

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 Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

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with Confidential Annexes 1 and 2’

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I. INTRODUCTION

1. Any objective assessment of the evidence in this trial leads to the inescapable conclusion that the entire legal process at the KSC¹—from investigation to thirty-three months of trial—has amounted to a vindication of **Hashim THAÇI** (“**THAÇI**”).² Established by the Kosovo Assembly, largely because of the political efforts of **THAÇI** himself, to investigate and prosecute the core allegations in the court’s “*foundational document*”, the so-called “*Marty Report*”,³ the legal process has established that the salacious allegations of “*illicit trafficking in human organs*” were nothing more than the product of a Russian disinformation campaign, as confirmed by General **Wesley CLARK**.⁴

2. **THAÇI** has also been vindicated with respect to the allegations brought against him. The Panel heard from a succession of high-ranking international officials: the NATO Supreme Allied Commander Europe, Spokesperson of the U.S. State Department, senior British and American diplomats, and the second-highest-ranking UN official on the ground. All of them interacted with **THAÇI** and had access to the most detailed diplomatic and intelligence information available. All concluded **THAÇI** was a political figure without any military role within the KLA, or command and control over it, and with no known connection to detentions of civilians, or ability or obligation to stop the post-war violence.

3. This was confirmed by KLA members at the highest level including **W04752**, **W04746** and **W04401**. The Panel has seen no documentary evidence of **THAÇI** issuing orders to perpetrators of unlawful detentions or receiving reports from them. The

¹ Annex 1 contains a list of the common acronyms used throughout this Brief.

² The other Accused are hereafter referred to as “**VESELI**”, “**SELIMI**” and “**KRASNIQI**”.

³ KSC & SPO, ‘Foundational Documents’, 2026, <https://www.scp-ks.org/en/documents/foundational-documents>, where the Marty Report is listed first.

⁴ T-251118, pp.28281-28282 (CLARK).

Panel has seen no credible evidence that **THAÇI** authored KLA communiqués, and no evidence of any causal link between any charged crimes on the one hand, and communiqués or public statements on the other. The Panel thus has before it a consensus of evidence, both internal and external to the KLA, that establishes reasonable doubt about the Specialist Prosecutor's Office's ("SPO") case against **THAÇI**.

A. FLAWS IN THE SPO THEORY AND METHODOLOGY

4. Any objective investigation of **THAÇI** by the SPO would have resulted in a declination of charges. However, **THAÇI**'s fate was seemingly sealed when MARTY made twenty-seven references to him in his now discredited report. As a result, the SPO targeted **THAÇI** for indictment at the outset and conducted its investigation as an exercise in justifying charges against its target. As Judge Wolfgang SCHOMBURG once said of the ICTY's Office of the Prosecutor: *"One cannot help getting the impression that an arrest warrant is issued first, and only afterwards do the actual investigations begin."*⁵

5. The SPO seems to have adopted a similar approach in its pursuit of **THAÇI**. It chose not to interview virtually any of the high-level international officials from whom the Panel heard in the Defence case. It also chose to ignore the evidence of KLA insiders that **THAÇI** had no military role or role in any detentions. It chose to ignore previous conclusions of the ICTY in *Limaj* and *Haradinaj*.⁶ Instead, it chose to build a case that relies significantly on statements by **THAÇI**'s fierce political opponents after the formation of the SITF and SPO, who had obvious motives to discredit **THAÇI** politically through false testimony.

6. Targeting **THAÇI** before gathering evidence predictably led to a shoddy

⁵ Renate Flottau, 'Fragw'urdige Abmachungen', *Der Spiegel*, 16 January 2005.

⁶ Annex 2 contains a list of all authorities cited in this Brief.

investigation. The SPO's most serious allegations of personal involvement, including the murder and disappearance of [REDACTED], were brought after only *six months* of investigation⁷ and only after [REDACTED] made public, defamatory allegations.⁸ There is no contemporaneous evidence that **THAÇI** was involved. Worse yet, the SPO built its case exclusively on hearsay or double-hearsay evidence, rather than calling alleged declarants to give first-hand evidence and be subjected to cross-examination. The SPO chose to drop witnesses rather than allow them to further discredit its thin [REDACTED] case and help the Panel establish the truth, as in the case of [REDACTED].

7. Regarding allegations that parliamentarians were "*severely beaten*" in Qirez/Ćirez and that **W03825** "*was left severely traumatised by the detention; he still suffers from pain in his right arm and hand as a result*",⁹ the SPO investigation failed to discover publicly available YouTube video evidence of **W03825's** condition immediately upon his release—evidence it seemingly only encountered during the Defence Opening Statement. Rather than reconsidering its reliance on **W03825's** evidence in the interests of justice, the SPO attempted to 'spin' the video to its advantage—an attempt that backfired significantly (as explained below). The SPO "*investigation*" also failed to uncover that at least one of its "*two Serb journalists*" was a suspected war criminal and paramilitary. Instead of addressing this issue at trial, the SPO was unable to refute it and chose to ignore it.

B. FAILURES OF THE JCE THEORY: THE REALITY OF THE KLA AND **THAÇI'S** LEADERSHIP

8. The Defence has meticulously dismantled the central pillars of the SPO case.

⁷ [REDACTED]. Indictment sought on 24 April 2020. See F00002.

⁸ [REDACTED].

⁹ SPO PTB, paras.463,468.

The core of this case is an alleged Joint Criminal Enterprise (“JCE”) whose common purpose was to *gain and exercise control over all of Kosovo* through the systematic persecution of Opponents. The SPO has failed to produce any direct evidence that such a criminal purpose ever existed: there has been no credible evidence that the KLA generally, or **THAÇI** personally, intended to seize power for themselves in Kosovo through the commission of crimes. If a common criminal purpose had been the driving force, it would have left a trail of meetings and documents where such topics were discussed. Yet, the SPO presented no witnesses who attended meetings where this purpose was conceived, nor any documents—such as minutes or communiqués—outlining its terms.

9. The SPO’s theory of a clandestine criminal plan is further undermined by the testimony of high-ranking international officials. General Wesley **CLARK**, Ambassador Christopher **HILL**, and James **RUBIN**—individuals intimately involved in diplomatic and military efforts of the time—never perceived any such criminal objective. **CLARK**’s conclusion was that the KLA was a group coming together to defend their population against ethnic cleansing, even suggesting that the SPO’s theory would have required an “*elaborate deception*” that was simply not evident on the ground. Had NATO member states understood that the KLA was working in furtherance of the alleged common purpose, it is inconceivable that they would have intervened militarily as they did.

10. Further, the SPO’s JCE theory is strategically illogical. The KLA’s primary goal—*independence from Serbia*—depended entirely on securing and maintaining the support of the international community, particularly the U.S. and NATO. **RUBIN** explained the U.S. Government made it “*absolutely*” clear to **THAÇI** that any adoption of the criminal policies of the aggressors would lead to an immediate withdrawal of support.

11. For **THAÇI**, maintaining the trust and respect of the U.S., KFOR and UNMIK was of the *“highest priority”*. It is inconceivable, as evidenced by Michael **DURKEE** and James (“Jock”) **COVEY**, that he would risk the alliance necessary for Kosovo's survival to pursue a criminal enterprise that would have rendered the KLA international pariahs. The KLA's actions, including demilitarisation, their eagerness to be seen complying with international standards and **THAÇI**'s public condemnation of rogue violence and co-operation with UNMIK establish a reasonable inference the KLA and **THAÇI** were focused on legitimacy, not criminality.

12. The SPO relies on **THAÇI**'s participation in the KLA General Staff (“GS”) to suggest he *“significantly contributed”* to crimes. However, there is no evidence that he had any connection to detentions as the head of the Political Directorate. Moreover, for a significant portion of the Indictment period,¹⁰ **THAÇI** was not in Kosovo. Between late-1998 and mid-1999, **THAÇI** was in Albania, Switzerland, France, the UK, Germany and Belgium, participating in high-level conferences like Rambouillet and meeting with leaders such as UK Prime Minister, Tony **BLAIR**, U.S. Secretary of State, Madeleine **ALBRIGHT**, and NATO Secretary-General, Javier **SOLANA**. His absence makes the SPO's claims of his *“effective control”* over individual perpetrators, or that he was connected to detentions and crimes on the ground in Kosovo, legally and practically unsustainable.

13. Furthermore, the KLA was not a traditional, monolithic army with a rigid hierarchy. It was described as an *“army of the dispossessed”*—a decentralised group of volunteers: farmers, doctors, and ordinary people, who took up arms to defend their homes. In such a chaotic, regionalised and voluntary structure, the *“effective control”* required for command responsibility—the material ability to prevent or punish

¹⁰Indictment, para.16: *“from at least March 1998 through September 1999”*.

crimes—simply did not exist. Vindication for **THAÇI** is also found in his consistent efforts to promote peace, inclusivity, and the rule of law. Contrary to the SPO's claim that he sought to eliminate political Opponents, the evidence shows that **THAÇI** attempted to create a unified and inclusive Kosovar front.

14. Notwithstanding that it had no legal authority or international recognition, the establishment of the Provisional Government of Kosovo ("PGoK") was designed to bring together rivals like the KLA, LDK and LBD – not to *gain and exercise control over all of Kosovo* for the KLA. **THAÇI** made repeated calls for LDK participation and eventually signed the JIAS agreement in December 1999, which led to the dissolution of KLA and LDK parallel structures in favor of a joint administration under UNMIK. These are not the actions of a man seeking to seize power through the murder of political rivals; they are the actions of a statesman building an independent and democratic state. Similarly, the KLA agreed to, and did, demilitarise by 20 September 1999. The significance of this should not be underestimated. If the KLA had intended to gain and maintain control over Kosovo, it would not have dismantled its forces so quickly.

15. In summer 1999, amidst a climate of post-war chaos and revenge, **THAÇI** made numerous public statements urging peaceful coexistence and calling on Albanians not to seek retribution against their Serbian neighbours. When confronted with concerns about human rights in 1998, **THAÇI** relayed these concerns to members of the GS, which in turn took steps to institutionalise discipline within the KLA, including the creation of a judicial sector and a military court to ensure due process—a direct response to his diplomatic engagements with human rights organisations.

C. CONCLUSION

16. The crimes that occurred during 1998 and 1999 were not the result of a

coordinated strategy from above, but rather individual acts of revenge, personal vendettas, and the actions of “*rogue elements*” or criminals pretending to be KLA. This assessment was shared by experts and organisations on the ground, including UNMIK, NATO/KFOR, and KDOM officials, who concluded there was no evidence of a coordinated strategy directed by KLA leadership. The ICTY’s *Limaj* and *Haradinaj* Chambers reached the same conclusion.

17. The SPO’s attempt to rewrite this history—to transform a war of liberation supported by the world’s leading democracies into a JCE—is not supported by the facts. **THAÇI**’s life and career have been dedicated to the freedom and independence of Kosovo. To convict him based on a theory that ignores his physical absence, his lack of effective control or connection to detentions, and his documented efforts to promote peace would be a grave miscarriage of justice.

18. Hashim **THAÇI** has been vindicated by the very evidence—and lack of evidence—presented in this trial. The only just outcome is a judgment of acquittal.¹¹

II. STANDARD AND BURDEN OF PROOF

19. Rule 140 establishes the standard of proof as “*beyond reasonable doubt*”. The burden of proof rests solely with the SPO. In the absence of direct evidence of guilt, the Panel may use circumstantial evidence to establish guilt beyond reasonable doubt

¹¹ The Defence preserves and maintains all procedural objections raised and litigated during the pre-trial and trial proceedings, particularly as regards the scope of judicial questioning (e.g. F02718, IA028/F00002), the admission of witness evidence without cross-examination, particularly where it relates to acts and conducts of the accused (e.g. F01391), the approach to admission of evidence through the bar table (e.g. F01387), the taking of judicial notice of adjudicated facts (e.g. F01417), the scope of the Witness Protocol (e.g. F00625, F00692, IA024/F00002), the admission of **THAÇI**’s prior statements (e.g. F01474), the repeated late amendment of the SPO Exhibit List (e.g. F00688), the SPO monitoring regime of **THAÇI**’s communications and its impact on the fairness of Case 06 (e.g. F02312, KSC-BC-2018-01/F00569, KSC-CC-2024-25/F00001) and the Defence preliminary objections on defects in the indictment (F00215), jurisdiction (F00216) and fundamental rights (F00217).

only “if the inference from that evidence is the only reasonable one that could be drawn from the evidence presented.”¹² If there is any reasonable explanation of the evidence other than the guilt of the Accused, reasonable doubt exists and the Accused must be acquitted.¹³

III. JOINT CRIMINAL ENTERPRISE

A. THE COMMON CRIMINAL PURPOSE DID NOT EXIST

20. In 1998 and 1999, the KLA had a common purpose: to achieve Kosovo’s independence through armed resistance to an apartheid Serbian regime.¹⁴ This armed resistance faced numerous obstacles, not the least being an organised effort by Serbian authorities to plant collaborators throughout Kosovar Albanian society, including within the KLA itself. According to Zoran STIJOVIĆ, Chief of the Analysis Section of the Prishtinë/Priština centre of Serbian State Security Department (RDB)¹⁵ from 1996 until 12 June 1999, Serbian security services had over 200 collaborators within the KLA.¹⁶ The KLA had a legitimate military objective to resist the Serbian regime’s sabotage, including through propaganda and public statements to discourage collaborators.

21. The events of 1998 and 1999 in Kosovo have been the subject of detailed analysis by journalists, diplomats, historians, humanitarians and jurists for over two decades. As noted in the Defence Opening Statement, the *Limaj* Trial Chamber concluded that any collaborator policy within the KLA was in pursuit of “*military objectives*,” and that “*individual cases of abduction, for reasons not within the collaborator*

¹² Rules, Rule 140(3) (emphasis added).

¹³ *Čelebići* AJ, para.458.

¹⁴ 1D00262, paras.13,46; T-250917, p.26845 (WILLIAMS); T-250922, pp.27019,27095 (DUNCAN); T-250930, p.27369 (COVEY); 1D00138; 1D00506, p.SPOE00305152; Adjudicated Fact No.213.

¹⁵ Adjudicated Fact No.171.

¹⁶ 1D00451, p.DHT03867; 1D00456_ET, p.DHT05282-ET. *See also* T-240325, pp.13644-13646 (W04147).

*policy, were carried out by rogue elements of the KLA.”*¹⁷ This Panel is not called to assess whether the KLA, or these four Accused, were part of a JCE to use unlawful means to pursue a legitimate military objective to combat the intelligence operations of the Serbian regime, because the SPO does not purport to challenge the means used to pursue the KLA’s legitimate military objectives. Instead, the SPO defined the alleged common criminal purpose of the JCE as an effort to unlawfully pursue a *political* objective: 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.*”¹⁸ For the last 27 years, no such common criminal *political* purpose was ever identified by any observers, journalists, witnesses, courts or even those the SPO describes as “*Opponents*” of the KLA.

22. The burden on the SPO to prove its historical revisionism is high: it must prove, beyond reasonable doubt, **both** that the Accused had a purpose to “*gain and exercise control over all of Kosovo*”, **and** that they intended to do so “*by means including unlawfully intimidating, mistreating, committing violence against, and removing those deemed to be opponents.*”¹⁹ A failure to establish **either** of these elements beyond reasonable doubt requires a dismissal of the JCE mode of liability.

1. *There is no direct evidence of the common purpose*

23. The SPO produced no direct evidence that the common purpose existed. It did not present any witnesses who attended meetings at which it was conceived or agreed to, or at which its terms were set. The SPO did not produce evidence from the KLA’s so-called “*Opponents*” that they understood the KLA was seeking to “*gain and exercise*

¹⁷ *Limaj* TJ, para.216; T-230404, pp.2326-2328 (Opening Statements).

¹⁸ Indictment, para.32; SPO PTB, para.2 (emphasis added).

¹⁹ Indictment, para.32; SPO PTB, para.2 (emphasis added).

control over all of Kosovo”, nor did international actors perceive such an objective.²⁰ The simplest way for the SPO to have demonstrated its existence was to have confronted each former KLA member who testified with evidence that this common purpose existed, and asked whether they had agreed to it and were working in furtherance of it. This was never attempted.²¹ No witness spontaneously described this common purpose in these terms, or claimed to have agreed to it or worked towards it. Those witnesses to whom it was put by the Defence denied its existence,²² and called it absurd.²³

(a) The purpose of the KLA –and THAÇI– was to liberate Kosovo, not to seize power for the KLA

24. If the common purpose had existed, this means its members also engaged in a protracted deception of the international experts and staff with whom they worked and interacted. This very sentiment was expressed by **CLARK**: *“maybe I’m wrong, but all of the impressions that I had at the time, and maybe this was an elaborate deception planned on the part of Mr. Thaci or others, this was a group of people who came together over a period of time to try to defend their population against Serb ethnic cleansing.”*²⁴ The Panel heard from leaders, commanders, and staff members of KDOM, NATO/KFOR, OSCE and UNMIK, who lived through the charged events and interacted with the alleged JCE members.²⁵ None was aware of the common criminal purpose as framed by the SPO.

²⁰ T-251117,pp.28174-28175, T-25118,p.28277 (CLARK); 1D00262,para.46; T-250915,p.26499, T-250917,pp.26805-26808 (RUBIN); 1D00375,paras.18-19; T-251110,pp.27660,27683-27685 (HILL); T-240325,pp.13599-13601 (W04147); T-251113,pp.28023-28024 (DURKEE).

²¹ On the one occasion where the SPO put the existence of an alleged KLA “policy” to a KLA witness, this was framed as an alleged policy of “*detaining collaborators*”, which the witness denied, which is not an illegal policy, and is not a common purpose to gain and maintain control over all of Kosovo: T-230712,p.5557 (W04746).

²² T-240703,pp.17532-17533, T-240715,pp.18204-18206 (W04752); T-240827,p.19056 (W04764); T-250915,pp.26542-26543 (RUBIN); T-250930,p.27369 (COVEY); T-241028,p.21277 (W04485). *See also* T-230912,pp.7797-7798 (W04255); 1D00506,p.SPOE00305152.

²³ T-250916,p.26688 (RUBIN).

²⁴ T-251118,p.28277 (CLARK).

²⁵ For details of the alleged JCE Members and Tools, *see* Indictment, para.35.

Had they known that members of the KLA leadership with whom they worked shared a common purpose to *gain and exercise control over all of Kosovo* by means of persecution, imprisonment, torture, and murder of Opponents, which was shared throughout all levels of the KLA and PGoK, their cooperation and support would have been inconceivable.²⁶ The KLA knew this would have cost them the support of the European Union and NATO which they needed to achieve their goal: independence from Serbia.²⁷ As RUBIN explained, “*we wanted to be sure we were, as we put it in government, on the side of the angels*”, “*we wouldn’t want to be on the side of anyone who had those kinds of associations, and we would have gone to extraordinary lengths to make sure.*”²⁸

25. The SPO case rests largely on its own gross misrepresentation of the origin and purpose of the PGoK. The PGoK was established at the end of the Rambouillet Conference on 23 February 1999 pursuant to an agreement reached among THAÇI (KLA), RUGOVA (LDK), and QOSJA (LBD).²⁹ Pursuant to this agreement, RUGOVA would remain as the Kosovar Albanian President, while the KLA would nominate the Prime Minister of a provisional government comprised of members of the KLA, LDK, LBD and other potential independent members.³⁰ It is a reasonable interpretation of the evidence that the PGoK was intended to be a provisional government *inclusive* of all major Kosovar Albanian political parties, and not a vehicle through which the KLA would *gain and exercise control over all of Kosovo*. Indeed, the evidence demonstrates that THAÇI made repeated and consistent calls for the LDK to participate in the PGoK,³¹ and that the establishment of the PGoK was supported by ALBRIGHT³² and BLAIR.³³

²⁶ T-250915,p.26543 (RUBIN).

²⁷ T-251113,pp.28023-28024 (DURKEE).

²⁸ T-250915,pp.26552-26553 (RUBIN).

²⁹ 1D00069_ET.

³⁰ 1D00227,p.DHT04961; 1D00069_ET,para.4. *See also* 1D00529,p.SPOE00304687.

³¹ *See* para.64.

³² 1D00262,para.69; T-250915,pp.26514-26516 (RUBIN); 1D00268,p.DHT05135.

³³ 1D00286,p.SITF00011866; T-250915,pp.26514-26516 (RUBIN).

26. Another key message conveyed by the internationals in their diplomatic efforts to convince the KLA to sign the Rambouillet Agreement was that the KLA would continue to exist as a political force and/or as part of a future police force after demilitarisation.³⁴ This promise was instrumental in 'selling' the Rambouillet Agreement to the zone commanders.³⁵ Therefore, a reasonable interpretation of the evidence of **THAÇI**'s efforts towards maintaining a role for the KLA in the political sphere or in a Kosovo police force, during the summer of 1999, is that these were aimed at ensuring that, as they had been promised, former KLA members would not be left jobless in the streets;³⁶ a legitimate goal that was also shared³⁶ by the international community.³⁷

27. The SPO has produced no compelling evidence that the KLA generally, or **THAÇI** specifically, ever had any discussions or plans to *gain and exercise control over all of Kosovo*. On the contrary, the evidence shows that although the KLA and LDK had frequent, often heated, political disagreements, the KLA consistently tried to work with the LDK and others to forge a united Kosovan front against the Serbian apartheid regime, despite the tensions created by attempts by FARK, the LDK's military arm,³⁸ to seize control of the KLA,³⁹ and by **BUSKOSHI**'s refusal to distribute to the KLA funds that had been collected in the diaspora for the KLA after the **JASHARI** massacre.⁴⁰ The KLA's willingness to include non-KLA actors was evident not only in the PGoK agreement, but also in the November 1998 KLA-FARK

³⁴ P01221_ET,p.14; T-240528,pp.16177-16178 (W02144); 1D00118,p.SPOE0030525; 1D00273,p.DHT05166.

³⁵ T-240528,p.16178 (W02144); 1D00279_ET,p.SPOE00229733. *See also* para.558.

³⁶ 1D00346,p.020804.

³⁷ 1D00098,p.SITF00173540; 1D00410,para.28; 1D00509,paras.1-4; 1D00548,p.DHT06407; 1D00550,para.6; 1D00573,p.DHT05439; P01976,p.012639; P04514,p.DHT11433. *See also* paras.263-265.

³⁸ Adjudicated Fact No.191.

³⁹ T-250918,pp.26995-26997 (WILLIAMS); 1D00151,p.DHT03948; 1D00102_ET,pp.U0022985-U0022986.

⁴⁰ T-250918,pp.26969-26971,26980-26981,27006 (WILLIAMS); T-251110,pp.27659-27660 (HILL).

agreement⁴¹ and in numerous negotiations held between the KLA and BUKOSHI.⁴²

28. KLA witnesses explained the aims of the KLA as liberation and independence.⁴³ Those who joined the KLA said they were motivated by their desire to remove the grip of an oppressive regime, rather than consolidating power for the KLA leadership by murdering and torturing political opponents. **W04752** said the KLA's goal was "*to liberate Kosovo*",⁴⁴ and **W04746** described the aim as "*the independence of Kosovo*".⁴⁵ **W04255** said that [REDACTED].⁴⁶ **W04576** said that after Albanian areas were occupied for more than 100 years by the Serbs, the aspiration was to liberate Kosovo and that is what they fought for.⁴⁷ **W02652** said that from 1997 the KLA said it would "*fight for the liberation of Kosovo*".⁴⁸

29. **W03165** joined the KLA "*to protect my country from the aggressor*",⁴⁹ after someone said reinforcements were needed to defend a village from the Serbs.⁵⁰ **W04355** and **W04752** explained that the KLA started as civilians organising a guard against the Serbs,⁵¹ and **W04679** described many people joining village defence "*mainly because they were outraged at what happened with the massacres*".⁵² **W03865** joined the KLA in June 1998 as a reaction to the JASHARI family massacre, but also prior killings, massacres, maltreatments and imprisonment and the ordeal inflicted on

⁴¹ 1D00166_ET.

⁴² P00739.7_ET,pp.19-21; P00761.1_ET,p.24; T-250917,p.26908 (WILLIAMS).

⁴³ T-231116,p.10262 (W04765); T-241127,p.22852 (W03873); T-241028,p.21277 (W04485); P01767.1_ET,p.2061; 1D00243_ET,p.DHT04009-ET; 4D00148_ET; 1D00185_ET; T-241203,p.23258 (W04401); T-241106,p.22077 (W01453); T-240930,p.20482 (W04278).

⁴⁴ T-240709,p.17849 (W04752).

⁴⁵ T-230714,p.5717 (W04746).

⁴⁶ [REDACTED] (W04255).

⁴⁷ T-240221,p.12663 (W04576).

⁴⁸ T-230417,pp.2934-2937 (W02652).

⁴⁹ T-230517,p.4240 (W03165).

⁵⁰ T-230518,pp.4279-4280 (W03165).

⁵¹ T-230523,pp.4555-4556 (W04355); 1D00436_ET,p.697.

⁵² T-241118,pp.22306-22307 (W04679).

Albanians by the oppressor.⁵³ **W04753** described [REDACTED].⁵⁴ **W01511** explained how local villagers around Dukagjin started to organise themselves following daily attacks by the Serbs; the KLA was organised by the people and was born for the people.⁵⁵

30. **W04147** described the KLA as fighting “for the Kosovar population and an independent Kosovo”,⁵⁶ and explained KDOM’s contemporaneous reporting to Washington called the KLA the “minutemen”, referencing U.S. troops who fought the British during the revolutionary war; the KLA were defending their homes and families.⁵⁷ Agim ÇEKU described the KLA as being drawn from all walks of life: farmers, teachers, and doctors, “‘the army of the dispossessed’ since we took up arms to fight against those who had driven us from our homes”.⁵⁸ **W04764** agreed.⁵⁹ John **DUNCAN** also remembered “the army of the dispossessed” as a phrase used at the time, and which reflected what he saw: “people who had a normal life, civilian life, being doctors, lawyers, you know, all sorts of different things, and they had taken up arms.”⁶⁰ Rather than being motivated by a common purpose to seize and maintain power for the KLA through the commission of crimes, the KLA’s objective was to liberate the area and then hold free elections, with political parties running Kosovo.⁶¹ The ICTY similarly found that “[t]he KLA supported a solution of the Kosovo question through an active armed resistance to the official regime”.⁶²

31. The motivation of KLA fighters to free themselves from decades of Serb

⁵³ T-240429,pp.15109-15110 (W03865).

⁵⁴ T-231030,pp.9160-9162 (W04753).

⁵⁵ T-240903,p.19498 (W01511).

⁵⁶ T-240327,p.13860 (W04147).

⁵⁷ T-240325,pp.13599-13601 (W04147). *See also* 1D00457.

⁵⁸ 1D00183,p.DHT04082.

⁵⁹ T-240827,p.19053 (W04764).

⁶⁰ T-250922,p.27046 (DUNCAN).

⁶¹ T-250324,pp.25876-25881 (W04403); 4D00038.

⁶² Adjudicated Fact No.213.

oppression and violence –rather than to *gain and exercise control over all of Kosovo* through a widespread or systematic attack against Opponents– is demonstrated by the acceleration of KLA membership following an emblematic act of Serb brutality, the murder of 54 people, most of them members of the JASHARI family, in March 1998.⁶³ **W04746** said that there were 18 members of the KLA in the Llap Zone in 1997, but then 100 by the end of March 1998 as a result of the JASHARI massacre, and that the KLA got “*extraordinary support*” from the people of Albania after the death of JASHARI; it was difficult to stop people from joining the KLA and difficult to consolidate.⁶⁴ Many witnesses gave the same evidence.⁶⁵

32. The record supports this reasonable interpretation of the evidence that there was no common criminal purpose to *gain and exercise control over all of Kosovo*, and that **THAÇI** was not a participant in any such purpose. For this reason alone, the alleged JCE cannot be established. Even if the SPO could establish such a purpose beyond reasonable doubt, it has failed to establish the second step: that this purpose was achieved by unlawfully intimidating, mistreating, committing violence against, and removing those deemed to be Opponents.

33. **W04147** testified KDOM never had evidence that the KLA GS had directed the capture or seizure of Serbian journalists or LDK activists, or any civilians at all.⁶⁶ He agreed there was “*good cooperation with the KLA leadership*” in terms of addressing issues of concern.⁶⁷ **CLARK** made a statement on 14 August 1999 addressing the violence in Kosovo, and said “*I will not point my finger at the KLA, their leader has been*

⁶³ Agreed Fact No.6; Adjudicated Fact Nos.26-28,30,751,766.

⁶⁴ T-230714,pp.5715-5717 (W04746). See also 1D00435_ET,pp.3184-3186; T-251117,pp.28168-28169 (CLARK); Adjudicated Fact No.41.

⁶⁵ T-230417,p.2931, T-230418,pp.3087,3089 (W02652); T-240429,pp.15109-15110 (W03865); 1D00436_ET,p.696; 1D00435_ET,p.3186; 1D00404,p.DHT04830; P01854.1_ET,p.19; P03580.1_ET,p.13; P00484,p.SPOE00083510; P01200.1_ET,pp.26-28; P01694.7_ET,p.4.

⁶⁶ T-240327,p.13863 (W04147).

⁶⁷ T-240328,p.13986 (W04147).

very cooperative with us at senior levels".⁶⁸ He never received intelligence or information that the KLA leadership had any plan to target Serbs or minorities, and does not believe that the KLA leadership engaged in a coordinated effort to target and attack Serbs or minorities.⁶⁹ This was consistent with NATO's view, also conveyed by **DURKEE**⁷⁰ and **DUNCAN**,⁷¹ who explained that the violence occurring in Kosovo was not organised or orchestrated.⁷²

34. **W02135** explicitly denied the existence of a KLA policy, testifying before the English High Court he had no evidence that the "*KLA institutionally, by policy if you wish, were committing terrorist acts against whomever*".⁷³ While he could not deny acts by individuals, **W02135** said "*I know, 99% know, that individual members of the KLA were, frankly, out of control. I know that they saw themselves as the victors and in that Balkan way, to the victor the spoils*".⁷⁴ **CLARK** confirmed this aligned with what **W02135** was reporting to him, and he agreed fully with that analysis.⁷⁵ This also reflects [REDACTED].⁷⁶ **CLARK** testified [REDACTED].⁷⁷

35. By the time **COVEY** joined UNMIK, he had almost 30 years in the foreign service, dealing with extreme warrior culture, sinister people intent on intimidation, politicians who would discern what others wanted to hear, and outright liars. He saw nothing that would lead him to believe **THAÇI** was attempting to seize power in

⁶⁸ 1D00387_ET.

⁶⁹ 1D00430,para.34.

⁷⁰ 1D00428,paras.17-19.

⁷¹ T-250922,pp.27103-27105 (DUNCAN).

⁷² T-250922,pp.27100-27102,27120 (DUNCAN).

⁷³ P02516,p.121589.

⁷⁴ P02516,p.121594. *See also* T-250120,pp.23945-23949 (W02183).

⁷⁵ T-251118,pp.28290-28292 (CLARK). **DUNCAN** agreed with **W02135**'s assessment: T-250923,p.27250 (DUNCAN). *See also* 1D00543,p.DHT04162.

⁷⁶ [REDACTED]. Regarding preparation of [REDACTED], *see* [REDACTED]. **DURKEE** also confirmed "*the views that I was hearing and recording for General Clark were that it was much more bottom-up and spontaneous than anything that looked like a concerted campaign*": T-251112,p.28013.

⁷⁷ T-251117,pp.28151-28152 (CLARK).

Kosovo by committing crimes against Opponents, either personally or through KLA members.⁷⁸ Asked why he agreed to be called by the Defence, having declined to testify in similar trials, **HILL** explained that, with the benefit of 25 years “*to think of things*”, and having “*no reason to believe that Mr. Thaci was involved in such activity*”, he “*felt [he] should tell what [he] know[s] about the situation.*”⁷⁹

36. These internationals did not form their views in ignorance. Their governments were actively seeking information about any kind of underlying criminal KLA policy or plan. **RUBIN** explained that at the time, Kosovo was one of the primary foreign policy priorities of the U.S. President and Government, which had a war crimes office and specific units staffed with dozens of experts who spent their days trying to determine whether there was any substance to claims of KLA crimes, as “*any suggestion that we were acting on behalf of criminals would have been something we’d want to get to the bottom of.*”⁸⁰ **RUBIN** explained that “*extraordinary lengths*” would have been taken to make sure the U.S. was not supporting a side that would adopt the policies of the aggressors they were being freed from.⁸¹ **RUBIN**’s testimony is corroborated by the State Department’s view in December 1999 that “*there is no evidence that the former UCK leadership is orchestrating the violence*”,⁸² which was the combined position of State Department experts from the human rights bureau, the war crimes office, the regional bureau *etc.*⁸³

37. As such, any finding that the common purpose existed is also a finding that NATO (including its 19 member states)/KFOR, UNMIK and their representatives on the ground, were deceived and ignorant of a reality that only the SPO was able to

⁷⁸ T-251002,pp.27592-27594 (COVEY).

⁷⁹ T-251111,p.27725 (HILL).

⁸⁰ T-250915,pp.26542-26543 (RUBIN).

⁸¹ T-250915,p.26553 (RUBIN).

⁸² 1D00175,p.DHT01473.

⁸³ T-250916,pp.26705-26706 (RUBIN).

uncover, decades later. In reality, the SPO has not pointed to any convincing evidence that **THAÇI** participated in any discussion or agreement to use criminal means to *gain and exercise control over all of Kosovo*.

38. Even the most critical of the few international observers called by the SPO never endorsed the existence of the common purpose alleged by the SPO.⁸⁴ **W02183** testified that “*the KLA guys came in and they had a plan*”, they wanted “*the Serbs out, and them in to take control of Kosovo*”, but then clarified that by ‘Serbs’ he meant Serb forces, and Serb administration,⁸⁵ rather than civilians. And while “*elements*” of the KLA had a mindset that Kosovo was for Kosovar Albanians, **W02183** recognised examples of **THAÇI** calling on those engaging in violence to stop doing so,⁸⁶ and other occasions on which **THAÇI** played “*a very helpful role in resolving this situation, at least [in] the short term.*”⁸⁷

39. **W02161** testified that she repeatedly raised allegations of human rights violations and detentions with the KLA, including **THAÇI**.⁸⁸ The lack of evidence of **THAÇI**’s involvement in detentions that may have taken place in the summer of 1999 is addressed below.⁸⁹ Regardless, rather than testifying that this criminal conduct was part of an underlying KLA common purpose to attack a civilian population, **W02161**

⁸⁴ **W02172** and **W02135** referenced a potential policy in their SPO statements. **W02172** stated (P02901,para.11), [REDACTED]. Similarly, **W02135** stated he did not know if detention sites were an issue of KLA policy, but even if not a formal policy, the KLA chose not to investigate or punish this (P02517,para.50). Notably, the probative value of both statements is low, as they were tendered in writing without cross-examination (see objections in para.119(ii)). The reliability of this evidence is further undermined by both witnesses giving statements to other authorities stating there was no such policy: *see* 1D00261,p.3532; P02516,pp.121589,121594-121595. Finally, even taken at their highest, neither statement supports the existence of the broad-ranging common purpose articulated by the SPO.

⁸⁵ T-250120,pp.23927-23928 (W02183), discussing P01968,para.53.

⁸⁶ T-250120,pp.23914-23916,23928-23938,23941-23944 (W02183), discussing examples including 1D00313, 1D00088, 1D00228,p.DHT04942, 1D00229, 1D000230, 1D00231, 1D00232,p.DHT01303. *See also* P01968,para.92.

⁸⁷ T-250120,pp.23932-23933 (W02183).

⁸⁸ T-231205,pp.10596-10603 (W02161).

⁸⁹ *See* Section III(B)(2)(g).

agreed “a lot” of acts of personal revenge were being committed where, for example, someone with a personal motive would call someone a collaborator;⁹⁰ that refugees flowing across the Albanian border in June/July 1999 were, as you would expect, “very distraught, very angry”;⁹¹ and that **THAÇI** was involved in many steps “trying to get the Serbs back and trying to quell violence”;⁹² despite operating in a situation of chaos which allowed the large-scale arrival of criminal elements, and people pretending to be KLA, compounded by the situation of no judges, and no courts.⁹³

40. This complex and nuanced reality was accepted by the majority of witnesses as being the cause of criminal conduct, rather than an allegedly murderous common purpose clandestinely shared throughout the KLA and PGoK. There is no direct evidence of the common purpose charged. None of the international observers described the KLA as working to *gain and exercise control over all of Kosovo* through the charged crimes.⁹⁴

(b) The common purpose would have been counter-productive

41. There was a reason that the KLA would not have operated pursuant to the SPO’s alleged common purpose. It would have been entirely counter-productive to the KLA’s overall goal of freeing Kosovar Albanians from the apartheid-like conditions and sub-human status inflicted by the Serbs.⁹⁵ For this, the KLA needed international support which the alleged common purpose would have jeopardised.

42. The evidence of historical oppression and mistreatment of Kosovar Albanians

⁹⁰ T-231207,p.10760 (W02161).

⁹¹ T-231205,p.10586 (W02161).

⁹² T-231207,p.10846 (W02161).

⁹³ T-231207,pp.10816-10819 (W02161).

⁹⁴ *Contra* Adjudicated Fact No.458.

⁹⁵ T-250922,p.27019 (DUNCAN); P04082_ET,p.011240; P00760_ET.7,p.076656; P00743.2,p.SITF00001534; P00743.4,p.076685; 4D00145,p.SITF00163980.

by their Serb occupiers is overwhelming.⁹⁶ Albanians were purged from public life.⁹⁷ **W04147** described Serbian policy against Kosovar Albanians as “*absolutely brutal*”.⁹⁸ MILOŠEVIĆ’s objective –confirmed by the plans for Operation Horseshoe– was to restore a demographic balance that would favour the Serbs.⁹⁹ **W03881** wrote in July 1999: “[a]ccording to British experts, more than 10,000 Kosovars were murdered by the Serbs or otherwise lost their lives during the ethnic cleansing.”¹⁰⁰

43. In 1999, OSCE wrote that “*the ethnic cleansing during the war had a deeply traumatic impact on the Kosovo Albanian community, leaving virtually no family untouched.*”¹⁰¹ **CLARK** described the systematic ethnic repression and ongoing ethnic cleansing as “*really unbelievable*”.¹⁰² **CLARK** recalled a conversation with MILOŠEVIĆ during the war: “‘*You know,*’ he said, ‘*we know how to handle these Albanians, these murderers, these killers of their own kind.*’ [...] ‘*We’ve done it before.*’ I said, ‘*Well, Mr. President, how did you handle it? What did you do?*’ He said, ‘*We killed them all.*’”¹⁰³ **RUBIN** described how “*decades of oppression*” of Kosovar Albanians had progressed to them being slaughtered in large numbers by Serb forces.¹⁰⁴ **DUNCAN** described the same progression, testifying that Kosovar Albanians “*had been subject essentially [to] an apartheid during the Serbian -- Milosevic’s era, where they had been excluded from*

⁹⁶ T-230911,pp.7666-7670 (W04408); T-231106,p.9323 (W03825); T-240228,p.13118 (W01140); T-240325,pp.13599-13600 (W04147); T-230711,p.5478 (W04746); 1D00440,pp.DHT08664,DHT08669-DHT08671; P00760_ET.7,p.076654; 1D00461; 1D00459,pp.DHT06675-DHT06676; 1D00499,p.020951; 1D00232,p.DHT01302; 1D00441,p.1D00-0566; 1D00442,pp.DHT12626-DHT12627; Adjudicated Fact Nos.1-11,742-743.

⁹⁷ T-240318,pp.13259-13261 (W02475); Adjudicated Fact Nos.12-13,738-741,744.

⁹⁸ T-240326,p.13688 (W04147).

⁹⁹ T-240326,pp.13687-13688, T-240327,pp.13899-13900 (W04147).

¹⁰⁰ P01194_ET,p.071282; T-240522,pp.15647-15648 (W03881). *See also* 1D00175; 1D00148,p.DHT01537; 1D00262,para.27; 1D00277,p.DHT05269; 1D00270,p.DHT05152; 1D00310,pp.DHT02860,DHT02878; 1D00325,p.2; 1D00333,p.020393; 1D00378,p.SPOE40010658; 1D00459,pp.DHT06679,DHT06681; 4D00146,p.2; 4D00206,p.K036-0964; 4D00214,pp.DJK01870,DJK01875; 1D00173; 1D00268,p.DHT05136; 1D00494,p.020786; 1D00467,p.DHT11643.

¹⁰¹ P00743.2,p.SITF00001539. *See also* 1D00441,p.1D00-0567; 1D00447; Adjudicated Fact Nos.745-746.

¹⁰² T-251117,p.28107 (CLARK). *See also* 1D00430,para.21; T-251117,pp.28102-28103,28134 (CLARK).

¹⁰³ T-251117,p.28111 (CLARK).

¹⁰⁴ T-250915,p.26554 (RUBIN).

government, from the public service, and gradually, as we saw, this ramped up into, essentially in the end, ethnic cleansing."¹⁰⁵

44. With decades of Serbian oppression as the backdrop, and dismantling this system of apartheid as the KLA goal, the evidence demonstrates that the KLA knew it needed international support to achieve this aim, and that the commission of crimes would put this support at risk. In short, the SPO's alleged common purpose would have been counter-productive. **W04147** testified that the KLA understood that after Dayton in 1995, Kosovo had very little prospect of becoming independent without the intervention of internationals, particularly the U.S.¹⁰⁶ Those involved in political negotiations also knew that without U.S. support, the quest for independence would amount to nothing.¹⁰⁷ Achieving and maintaining support from Western military powers was therefore a KLA key goal.¹⁰⁸ KLA witnesses corroborated this: **W03873** said the KLA knew of no country that had been freed without alliances,¹⁰⁹ and **W04401** agreed that cooperating with internationals was a priority.¹¹⁰

45. In terms of the value **THAÇI** placed on his relationship with the U.S., **RUBIN** considered *"he wanted the United States to trust and respect him"* and this was *"his highest priority beyond his own respect and interest in protecting his own people."*¹¹¹ **DUNCAN** said that the support of the U.S. was important to **THAÇI**, who *"saw the Americans as key players in all of this."*¹¹² A U.S. cable from 26 December 1998 records **KRASNIQI** saying

¹⁰⁵ T-250922,p.27019 (DUNCAN). See also T-250922,p.27095 (DUNCAN).

¹⁰⁶ T-240325,pp.13599-13561 (W04147).

¹⁰⁷ T-240327,p.13887 (W04147). See also 1D00441,p.1D00-0635, stating the NATO Secretary-General *"will take full account of the position and actions of the Kosovar leadership and all Kosovar armed elements in and around Kosovo in reaching his decision on military action"* and NATO *"will take all appropriate measures in case of a failure by the Kosovar Albanian side to comply with the demands of the international community"*.

¹⁰⁸ T-230911,p.7647 (W04408); T-251112,pp.27991-27992, T-251113,pp.28023-28024 (DURKEE); T-251112,pp.27906-27907 (HILL); 1D00430,para.35; 1D00428,para.19; T-250922,p.27085 (DUNCAN).

¹⁰⁹ T-241125,pp.22656-22657 (W03873).

¹¹⁰ T-241203,pp.23242-23243 (W04401).

¹¹¹ T-250915,p.26544 (RUBIN).

¹¹² T-250922,p.27085 (DUNCAN).

that the KLA considers the U.S. as its only “*ally and friend*”.¹¹³

46. It is implausible that the KLA could have had an objective to *gain and exercise control over all of Kosovo* for itself through the commission of crimes –putting the KLA in direct contradiction with its goal to secure U.S. and international support– and that this objective went undetected by the U.S. and other internationals who were actively searching for any indication of a criminal policy.

47. By contrast, the KLA was determined to show that it was complying with international standards in its treatment of civilians. **W04746** said that with the arrival of KDOM, the KLA was eager to ensure they were perceived well in the international arena, and wanted a good image of the KLA for the world.¹¹⁴ The KLA obeyed international rules and took advice from internationals because “*they are the ones that will help us*”.¹¹⁵ **W02161** said it was “*very important*” for the KLA to have been seen as complying with international law.¹¹⁶ The 26 December 1998 cable records **KRASNIQI** conveying that the KLA did not control all armed Albanian civilians, and that some rogue groups claiming to be KLA “*have carried out actions that have damaged the KLA’s local [and] international image*”, before distancing the KLA from terrorist tactics, and referencing KLA public statements condemning these crimes.¹¹⁷

48. **W03724** said that in addition to wanting to present itself in the best possible light, the KLA wanted to demonstrate legitimacy to the international community, and for their force to be seen as honourable.¹¹⁸ For example, **W03724** testified that there was no major KLA retaliation to the MUP killings in Reçak/Račak because of

¹¹³ P01072,p.116682. See also T-251111,p.27742 (HILL).

¹¹⁴ T-230714,p.5738 (W04746).

¹¹⁵ T-230714,pp.5736-5737 (W04746).

¹¹⁶ T-231205,pp.10568-10569 (W02161).

¹¹⁷ P01072,p.116683.

¹¹⁸ T-230914,p.8030 (W03724).

conversations between the KLA and the international community, saying it was not the time to respond to a massive violation of the ceasefire with another violation if they wanted international military support.¹¹⁹

49. A November 1999 ICG report said *“it is also generally acknowledged that it is not in the interests of the KLA leadership to be seen sanctioning the increasingly barbaric attacks on Serbs. They are aware of the damaging effect of such assaults, often upon elderly and defenceless civilians, that are rapidly eroding the hard won sympathy that Kosovar Albanians enjoy in the West.”*¹²⁰ **W04752** ordered that *“improper behavior towards the civilian population is to be prevented in all KLA units”,*¹²¹ to stop those misusing their authority for personal grudges, because *“we wanted to show the internationals that we were a disciplined army, that our aim was to liberate Kosovo, and that the army was taking such measures to discipline its ranks and to achieve its ultimate goal.”*¹²²

50. Importantly, **RUBIN** said that the message was *“absolutely”* conveyed to **THAÇI** that the issue of war crimes was one of the most important foreign policy issues during the CLINTON presidency, and if the U.S. had anything concrete that **THAÇI** was ordering murders or anything of that type it would withdraw its support for the KLA immediately.¹²³ **RUBIN** was asked:¹²⁴

Q. Did you see anything in Mr. Thaci’s words or behaviours that led you to believe that he was willing to risk US support?

A. No, I think that the one time he had to risk it was at Rambouillet, and I saw the powerful effect it had on him when he had to say no to Madeleine Albright because he was not in charge, and I knew that he was so pained by having to say no that he almost broke down. And so I regarded his desire to make sure that America trusted and respected and supported the Kosovar people, Albanian people’s goals to be free and safe, that that was his highest priority.

¹¹⁹ T-230914,pp.8084-8089 (W03724).

¹²⁰ 1D00234. See also 1D00497,p.7000007.

¹²¹ 1D00029_ET.

¹²² T-240709,pp.17848-17849 (W04752). See also Section III(B)(2)(f).

¹²³ T-250915,p.26543 (RUBIN); 1D00262,para.83.

¹²⁴ T-250915,pp.26544-26545 (RUBIN).

51. This was echoed by **W04147**, who agreed *“it would have been counterproductive to Mr. Thaci’s efforts to meet European and American officials to drum up support to also be supporting commission of war crimes on the ground”*.¹²⁵

52. Against this backdrop, the SPO’s JCE case has a fundamental illogic at its centre. According to the SPO, the alleged common purpose was to *gain and exercise control over all of Kosovo*. However, the evidence demonstrates that the very existence of the common purpose would have undermined this goal by pushing away the foreign governments and allies, including NATO and its 19 member states who could (and ultimately did) deliver the Kosovar Albanians a future free from oppression and brutality.

(c) The SPO case as to the alleged targets is not supported by the evidence

53. The categories of people targeted by the alleged common purpose are broad and vague in scope. The SPO claims that the common purpose was directed against *“those deemed”* to be Opponents of the JCE members, which is said to have **included** *“persons who were or were perceived to have been: (a) collaborating or associating with FRY forces or officials or state institutions or (b) otherwise not supporting the aims or means of the KLA and later the PGoK, including persons associated with the LDK, and persons of Serb, Roma and other ethnicities”*.¹²⁶ This vague framing contrasts with the overarching JCE repeatedly pleaded at the ICTY against *“Bosnian Muslims and Bosnian Croats”*,¹²⁷ or the *“non-Hema civilian population”* in *Ntaganda*,¹²⁸ or *“Timbuktu and its residents”* in *Al Hassan*,¹²⁹ or the *“UPC military elements and of the Hema civilians”* in *Katanga*.¹³⁰ Here,

¹²⁵ T-240325,p.13606 (W04147). See also T-251112,pp.27911,27883-27884 (HILL); 1D00430,para.35.

¹²⁶ Indictment,para.32 (emphasis added).

¹²⁷ *Mladić* TJ,para.11; *Karadžić* TJ,para.592. See also *Brđanin* TJ,para.14.

¹²⁸ *Ntaganda* DCC,para.1, confirmed by *Ntaganda* Confirmation Decision,paras.105-107.

¹²⁹ *Al Hassan* TJ,para.1620.

¹³⁰ *Katanga* Confirmation Decision,para.548(ii).

the SPO's alleged common purpose spans numerous non-exhaustive categories which include entire ethnicities, or categories based on how people were subjectively perceived by the JCE members at a certain time, and based on their "*associations*".

54. This broad framing of alleged targets means that evidence demonstrating that members of these groups were **not** targeted then casts doubt on the existence of the common purpose itself. For example, the SPO alleges that the common purpose was directed against "*persons associated with the LDK*".¹³¹ This cannot be reconciled with the evidence that the KLA was composed, in large part, of LDK members and supporters.

55. **W04752** said that many KLA recruits were LDK supporters.¹³² When he joined the KLA in May 1998, local staff and soldiers were predominantly from the LDK. **W04737** said that [REDACTED].¹³³ **W04746** said that "*the LDK was at the service of the KLA during the war*" and **W04758** agreed that being a member of the LDK was not an obstacle to joining or supporting the KLA, and that a large part of the KLA leadership were part of the youth forums of the LDK.¹³⁴

56. [REDACTED] was an LDK supporter and KLA soldier. He was open in his support of the LDK and was appointed as the deputy commander of [REDACTED].¹³⁵ [REDACTED] was an LDK member who saw no conflict between being an LDK supporter and part of the KLA,¹³⁶ and said that many LDK members had been active KLA members at their own instigation since [REDACTED] 1998.¹³⁷ As explained by **W04255**, this was [REDACTED].¹³⁸ Many other witnesses also explained that many

¹³¹ Indictment, para.32.

¹³² T-240715, pp.18204-18206 (W04752).

¹³³ P01605.7_ET, p.7. See also [REDACTED] (W04737); T-230418, p.3095, T-230419, p.3155 (W02652).

¹³⁴ T-241024, pp.21194-21196 (W04758). See also T-240930, p.20482 (W04278).

¹³⁵ [REDACTED].

¹³⁶ [REDACTED].

¹³⁷ [REDACTED].

¹³⁸ [REDACTED] (W04255).

KLA members had been, or were previously, LDK members.¹³⁹ **W02652** confirmed that there was no general policy to target LDK members.¹⁴⁰ Although [REDACTED],¹⁴¹ **W04576** never considered the LDK as an opponent of the KLA.¹⁴² [REDACTED] confirmed that people with different political opinions, for example LDK supporters, would not be called collaborators.¹⁴³ **W04744** said that in Suharekë/Suva Reka, given that the KLA was created by the structures of the LDK and was commanded and run by former LDK supporters, it could not have been that someone was considered a KLA opponent because they were an LDK member.¹⁴⁴ According to **W03724**, in Malishevë/Mališevo, KDOM was using the LDK mayor to communicate with the KLA.¹⁴⁵

57. Witnesses who claimed that LDK members were targeted by the KLA then walked this back under questioning.¹⁴⁶ [REDACTED]'s interview stated that many people from the LDK were accused of being spies, were targeted on this basis, and that [REDACTED].¹⁴⁷ While testifying, he clarified that everyone was LDK, there were no repercussions, and [REDACTED] had not been involved in LDK politics.¹⁴⁸ [REDACTED] said he was targeted as a collaborator on the basis of being an LDK or RUGOVA supporter,¹⁴⁹ but later agreed that basically everyone in [REDACTED] was an LDK supporter and that other people were not targeted on that basis.¹⁵⁰ While both [REDACTED] and the SPO previously represented that his detention was linked to

¹³⁹ P01694.1_ET,p.8; P01805.1_ET,p.7; P02090.6_ET,pp.3-4; P01136.1_ET.1,pp.8-10; P01825.1_ET,p.14; P01867.1_ET,p.20.

¹⁴⁰ T-230419,p.3156 (W02652).

¹⁴¹ [REDACTED] (W02652).

¹⁴² T-240222,p.12825 (W04576).

¹⁴³ [REDACTED].

¹⁴⁴ T-240624,pp.17032-17034 (W04744).

¹⁴⁵ T-230914,pp.8078-8079 (W03724).

¹⁴⁶ [REDACTED].

¹⁴⁷ [REDACTED].

¹⁴⁸ [REDACTED].

¹⁴⁹ [REDACTED].

¹⁵⁰ [REDACTED].

[REDACTED]'s membership in the LDK,¹⁵¹ [REDACTED] testified that [REDACTED] were only fans of the LDK, and [REDACTED] only joined the LDK after the war. [REDACTED] was never asked about the LDK while detained, and [REDACTED].¹⁵² The Panel should exercise caution in relying on similar evidence from witnesses whose evidence was not subject to cross-examination.¹⁵³

58. **COVEY** wrote in 2005 that KLA fighters saw FARK as nearly as much as an enemy as the Serb special forces and following the war, "*the KLA's ruthless campaign against the LDK continued.*"¹⁵⁴ However, he qualified this position while testifying, stating that UNMIK understood that acts were carried out by "*personnel associated with the KLA movement*", not as a policy of the KLA.¹⁵⁵

59. The SPO's alleged common purpose to commit murder, cruel treatment, and torture against "*persons associated with the LDK*" is therefore undermined by the evidence of an overlap in membership between the KLA and LDK. Evidently, the SPO is not required to demonstrate that every member of the LDK was targeted to establish that the common purpose existed. However, evidence that "*persons associated with the LDK*" made up the majority of the KLA's membership undermines the SPO case that JCE members had agreed to carry out attacks against them: it provides strong circumstantial evidence of a lack of intent to target LDK members.

60. Similarly, the SPO alleges that the common purpose was directed against anyone "*not supporting the aims or means of the KLA and later the PGoK*".¹⁵⁶ Again, the

¹⁵¹ [REDACTED].

¹⁵² [REDACTED]. See also similar findings by [REDACTED]; [REDACTED].

¹⁵³ See, e.g., P03368.1_ET,pp.23-25; P03368.3_ET,pp.37-39; P01940.1_ET,p.13; P01480.1_ET,p.55; P00673,p.SITF00370907. See also para.119(i).

¹⁵⁴ P04496,p.SPOE00397810.

¹⁵⁵ T-251001,p.27550 (COVEY) (emphasis added). See also T-241126,p.22757 (W03873).

¹⁵⁶ Indictment,para.32.

existence of the charged common purpose is undermined by evidence of its alleged members, including **THAÇI**, working with people who did not support the aims or means of the KLA and PGoK. This collaboration was repeated, lengthy, and widely acknowledged. **W02144** said that already in July 1998, **THAÇI** and **VESELI** had expressed the KLA's resolve to participate in a government of national unity, including with different factions of Kosovar Albanians.¹⁵⁷ On 2 November 1998, a tentative agreement was reached between the GS and FARK.¹⁵⁸

61. Between 3 November and 18 December 1998, **W04147** learned about attempts by the GS to build bridges with the LDK. **W04147** confirmed a cable he sent on 18 December 1998 about the KLA being *"quietly trying to make up with Bukoshi"* and *"working discretely to build bridges with the LDK, even with Rugova, and other Kosovar Albanian political forces. In the countryside, U.S. KDOM has frequently found that the KLA and LDK share [...] the same office and are often one and the same"* and *"observations that LDK officials in the villages are often KLA officers is consistent with reporting by embassy political officers"* that *"there are quiet contacts between the KLA and the LDK including Rugova's close advisers, in Pristina"*.¹⁵⁹ A U.S. cable from 26 December 1998 records **KRASNIQI** stating the KLA understood the importance of working with other Albanian political factions and was willing to cooperate with any political force seeking a better life for Kosovo's people, and criticising the European Community for doing little to help the LDK or support RUGOVA.¹⁶⁰

62. The idea that the common purpose encompassed murder and violence against political Opponents is also irreconcilable with evidence of the KLA working with these Opponents at Rambouillet. Paul **WILLIAMS** witnessed cohesion among the

¹⁵⁷ T-240528,pp.16183-16184 (W02144).

¹⁵⁸ 1D00166_ET.

¹⁵⁹ T-240325,pp.13660-13661 (W04147), discussing P01069.

¹⁶⁰ P01072,pp.116683-116684.

Kosovar Albanian delegation: it took a while, but they developed a consensus-based approach. There was a desire to unify the KLA, LBD and LDK, so the hard-won advantage of the Kosovar Albanians could continue post-Rambouillet.¹⁶¹ The 23 February 1999 agreement shows the KLA, LDK, LBD and the delegation's two independent members decided to form a provisional government, where "[t]he three political groups will have an equal representation in Government".¹⁶²

63. Bernard KOUCHNER, SRSG, later described the agreement as being signed by the LDK, KLA, LBD and the independents as equals.¹⁶³ **W02144** said it was always the thinking that there had to be a provisional government, an amalgam of all the Kosovar representatives.¹⁶⁴ A British Government cable from 1 March 1999 [REDACTED] records: [REDACTED]¹⁶⁵ and "*Rugova, Qosja and Krasniqi all also confirmed their agreement to work together in a provisional 'government' after an agreement is signed.*"¹⁶⁶

64. On 8 April 1999, **KRASNIQI** said "*[w]e want to get to the point of holding free elections*" and there were "*'five places' in the provisional government for Kosovo Albanian leader Ibrahim Rugova's party.*"¹⁶⁷ **W04147** confirmed a 19 April 1999 cable recording that **KRASNIQI** "*pledged to invite LDK representatives as well as politicians from other mainstream parties to Tirana for discussions with him as soon as he returns*",¹⁶⁸ and that these meetings happened.¹⁶⁹ On various occasions in May 1999, **THAÇI** publicly called for the LDK to participate in the PGoK and respect the agreement its President

¹⁶¹ T-250917,pp.26866-26867 (WILLIAMS).

¹⁶² 1D00069_ET.

¹⁶³ 1D00405,p.DHT05441.

¹⁶⁴ T-240528,pp.16179-16182 (W02144).

¹⁶⁵ 4D00035,p.DJK00741.

¹⁶⁶ 4D00035,p.DJK00742.

¹⁶⁷ 4D00038; T-240326,pp.13766-13767 (W04147).

¹⁶⁸ 4D00036,p.6D21-1296.

¹⁶⁹ T-240326,pp.13762-13764 (W04147).

signed,¹⁷⁰ and invited RUGOVA for talks to *“build a unified political platform.”*¹⁷¹ **THAÇI** continued to call on RUGOVA in the same terms throughout spring and summer 1999,¹⁷² maintaining that *“[t]he LDK has its own place in the government”*.¹⁷³ The evidence shows that it was the LDK that effectively sabotaged the PGoK, refusing to participate *“unless they get more seats than the other key political forces in Kosovo, particularly the KLA and the rival LBD party.”*¹⁷⁴

65. **COVEY** confirmed that **THAÇI** played a constructive role that helped advance UNMIK’s peacebuilding aims, including by *“routinely sharing attention, power, and credit with figures he had once denounced”*, meaning first and foremost RUGOVA.¹⁷⁵ The evidence demonstrates **THAÇI**’s genuine and meaningful engagement in the establishment and work of the KTC, which was created to involve the major political players as a sounding board for UNMIK decisions with Kosovo-wide implications.¹⁷⁶ A 6 July 1999 UNMIK cable records that **THAÇI**’s willingness to make a public statement to distance himself from an anti-Serb incident *“took away the Serbs’ argument to stop working with the Kosovo Albanians”*; after this, the Serbs looked *“ready to participate in the KTC”*.¹⁷⁷ When RUGOVA deserted the first KTC session,¹⁷⁸ **THAÇI** told **KOUCHNER** and **COVEY** that he thought this was a mistake; he wanted democratic institutions, not a monopoly on power, and stated that lasting democracy could only be achieved if the entire Balkans were free and democratic.¹⁷⁹ **THAÇI**

¹⁷⁰ 1D00168,p.DHT04022.

¹⁷¹ T-250120,p.23914 (W02183); 1D00314; 1D00313; 1D00315; 1D00317.

¹⁷² 1D00322_ET; 1D00286,p.SITF00011866; 1D00341,p.020459; 1D00342_ET,p.1; 1D00346,p.020804; 4D00101,p.SPOE00214815; 1D00088; 1D00093,p.020478; P00515_ET.60,pp.008743-008744; P00515_ET.78; P04062,p.SITF00011680; 1D00529,p.SPOE00304687.

¹⁷³ 1D00318_ET.

¹⁷⁴ 1D00240,p.DHT04952. *See also* T-241205,pp.23451-23457 (W04401); T-240708,pp.17754-17755 (W04752); T-250121,pp.24000-24004 (W02183); 1D0056.

¹⁷⁵ T-251002,p.27598 (COVEY).

¹⁷⁶ 1D00390,para.29; 1D00366.

¹⁷⁷ 1D00402,pp.DHT05466-DHT05467.

¹⁷⁸ 1D00405,p.DHT05441; T-250930,p.27362 (COVEY).

¹⁷⁹ T-250930,pp.27360-27362 (COVEY), discussing P01980,p.SPOE00246108; T-250121,pp.24035-24038 (W02183).

continued to advocate for democratic processes and institutions that involved all major players (including Serbs);¹⁸⁰ this included “*emphatically advocat[ing]*” for an apolitical, entirely civilian and multi-ethnic KPC to assist in the rebuilding of the country.¹⁸¹

66. Throughout summer 1999, there were examples of local administrations composed of LDK, LBD, and KLA members working together, some also including Serbs and other ethnic minorities.¹⁸² **W02161** agreed that **THAÇI** was involved in efforts to bring these various groups together to try to form the government.¹⁸³

67. These efforts culminated on 15 December 1999, when the three Kosovar Albanian party leaders, **THAÇI** (PPDK), RUGOVA (LDK), and QOSJA (LBD),¹⁸⁴ signed the JIAS agreement.¹⁸⁵ The parties committed to work together, including through an Interim Administrative Council, which also comprised a Kosovo Serb representative, under the ultimate decision-making power of the SRSG.¹⁸⁶ In bringing the three major Kosovar Albanian political parties together under UNMIK’s authority,¹⁸⁷ the JIAS was hailed by UNMIK as a “*huge milestone*” from a peace-making perspective.¹⁸⁸

68. **THAÇI**’s commitment to the JIAS also came at significant political cost,¹⁸⁹ particularly among those who did not want the PGoK to be dissolved, or to lose their

¹⁸⁰ P01976,p.SPOE00203090; T-250121,pp.24027-24030 (W02183); P04497_ET,p.SPOE40015950.

¹⁸¹ P04497_ET,p.SPOE40015957.

¹⁸² T-231207,pp.10804-10808 (W02161); P00743.2,pp.SITF00001597-SITF00001646.

¹⁸³ T-231207,pp.10810-10811 (W02161).

¹⁸⁴ 1D00412; 1D00410,para.3.

¹⁸⁵ 1D00400.1; 1D00396; 1D00396.1.

¹⁸⁶ 1D00400.1,pp.DHT05754,DHT05756.

¹⁸⁷ 1D00410,para.3; T-250930,p.27387 (COVEY).

¹⁸⁸ T-250930,pp.27379-27380 (COVEY). *See also* 1D00390,para.52; 1D00410,paras.3,5,161.

¹⁸⁹ 1D00390,para.52.

status.¹⁹⁰ COVEY testified that THAÇI was instrumental in the success of this operation; it was the LDK that was more reluctant to declare the dissolution of its ‘government’.¹⁹¹

69. This evidence demonstrates repeated and long-term coordination with (and tolerance of) the political Opponents who are the alleged targets of the SPO’s murderous common purpose. This evidence raises reasonable doubt as to the central premise of the SPO’s JCE theory: that the KLA in the Indictment period had a common purpose to *gain and exercise control over all of Kosovo* through the commission of crimes.

70. There is no evidence that THAÇI’s collaboration with these political rivals was faked, or temporary: it continued for decades. When THAÇI lost the elections in 2000 to RUGOVA, he conceded, made a public announcement that he accepted the results, and supported RUGOVA for President of Kosovo¹⁹² in 2002. And in 2005, THAÇI agreed to join RUGOVA’s unity team for Kosovo’s status negotiations, chaired by LDK leader Fatmir SEJDIU. After THAÇI won the national elections and became Prime Minister in the run up to independence in February 2008, he invited the LDK to join a coalition government, and Fatmir SEJDIU (LDK) became the President.¹⁹³

71. ŠEŠELJ was alleged to have been a part of a JCE, the object of which was the “*permanent forcible removal [...] of a majority of the Croat, Muslim and other non-Serb civilian populations*”.¹⁹⁴ In rejecting the existence of this common purpose, the Trial Chamber relied on the Cutileiro plan in Bosnia and Herzegovina in March 1992, which was “*supposed to allow the various communities to continue to live together*”, and noted that

¹⁹⁰ 1D00408; 1D00410,para.6.

¹⁹¹ 1D00410,para.12; T-250930,p.27388 (COVEY).

¹⁹² 1D00574,p.DHT05631; 1D00390,para.82.

¹⁹³ T-230912,pp.7803-7804 (W04255).

¹⁹⁴ Šešelj Indictment,para.6.

“[a]s part of the Belgrade initiative (August 1991), Milošević had also negotiated with the BiH leader, Mr Izetbegović, and would have agreed to the latter becoming the first president of a truncated Yugoslavia”. The Trial Chamber held that *“[t]his is clearly incompatible with the alleged contemporaneous implementation of the [JCE].”*¹⁹⁵ In the same way, consistent acts by **THAČI** over the course of months and years demonstrating his determination to include, work, and coordinate with the alleged targets of the SPO’s common purpose, are devastating to the SPO’s JCE case.

72. Importantly, the SPO does not claim that the common purpose was to target political Opponents in certain periods but to embrace and coordinate with them in others. Nor can it shift to try to accommodate this evidence. In *Šešelj*, in a finding confirmed on appeal,¹⁹⁶ the Trial Chamber dismissed an attempt by the Prosecution to support *“at times, the existence of a criminal enterprise with variable principles, whose objectives and modes of execution changed depending on the dynamics of power.”* This approach, *“which offers alternative outlines that lack clarity, could not be accepted without violating the rights of the Accused to be informed unequivocally of what he is being charged with.”*¹⁹⁷ This evidence of the KLA working together with the Opponents it was allegedly killing and abusing cannot be reconciled with the SPO case, because the common purpose as pleaded did not exist. The SPO presented no direct evidence that it did.

2. The existence of the common purpose cannot safely be inferred

73. The existence of an agreement for a common purpose *“need not be express, but may be inferred from all the circumstances.”*¹⁹⁸ As such, the SPO was entitled to assert that

¹⁹⁵ *Šešelj* TJ, para.254.

¹⁹⁶ *Šešelj* AJ, para.117.

¹⁹⁷ *Šešelj* TJ, para.265.

¹⁹⁸ *Blagojević* TJ, para.699. See also Confirmation Decision, para.108.

the common purpose materialised extemporaneously,¹⁹⁹ and could be inferred from a plurality of persons acting in unison to put the JCE into effect.²⁰⁰

74. However, different and independent groups may share identical objectives **without** their members being part of a common plan. As such, it is “*the interaction or cooperation among persons –their joint action– in addition to their common objective, that forges a group out of a mere plurality. In other words, the 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.”²⁰¹ Therefore, it is the evidence of “*joint action*” that is important or, as held by the Pre-Trial Judge, the plurality of persons acting “*in unison*”.²⁰²*

(a) The alleged JCE members did not act “in concert” or “in unison”

75. The first obstacle to inferring the existence of the common purpose is the broad and imprecise framing of its alleged members. With the Accused, other members allegedly included “*certain other KLA and PGoK political and military leaders, including other General Staff members; PGoK ministers and deputy ministers; KLA zone commanders, deputy zone commanders, and other members of zone command staffs; brigade and unit commanders; commanders and members of the KLA and PGoK police and intelligence services; and other KLA soldiers and PGoK officials*”.²⁰³ Without more specificity, this could encompass anyone who was part of the KLA or PGoK during the Indictment period. The SPO has provided no way to identify who among these tens of thousands²⁰⁴ of KLA and PGoK members were part of the common purpose. Who is alleged to have

¹⁹⁹ Confirmation Decision, para.108; *Tadić* AJ, para.227(ii); *Brđanin* AJ, para.418; *Kvočka* AJ, para.117.

²⁰⁰ Confirmation Decision, para.108; *Tadić* AJ, para.227(ii); *Furundžija* AJ, para.119.

²⁰¹ *Stanišić* TJ, para.1259 (emphasis added). See also *Krajišnik* TJ, para.884; *Haradinaj* TJ, para.139.

²⁰² Confirmation Decision, para.108. See also *Mustafa* TJ, para.739.

²⁰³ Indictment, para.35.

²⁰⁴ **DUNCAN** stated the number of KLA members “*was somewhere in the region of 20 to 30.000 people*” in June 1999: T-250923, pp.27253-27254 (DUNCAN). Serbian intelligence sources put the KLA at 30,000-35,000 members: T-240326, pp.13669-13671 (W04147).

been acting in concert to *gain and exercise control over all of Kosovo* through crimes, and who was not?

76. The second obstacle, and one which precludes an inference that the common plan existed, is the evidence that the KLA was not acting in concert or unison, but was uncoordinated and deeply divided. The KLA emerged and remained local; a grassroots movement of volunteers defending their homes and villages. Despite attempts to become more professional and organised, the KLA never fully developed from its horizontal structure to an organisation with a functioning vertical chain of command. It remained fragmented. Rather than setting the groundwork for “*joint action*” of people “*acting in unison*”, the KLA’s emergence and structure set the scene for the exact opposite.

77. The evidence is replete with units in the same zone acting without coordination;²⁰⁵ parallel chains of commands operating in the same areas;²⁰⁶ subzone commanders not respecting orders or making decisions without consulting;²⁰⁷ internal struggles among KLA zone commanders;²⁰⁸ difficulties in communication and coordination between zones,²⁰⁹ and between the zones and the GS.²¹⁰

78. **W04147** also described a “*country-urban*” divide²¹¹ between the KLA “*old guard*” on the ground for years, and the young, well-educated, Prishtinë/Priština-based journalists or students from the diaspora.²¹² A cable written by **W04147** on 10 March

²⁰⁵ T-240703,p.17572 (W04752); T-240917,pp.19890-19893 (W04737); T-241118,pp.22306-22307 (W04679); T-241106,pp.22115-22116 (W01453); T-240930,pp.20469-20470 (W04278).

²⁰⁶ T-230718,pp.6042-6045 (W02153); T-230418,p.3091 (W02652).

²⁰⁷ T-240903,pp.19503-19504 (W01511).

²⁰⁸ T-240327,pp.13854-13856 (W04147).

²⁰⁹ T-240528,pp.16114-16118 (W02144); T-241126,p.22752 (W03873).

²¹⁰ See paras.489-492,494.

²¹¹ P01066,para.42. See also T-240326,pp.13720-13722 (W04147).

²¹² T-240327,pp.13856-13858,13884-13885 (W04147).

1999 referenced ongoing “*internal KLA differences based largely on experience and history*”, noting that **KRASNIQI** and other political wing members representing the KLA in the eyes of the world still rankled with **W04290**, **W04746** and other young KLA founders.²¹³ This opposition was reflected in the zone commanders’ resistance to taking operational direction from those representing the GS before the international community, such as **THAÇI**.²¹⁴ There were other significant disagreements between the zone commanders and the GS,²¹⁵ and other criticism of the GS from zone commanders, who regarded themselves as independent or autonomous from the GS.²¹⁶

79. An emblematic example was the “*coup*”²¹⁷ which took place during the Rambouillet Conference, which further opened the divide between the zone commanders and the GS. It also split the zone commanders; some were against the installation of **W04290**, refused to recognise him as the commander, and continued to recognise Azem SYLA.²¹⁸ **W04147** wrote in a cable dated 10 March 1999 that Rambouillet “*deepened the difference in political outlook*” between political directorate members, and “*the military commanders.*”²¹⁹ The zones did not “*act in unison*”, and the GS did not “*act in unison*” with the zones.

80. The GS itself was not a group that “*acted in unison*”.²²⁰ As discussed below, GS

²¹³ P01080,pp.075396-075397.

²¹⁴ T-240325,p.13598 (W04147). See Section V(C)(1)(c).

²¹⁵ For example, **W04403** testified about a dispute in August 1998 over who would represent the KLA in negotiations with the Serbs, where the Dukagjin zone took a different view from the GS, with this ‘split’ being the subject of press commentary: T-250325,pp.25802-25803,25862-25866 (W04403); P01853_ET.

²¹⁶ T-231115,pp.10182-10184, T-231116,pp.10263-10264 (W04765); T-230906,pp.7447-7448 (W04408); T-240717,p.18481 (W04752).

²¹⁷ T-240325,p.13614 (W04147).

²¹⁸ T-231116,p.10261 (W04765).

²¹⁹T-240326,pp.13753-13754 (W04147), discussing P01080,p.075396.

²²⁰ For example, **W04403** testified that part of the KLA Central Staff was in favour of officers entering Kosovo from other armed forces, and another part was opposed: T-250324,pp.25705,25707-25708 (W04403).

meetings were very rare,²²¹ with no consistency in timing or attendance.²²² Its members were scattered around Kosovo, in Albania, and travelling abroad.²²³ Important decisions were taken without being discussed, in the heat of the moment, and without others necessarily knowing about them.²²⁴ **THAÇI** was out of Kosovo for a significant portion of the Indictment period,²²⁵ and there is scant evidence of him attending GS meetings.²²⁶

81. An ECOMM document from 23 September 1998 describes a geographical dislocation in the KLA that *“appears to be matched by an ideological dislocation, with a perhaps varying level of commitment to the ultimate goal of independence. Demaqi himself has admitted that the UCK has now split into several autonomous groupings, opening up the potential for rivalry and infighting.”*²²⁷ A U.S. cable from 18 December 1998 records the KLA being divided along generational, geographic and political lines.²²⁸ The division on ideological questions was represented by a split between *“moderates”* like **THAÇI** who were ready to negotiate and work with the West, and *“extremists”* or *“radicals”* who opposed any negotiated position and believed Kosovo could only be liberated by force.²²⁹ This divide was present in 1998, but came to the fore during and immediately after the Rambouillet Conference.²³⁰ This was not a cohesive coordinated group acting in unison.

²²¹ T-241204,p.23357 (W04401).

²²² See para.494.

²²³ T-240703,pp.17564-17565 (W04752); T-241202,p.23033 (W04401); P01069,p.075323; T-240327,p.13874 (W04147).

²²⁴ T-241205,pp.23466-23467 (W04401).

²²⁵ See paras.513-518.

²²⁶ T-241202,p.23141 (W04401), regarding a ‘meeting’ in June 1998 in Negroc; P00895_ET,p.U002-0164; 4D00011_ET, regarding restructure meetings in November 1998.

²²⁷ 2D00033,p.SPOE00304291. See also 1D00518,para.12.

²²⁸ P01069,p.075317.

²²⁹ T-250915,pp.26569-26571 (RUBIN); P01069,p.075328; 2D00033,p.SPOE00304291; T-240325,pp.13662-13663 (W04147). See also T-251110,pp.27703-27704,27710-27711, T-251111,p.27746, T-251112,pp.27906-27907 (HILL); T-250917,pp.26871-26873,26878 (WILLIAMS); 1D00146_ET; 1D00279_ET,p.SPOE00229726; 4D00178,p.SPOE00304216; 1D00516, pp.SPOE00304233-SPOE00304234.

²³⁰ See Section V(C)(2)(b)(ii).

82. The situation did not improve with the arrival of UNMIK. Immediately after the war, it became clearer that “*extremists*” in the KLA were determined to chase the Serbs out of Kosovo, using violence where necessary,²³¹ and were resisting the KLA’s transformation into a political organisation.²³² ÇEKU, THAÇI and others were called “*traitors*” for permitting KLA demilitarisation before Mitrovicë/Mitrovica and the rest of north Kosovo had been “*liberated*”.²³³

83. During this time, there was also no unified KLA political arm through which the alleged JCE members could have attempted to *gain and exercise control over all of Kosovo*. The evidence demonstrates that multiple political parties emerged in the summer of 1999 claiming to be the political successors of the KLA, including MAHMUTI’s Democratic Unification Party (PBD), which the OSCE reported had “*the support of the majority of KLA leaders.*”²³⁴ THAÇI had not even established a political party at this time, as the divides that plagued the KLA during the conflict continued post-war. W04408 agreed with a 2001 HRW report that the strong regionalisation and divides which dominated the KLA were “*evidenced by the post-war splintering of the insurgency.*”²³⁵ Accordingly, the SPO has failed to establish which specific group or faction within the KLA was attempting to *gain and exercise control over all of Kosovo*, at what time, and on whose behalf. The SPO has certainly failed to establish beyond reasonable doubt that THAÇI was a member of any such group or faction.

84. More broadly, considering the internal ideological and structural divisions

²³¹ T-251001,pp.27474-27475 (COVEY); 1D00149,p.2; 1D00365,p.DHT05479; 1D00238,p.DHT04111. Corroborated in T-251113,p.28086 (DURKEE). See also T-250120,p.3991 (W02183); P02874.2_ET,pp.14,30; P04514,p.DHT11556.

²³² [REDACTED]. See also P01605.5_ET,pp.12-13; P02517,para.21; 1D00570,p.DHT05504.

²³³ 1D00411,p.DHT05540; T-250930,pp.27391-27392 (COVEY).

²³⁴ 1D00422,p.SITF00011456. See also T-251002,p.27591 (COVEY); 1D00421.

²³⁵ T-230906,pp.7447-7448 (W04408), referring to K036-0808-K036-1427. See also 1D00565.

within the KLA, no reasonable finder of fact could consider the totality of evidence and infer, beyond reasonable doubt, that the alleged members of the SPO's alleged JCE were "*act[ing] together, or in concert with each other, in the implementation of a common objective*".²³⁶ The existence of a common purpose cannot be reasonably inferred.

(b) The SPO's common purpose is not the only reasonable inference available on the evidence

85. Even if the evidence showed that the KLA had been aligned in its goals and acting "*in unison*" –which it does not– the existence of a common plan can only be inferred through this kind of joint action where it is the **only reasonable inference** available,²³⁷ and after an examination of the totality of the circumstances surrounding the commission of the underlying offences.²³⁸ In *Blagojević*, for example, a Trial Chamber inferred the existence of "*a common plan to commit the crimes of murder, extermination and persecutions through capturing, detaining, executing and burying over 7,000 Bosnian Muslim men and boys.*" The Chamber could safely infer the existence of such a plan "*from the fact that over 7,000 men and boys were captured, detained, murdered and buried in the space of only five days: this would not have been possible unless there was a plan and co-ordination between the members of the [JCE].*"²³⁹ In other words, the crimes charged could not have occurred without the kind of coordination that could only come from a shared common plan.

86. In this case, even if each of the underlying charged acts are found beyond a reasonable doubt to have occurred, there are a multitude of other reasonable inferences for their occurrence than the existence of the SPO's alleged common purpose.

²³⁶ *Krajišnik* TJ, para.884.

²³⁷ *Brdanin* TJ, para.353; *Krajišnik* AJ, para.192.

²³⁸ *Milutinović* TJ, para.102.

²³⁹ *Blagojević* TJ, para.721. See also *Blagojević* TJ, para.699.

(i) *Other reasonable inferences exist*

87. The Panel heard that, rather than acting pursuant to a coordinated common purpose, KLA members (and non-members) were settling disputes and seeking vengeance for the crimes committed against them. **W02153** testified that revenge was a hallmark of the entire conflict.²⁴⁰ **KOUCHNER** underscored “*just how difficult the task is; vengeance and fear are all too common in post-conflict Kosovo*”.²⁴¹ **Daan EVERTS** wrote in June 1999 that “*on an individual level, it will certainly not be easy to control feelings of revenge, that have been existing after a hundred years of oppression.*”²⁴²

88. This phenomenon of seeking revenge was reflective of the *Kanun*, pursuant to which “*if somebody has wronged you, the principle is that you can seek retaliation against a member of their family*”,²⁴³ and was based on the principles that Albanians lived by.²⁴⁴ **DUNCAN** explained many Albanians in Kosovo had come from northern Albania, where the *Kanun* was very dominant, and “*the blood feud [...] [w]as a basis to society*”,²⁴⁵ and that “*when a society is under pressure, these old ways of behaving do tend to become stronger*”.²⁴⁶ **W04870** explained that [REDACTED].²⁴⁷ **W04811** explained that for a long time in Kosovo, *Kanun* was how you solved problems.²⁴⁸ Other witnesses also referenced the *Kanun* in explaining what happened to them or their family members.²⁴⁹

89. With this context as the backdrop, the evidence demonstrates that much of the

²⁴⁰ T-230719,p.6112 (W02153).

²⁴¹ P00743.2,p.SITF00001534.

²⁴² 2D00040,p.SITF40009162; T-250122,pp.24202-24203 (W02183). *See also* 1D00443,para.92.

²⁴³ T-240318,p.13208 (W04811).

²⁴⁴ T-240327,pp.13841-13842 (W04147).

²⁴⁵ T-250922,pp.27019-27020 (DUNCAN).

²⁴⁶ T-250922,p.27026 (DUNCAN). *See also* T-251113,p.28021 (DURKEE).

²⁴⁷ [REDACTED].

²⁴⁸ T-240318,pp.13225-13226 (W04811).

²⁴⁹ P01315,p.SITF00181132-SITF00181133; P01673_ET,p.SPOE00038118.

Indictment period violence was directed towards settling personal vendettas and seeking revenge for past crimes.

Other reasonable inference: settling personal scores

90. Evidence of score settling between families and individuals, discussed by international observers on the ground,²⁵⁰ also came from victims. Rather than claiming to have been victims of an alleged common purpose, they testified about revenge, feuds and disputes as the triggers for violence.²⁵¹ **W04018** said those responsible for his detention and beatings should have come out and killed him on their personal behalf, *“not on the behalf of the KLA”*, because it was not a KLA matter.²⁵² All the people detained with [REDACTED] were linked to his personal dispute over a refusal to allow them to [REDACTED] his land.²⁵³ **W04444** had no idea whether it was KLA or rogue elements who arrested him; he was given no reasons but believes that his abduction was to do with revenge and nothing to do with the war or KLA.²⁵⁴ [REDACTED] testified that [REDACTED] was killed because people were jealous of him; he was good looking and good with girls.²⁵⁵ [REDACTED] similarly told UNMIK that [REDACTED].²⁵⁶ People who came to take away [REDACTED] were filled with *“anger and bitterness”* and *“personal animosity”* towards him.²⁵⁷

91. An ECMM report stated that **W04368**'s [REDACTED] kidnapping *“was allegedly*

²⁵⁰ T-251113,pp.28019-28021 (DURKEE); T-250922,pp.27113-27114 (DUNCAN); 1D00430,paras.33-34; T-251117,pp.28142-28145, T-251118,pp.28222-28223 (CLARK); 1D00067.

²⁵¹ E.g. P02068.4_ET,pp.1846-1848; P02068.2_ET,pp.1598-1599; P01008,p. SPOE00089489; P01009,p.SPOE00092011; P01010,p.SPOE00089448; P00818,pp.SPOE00298513-SPOE00298514; P01170.1_ET,p.21; [REDACTED]; [REDACTED]; P01931,p.SITF00325723; T-240506,p.15371 (W01978); P01155.3_ET,p.29; P01932,pp.2906-2907; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

²⁵² T-230905,p.7214 (W04018). See also T-230905,pp.7174-7178,7181-7192 (W04018).

²⁵³ [REDACTED].

²⁵⁴ T-231109,p.9786, T-231113,pp.9827-8928 (W04444).

²⁵⁵ [REDACTED].

²⁵⁶ [REDACTED].

²⁵⁷ [REDACTED].

performed out of jealousy".²⁵⁸ Both **W04368** and [REDACTED] are recorded as having said [REDACTED]'s death was for private reasons, and the people who did it were just using the war as a cover, an excuse to commit crimes against people like him.²⁵⁹ [REDACTED] confirmed that one of the alleged KLA commanders involved in his abduction accused him of having taken his job [REDACTED].²⁶⁰ **W04746** testified that people in the Llap zone were arrested because of private disputes or malicious motives. He remembered one or two instances related to disputes between villagers where he had to intervene. They would be apprehended, calmed down, and given a warning.²⁶¹

92. There is also evidence of individuals making false accusations of collaboration in order to settle personal scores.²⁶² [REDACTED] stated that spite and jealousy against him and [REDACTED] were possibly the reasons for their treatment: [REDACTED].²⁶³ [REDACTED].²⁶⁴ [REDACTED] said there was a concern in the KLA that the task of finding collaborators in KLA ranks, being those who cooperate with the Serbs to the detriment of the KLA and civilians, would be used to settle personal scores; but they had no time to deal with that issue at all properly.²⁶⁵ **W04752** learnt from zone commanders about rogue individuals within their zones abusing the term 'collaborators', people who "*misused their authority for personal grudges that dated back before the war.*"²⁶⁶ **W02161** is aware that "*lists*" of collaborators were made by people in

²⁵⁸ 1D00045,p.SPOE00301580.

²⁵⁹ T-230904,pp.7079,7113-7114,7123-7125 (W04368).

²⁶⁰ [REDACTED].

²⁶¹ T-230712,pp.5556-5557 (W04746). *See also* P01822_ET,p.4135.

²⁶² *See, e.g.,* P02068.1_ET,pp.1459-1461,1466-1467; P02068.2_ET,p.1566; 1D00261,p.3532; P02047.1_ET,p.6; P01502_ET,para.4; P02057.2_ET,pp.5-6; P02058.1_ET,pp.15,21-25; P02058.2_ET,pp.8-16; [REDACTED]; T-240507,pp.15412-15419,15447 (W03878); [REDACTED]; P00251,pp.SITF00180626-SITF00180627; P00252.4_ET,pp.14-15.

²⁶³ [REDACTED].

²⁶⁴ [REDACTED].

²⁶⁵ [REDACTED].

²⁶⁶ T-240709,p.17849 (W04752). *See para.*275.

villages trying to settle personal scores.²⁶⁷ KLA witnesses corroborated this; **W01511** also attributed the creation of lists to jealousies and political rivalries within villages,²⁶⁸ and [REDACTED] said that there was a register to which innocent people were added because of personal grudges.²⁶⁹

Other reasonable inference: lawful arrest and detention

93. Individuals were also detained because they were legitimately perceived as combatants,²⁷⁰ and not because they were Opponents to an objective to *gain and exercise control over all of Kosovo*. Despite [REDACTED], evidence demonstrates he had: (i) been a Serbian police and army reservist;²⁷¹ (ii) never formally left the Serbian Army or renounced his weapon; (iii) been well-known in the local area as a member of the Serbian forces, [REDACTED];²⁷² and (iv) [REDACTED].²⁷³ [REDACTED] was detained by KLA local soldiers who knew he had served in the Serbian armed forces, and his military documents and weapons were seized on arrest.²⁷⁴ While detained, [REDACTED] was accused of committing crimes while serving in the armed forces, with the suggestion that he was detained in retaliation for the crimes he and Serbian forces had committed in the area. [REDACTED]'s specific involvement was corroborated by public reporting.²⁷⁵

94. This story was repeated across different regions. **W04043** testified about two

²⁶⁷ T-231211,pp.10946-10947 (W02161). See also T-231207,p.10755 (W02161); P00990,pp.SPOE00089602-SPOE00089603,SPOE00089614; P01204,paras.11-12; P03580.4_ET,p.17.

²⁶⁸ T-240904,pp.19625-19627 (W01511).

²⁶⁹ [REDACTED].

²⁷⁰ T-231206,p.10638 (W02161): "If somebody was a member of the Serbian security force, a policeofficer, an army, or something like that, then that would have been a combatant, and the, quote, collaboration I would not have applied to that particular instance."

²⁷¹ [REDACTED].

²⁷² [REDACTED].

²⁷³ [REDACTED].

²⁷⁴ [REDACTED].

²⁷⁵ [REDACTED].

individuals arrested because they were policemen.²⁷⁶ [REDACTED] was working for the Serbian police in [REDACTED] when he was arrested by alleged KLA, who also seized his weapons.²⁷⁷ [REDACTED] worked as a police officer when he was arrested, and those who arrested him knew that;²⁷⁸ he was forced to give up the weapons his family had at home, including [REDACTED]'s army rifle.²⁷⁹ In each instance, as well as numerous others involving people arrested and detained who were known to have been part of various Yugoslav and Serbian forces (police officers, VJ soldiers, military reservists),²⁸⁰ there were reasonable grounds to believe these individuals were subjectively perceived to be combatants by those arresting them.

95. Similarly, people may have been detained in pursuit of a legitimate military objective because they were perceived to be collaborators. **W03540** was a forester, arrested after being seen wearing a uniform resembling a Serbian army uniform, carrying a gun and in a context in which it was acknowledged that foresters often informed the Serb paramilitary.²⁸¹ **W03540** was asked while detained about his contacts with the Serbian security apparatus, and acknowledged he did in fact report to the Serbian authorities about KLA actions and movements, including about troop strength, weapons strength and positions.²⁸² [REDACTED] was interrogated about cooperating with Serbian police, including transporting Albanian girls, doing business with them and associating with them. He admitted it was likely he was targeted because of his perceived cooperation with the Serbs.²⁸³ [REDACTED] was told that [REDACTED], was detained because he worked for the Serbian police, and

²⁷⁶ T-231109,pp.9720-9721,9726-9727,9757 (W04043).

²⁷⁷ [REDACTED].

²⁷⁸ [REDACTED].

²⁷⁹ [REDACTED].

²⁸⁰ See, e.g., P02051_ET,pp.9,17,29-30; [REDACTED]; P01233_ET,p.2; T-240606,pp.16926,16936-16941 (W04824); [REDACTED]; P01003.2_ET,p.9; P02538_ET,p.2; P02537_ET,pp.8-9; P00828_ET,para.3; [REDACTED].

²⁸¹ T-230619,pp.5036-5038 (W03540); P01754,p.SPOE00088349; P00190,p.SPOE00123205.

²⁸² T-230619,pp.5038-5053 (W03540).

²⁸³ [REDACTED].

for the Serbian army during the Bosnian war.²⁸⁴ [REDACTED] testified previously that [REDACTED] and had been transferred to work in the Serbian [REDACTED].²⁸⁵ Other evidence was presented showing [REDACTED] carried a gun,²⁸⁶ and had previous roles in the [REDACTED], and in a Serbian company in which his role involved [REDACTED],²⁸⁷ meaning [REDACTED] could have been perceived as both a combatant **and** a collaborator.

96. Individuals may also have been arrested and detained for other reasons falling outside the alleged common purpose.²⁸⁸ [REDACTED] was arrested with [REDACTED], following an altercation in which [REDACTED] killed another man [REDACTED] as part of an ongoing [REDACTED] dispute and blood feud. While testifying, [REDACTED] accepted the only reason for their detention was this incident, and specifically that they were detained for security reasons; namely, to protect them from retaliation by the family of the man killed, in furtherance of the feud. [REDACTED] agreed his arrest was due to [REDACTED].²⁸⁹ This was confirmed by contemporaneous statements,²⁹⁰ and findings in [REDACTED].²⁹¹

Other reasonable inference: revenge of returning refugees

97. Also relevant is the mass displacement of the Kosovar Albanian population during the conflict: more than 800,000 people had been displaced and returned home *en masse* after the NATO campaign.²⁹² **W04147** explained that after the scale of the

²⁸⁴ [REDACTED].

²⁸⁵ [REDACTED].

²⁸⁶ [REDACTED].

²⁸⁷ [REDACTED].

²⁸⁸ *E.g.*, [REDACTED].

²⁸⁹ [REDACTED].

²⁹⁰ [REDACTED].

²⁹¹ [REDACTED].

²⁹² P02563,p.SPOE00000757; 4D00102,p.DJK01129; 1D00443,para.90; 1D00444; 1D00450,pp.DHT10275-DHT10276,DHT10281,DHT10284; 1D00539,para.10. *See also* T-240327,p.13897 (W04147); P04514,p.DHT11547; Adjudicated Fact No.134.

destruction by Serb Security forces, the looting, the killing of farm animals, burning of homes, even murder, *“it was hard to imagine that people who’d suffered and -- those horrors and had been driven from their homes [...] would come back without wanting to take revenge if they had the opportunity, particularly against Serbian neighbours who they believed had participated in these horrors or taken advantage of what the Serbian security forces had done.”* This made *“absolute common sense”*.²⁹³

98. **W02153** said that when Kosovar Albanians returned home, families and friends had been murdered, their homes burnt, their possessions stolen; so, there was a *“significant amount”* of revenge.²⁹⁴ **W02161** described acts of revenge and retaliation, which KVM saw in the form of dead Serbs and Roma. Initially, everything was just chaos, people came back, their houses were destroyed, they were distraught, they got angry, maybe beat someone up.²⁹⁵ **W02183** also discussed the link between the conditions in which returning refugees found themselves and the violence and intimidation.²⁹⁶ [REDACTED] said the entire world knows that the Serbs committed massacres in Kosovo; as the refugees were returning and the civilian population was coming in, [REDACTED] told [REDACTED] that he could not control them.²⁹⁷

99. **W02135** observed that *“there are some very unpleasant attitudes among some Serbs against Albanians, including in some cases believing them to be sub-human. While one cannot condone the Kosovo Albanian reaction as they came out of their dreadful time, one can sort of understand the desire for revenge.”*²⁹⁸ Based on NATO’s information, **CLARK** attributed the wave of violence that followed the return of Kosovar refugees to various factors; hatred, score settling, revenge, blood feuds, criminal gangs, and crimes of greed and

²⁹³ T-240327,pp.13897-13899 (W04147). See e.g. P02536.1_ET,pp.19,27.

²⁹⁴ T-230719,pp.6108-6109 (W02153).

²⁹⁵ T-231205,pp.10589-10591 (W02161).

²⁹⁶ T-250121,p.24111 (W02183), referring to 1D00226,p.DHT04971.

²⁹⁷ [REDACTED].

²⁹⁸ P02517,para.76. See also T-250122,pp.24203-24205 (W02183).

opportunity.²⁹⁹ The resentment and fear were so deep that spontaneous violence was “almost inevitable”: NATO “deployed forces, we went to the Serb monasteries, we did everything we could to sort of hold down the violence. But, you know, people are angry. I mean, this is life and death. This is murder. This is people whose possessions were taken away, who were fearful for their lives, who have seen their homes destroyed by neighbours and looted by neighbours. You just can’t imagine the passion that was there in these people.”³⁰⁰ **DURKEE** had the same perception.³⁰¹ **RUBIN** explained that the U.S. felt these were actions of individual Kosovar Albanians whose families had been murdered and would then retaliate.³⁰²

100. The UN Secretary-General wrote on 25 June 1999 that “feelings of revenge or for at least some form of retribution are running high”.³⁰³ Throughout June 1999, **W03881** wrote about returning refugees finding their houses burnt, their belongings stolen or destroyed, their family and friends murdered by the Serbs. KFOR discovered mass graves, and locations where people had been buried, or still had to be buried.³⁰⁴

101. **DUNCAN** agreed with a statement of Anthony **QUINN** (KFOR) before the English High Court that “[t]he murder rate was extremely high: within the first four weeks we had over 100 murders. The majority of the victims were from the Serbian community who had not left the country as returning Albanians sought revenge. [...] The array of crimes committed by the local population which we were investigating seemed to have a variety of causes. There were revenge crimes committed by Albanians against Serbs for the perceived wrongs committed by them prior to and during the war, but there were also a large number of

²⁹⁹ 1D00430,paras.33-34; T-251117,pp.28142-28145, T-251118,pp.28222-28223 (CLARK); 1D00572,p.DHT06083; P04514,p.DHT11556.

³⁰⁰ T-251117,p.28142 (CLARK).

³⁰¹ 1D00428,paras.16-18; T-251113,pp.28019-28020 (DURKEE).

³⁰² T-250916,pp.26729-26730 (RUBIN).

³⁰³ 1D00233,p.SITF40000700.

³⁰⁴ T-240522,pp.15641-15647 (W03881), regarding P01194_ET, pp.071152,071170,071190,071220.

cases where opportunistic individuals or groups were fulfilling personal vendettas or grudges or simply pursuing a criminal enterprise in what was a relatively lawless society."³⁰⁵ **DUNCAN** found this unsurprising, the same occurred in France after World War II, but there they had the police to respond, while Kosovo was a vacuum.³⁰⁶ **DUNCAN** saw this destruction when he returned on 6 July 1999. It was like *"evil stalking the land"* and went beyond the sort of thing that normally happens at the end of wars. **DUNCAN** observed the houses burning were Serb houses. It was happening because of revenge, it was ordinary people burning them.³⁰⁷

102. Civilians similarly described this phenomenon of hatred among ordinary people, and concern about revenge attacks by returning villagers: **W01336** stated they were told [REDACTED],³⁰⁸ while **W00996** stated when the Albanians returned they knew [REDACTED].³⁰⁹ In a [REDACTED] meeting with FARK [REDACTED] raised an incident where alleged Military Police Units were apprehended during an illegal action. [REDACTED] explained that such incidents were not ethnic cleansing but the actions of young soldiers taking revenge on known criminals [REDACTED].³¹⁰ **W02475** explained that this was not 'revenge' in the sense of doing something to someone who had done something to you, it was more like a public wave of violence against certain communities, being done by ordinary Albanians.³¹¹ A German newspaper described the destruction of historical statues as *"an eye for an eye, a monument for a monument –in Prizren, as elsewhere in Kosovo, the time for vengeance has come– vengeance and lawlessness. People are being driven out, homes looted, houses burnt. The war has an ugly sequel."*³¹²

³⁰⁵ T-250922,p.27113 (DUNCAN).

³⁰⁶ T-250922,pp.27112-27114 (DUNCAN).

³⁰⁷ T-250922,pp.27099-27102 (DUNCAN).

³⁰⁸ [REDACTED] (W01336). *See also* P02865_ET,pp.32-33; P02104.8_ET,pp.16-17.

³⁰⁹ P01450.2_ET,p.14.

³¹⁰ [REDACTED].

³¹¹ T-240318,pp.13278-13279 (W02475).

³¹² P00949_ET,p.1; [REDACTED].

103. This widespread criminality sparked by revenge was predictable, and predicted. **W04147** anticipated issues for the Serb minority in Kosovo even before NATO entered, primarily due to Serb past brutal policies. KDOM anticipated that, when NATO entered, Albanians would exact retribution against the Serbs who behaved so brutally towards them.³¹³ A Pentagon spokesman said on 5 June 1999: *"I don't think Kosovo is going to be a very happy place for Serbs when NATO comes in [...]. I'm just stating what we anticipate what the facts will be."*³¹⁴ **DUNCAN** said that this explained the language in the 'Undertaking of Demilitarisation And Transformation by the UCK'³¹⁵ ("Undertaking") about the KLA refraining from retaliatory attacks.³¹⁶ Serbs living in Kosovo expected this: in Rahovec/Orahovac, when they learned the Serb army and police would withdraw following the MTA,³¹⁷ many civilians also left, afraid of revenge from those returning.³¹⁸

104. The Roma population was a target of revenge violence for multiple reasons; **W02475** explained that in the 1990s, as Kosovar Albanians were being replaced by those loyal to the regime, the Roma supported MILOŠEVIĆ in a series of demonstrations in Belgrade and elsewhere, while visible Roma took Albanian jobs. Animosity towards Roma in summer 1999 would have been exacerbated by this historical discrimination.³¹⁹ A note of an SRSG visit to the Fushë Kosovë/Kosovo Polje Roma School in July 1999 noted that *"the Roma were recruited in large numbers by the VJ and MUP"* and *"Roma support of Serbs and participation in their activities against the ethnic*

³¹³ T-240326,pp.13686-13688 (W04147). See also 1D00541_ET,p.DHT11728-ET.

³¹⁴ 1D00076; T-251117,pp.28139-28141 (CLARK). See also 1D00333,p.020394; 1D00444.

³¹⁵ P01444.

³¹⁶ T-250923,pp.27246-27227 (DUNCAN).

³¹⁷ P04064.

³¹⁸ T-231102,pp.9273-9290 (W00208).

³¹⁹ T-240318,pp.13259-13561,13263,13269 (W02475). See also T-250930,pp.27405-27407 (COVEY); T-230613,pp.4775-4777 (W04323).

Albanians is vividly remembered."³²⁰ There were widespread repercussions against Roma accused of being collaborators with the Serbs. Roma families were expelled in response to reports that Roma were looting Albanian houses. The assumption was that these crimes were again anchored in revenge.³²¹

Other reasonable inference: rogue actors, KLA pretenders, and criminal gangs

105. There is also evidence that among the perpetrators were those pretending to be KLA members to commit crimes. After the war, people were buying and misusing KLA uniforms as a disguise for violence and personal ends.³²² **W02475** said in July 1999 *"Albanians are dressing up as UCK for 30 Deutschmarks"*.³²³ The UN High Commissioner noted in September 1999 that some victims of ethnic violence *"have reported that their assailants included men in KLA uniforms, although it is possible that much of the violence is simply the work of criminal elements masquerading in uniforms of the KLA"*, finding *"KLA uniforms are available for about DM 50 in Albania, and that Albanian-national men with no relationship at all to the KLA can use the uniform as a passport through the German KFOR sector of Kosovo."*³²⁴ **W02161** agreed that during this period, KLA uniforms were readily available in Albania for anybody that wanted them for a very cheap price. There were people wearing uniforms who had never fought for the KLA.³²⁵ KLA and PGoK officials reported the same phenomenon;³²⁶ a September 1999 statement from ÇEKU (reported by ICG) reads:³²⁷

Ceku also claims the continued attacks on Serbs and other non-Albanian minorities by people wearing KLA uniforms were not sanctioned by the KLA leadership: "It is not difficult for someone to acquire a KLA uniform ... they are available all over Kosovo and Albania," he said.

³²⁰ 1D00416. See also T-250930,pp.27405-27407 (COVEY); 1D00546,p.DHT06038.

³²¹ T-240528,pp.16187-16188 (W02144). See also [REDACTED].

³²² T-240527,pp.16061-16062 (W04305); 1D00544,p.SPOE00214863; 1D00546,p.DHT06037.

³²³ T-240318,pp.13274-13275 (W02475). See also T-231012,p.8840 (W04769).

³²⁴ 1D00085,para.102; T-240318,p.13275 (W02475). See also 4D00132,p.SITF40008377.

³²⁵ T-231207,pp.10816-10818 (W02161).

³²⁶ See e.g., 1D00257.

³²⁷ 1D00234,p.SITF00000367.

In this, Ceku is correct – KLA uniforms and insignia are widely available at shops and kiosks throughout Kosovo and Albania and, after all, anyone can wear a mask.

106. There were also, undoubtedly, crimes committed by non-KLA members. **DUNCAN** recalled that when refugees returned after 10 June 1999, criminal gangs came with them.³²⁸ In a situation of anarchy, criminals seek to take advantage.³²⁹ [REDACTED].³³⁰

107. The UN High Commissioner reported in September 1999 that “[o]pen borders have in fact allowed the large-scale arrival of criminal elements, particularly from Albania”.³³¹ **W02153** explained that criminal gangs were operating in Prizren post-conflict, and a criminal element coming in from Albania was taking advantage of the chaos. There were also forms of serial killing taking place with political elements, dominated by Serb gangs in cooperation with Albanian elements, taking advantage of lawlessness and chaos.³³² **W03881** wrote on 19 June 1999 that Albanian bandits kept crossing the border: “*They steal, plunder, pillage*”.³³³ **W00208** said that during this period, individuals, paramilitaries and bandits came from Kaçanik/Kaçanik to cause problems in Rahovec/Orahovac, and it was chaos.³³⁴

108. The perspective of those detained during the post-war period also corroborates these reports, and demonstrates the alleged perpetrators may have been posing as KLA soldiers. [REDACTED] stated those involved in his detention wore KLA

³²⁸ T-250923,pp.27283-27285 (DUNCAN). See also T-251113,pp.28021-28022 (DURKEE); 1D00428,para.17; [REDACTED].

³²⁹ T-250922,pp.27100-27102 (DUNCAN).

³³⁰ [REDACTED]. See also [REDACTED]; 1D00430,para.33; 4D00127,p.SITF00389266; P00743.2,p.SITF00001598; P04063,p.SPOE00217131; 1D00507; 1D00560,p.DHT06072.

³³¹ 1D00085,para.102, discussed in T-240318,p.13275 (W02475). See also P02563,p.SPOE00000756; 1D00390,para.35; 1D00428,para.17.

³³² T-230719,pp.6113-6114 (W02153).

³³³ T-240522,pp.15640-15643 (W03881); P01194_ET,p.071190.

³³⁴ T-231102,pp.9273-9280 (W00208).

uniforms but [REDACTED].³³⁵ [REDACTED] ultimately agreed he could not be sure the perpetrators were [REDACTED].³³⁶ [REDACTED] similarly refused to confirm that those who arrested and detained him were KLA. Although this was reported to KFOR, [REDACTED] stated he was very stressed out and a lot was happening.³³⁷ [REDACTED] instead advised the SPO that many non-KLA soldiers were wearing KLA uniforms during this post-war period: [REDACTED].³³⁸

109. This wall of evidence precludes a finding that the only reasonable inference was that the crimes charged were a result of the SPO's alleged common purpose. There were many other reasons that crimes were being committed in the Indictment period, and not one witness in this case claimed to have been acting pursuant to the common purpose, or to have been victimised by those who were. The Panel heard from those who were on the ground, and whose job it was at the time to determine whether the crimes were being committed by individuals pursuant to their own vendettas, anger, or overwhelming grief, or whether there was a common criminal purpose at play. These individuals, experts in their fields, drew on a broad range of contemporaneous conversations, observations and sources³³⁹ as they actively sought to uncover whether the KLA had put a criminal common purpose in place to commit the charged crimes against civilians. None of them, at the time or since, concluded that there was.

110. This is not the situation in *Blagojević* cited above, where the killings of 7,000 men and boys in five days would only have been possible with a common purpose

³³⁵ [REDACTED].

³³⁶ [REDACTED].

³³⁷ [REDACTED].

³³⁸ [REDACTED].

³³⁹ T-250922,pp.27020-27022 (DUNCAN); T-251112,pp.27984-27987,28011-28014 (DURKEE); 1D00262,paras.11-12; T-250915,pp.26490,26549-26550,26562-26563,26589 (RUBIN); T-251110,pp.27653-27655 (HILL); T-250930,p.27338, T-251001,pp.27557-27558 (COVEY); T-251117,pp.28113-28114,28146-28148,28158-28161 (CLARK).

and coordination between the perpetrators, and no other reasonable inference could be drawn. Here, there is voluminous direct evidence that the crimes were being committed for other reasons. The existence of the common purpose cannot be safely inferred as *the only reasonable inference from the circumstantial evidence*, and no JCE liability can arise in this case.³⁴⁰

B. **THAÇI DID NOT MAKE A SIGNIFICANT CONTRIBUTION TO THE CRIMES**

111. Demonstrating the existence of this common purpose is not enough. The SPO must also demonstrate beyond reasonable doubt that **THAÇI** participated in its implementation. At the KSC, this requires that **THAÇI**'s contribution should "*at least be a significant contribution to the crimes for which [he] is found responsible.*"³⁴¹

1. ***THAÇI's contributions to the KLA and PGoK were not contributions to the crimes***

112. Here, the SPO hits its next obstacle. The SPO elected not to charge **THAÇI** as having personally committed crimes under Article 16(1)(a) of the Law, but rather to try to link him to others' criminal conduct in other ways. This reflects the lack of any direct evidence of **THAÇI**'s personal involvement. The Indictment and PTB include a limited number of allegations that **THAÇI** personally participated in the mistreatment of Opponents.³⁴² Each of these is addressed below. The analysis demonstrates that the SPO has failed to meet its evidential burden for any allegations of **THAÇI**'s personal involvement in crimes. Of course, had these allegations been credible, **THAÇI** would have been charged as a principal perpetrator.

³⁴⁰ *Gotovina* AJ, para.96.

³⁴¹ *Mustafa* TJ, para.740 (emphasis added), citing *Mladić* TJ, para.3561; *Krajišnik* AJ, paras.215,662,675,695-696; *Brđanin* AJ, para.430; *Kvočka* AJ, paras.97-98. See also Confirmation Decision, para.110.

³⁴² SPO PTB, para.7.

113. Otherwise, **THAÇI** is sweepingly alleged to have made a “*significant contribution*” to the common purpose on the basis of his membership of the GS and PGoK, with the SPO claiming that he was among “*the senior political and military leaders of the KLA/PGoK throughout the Indictment Period, exercising authority over the individuals and KLA/PGoK structures implementing the common criminal purpose*”.³⁴³

114. Specifically, the SPO alleges that, in addition to his role at the GS “*and in the formulation, dissemination, and implementation of the Opponents policy through communiqués and other means*”, **THAÇI**:

*(i) played a vital liaison function between KLA members in Kosovo and those abroad, which encompassed facilitating supplies, deployments, and other communications; (ii) led deployments of KLA members into Kosovo, welcomed and deployed other KLA members, and visited zone commands and inspected troops; (iii) issued General Staff instructions to commanders; (iv) intervened personally, together with other General Staff members, to resolve disputes between commanders and solve problems on the ground; (v) appointed and participated in the appointment of commanders and PGoK officials; (vi) coordinated, took part in, and received reports concerning military operations on the ground; (vii) authorised, supervised, and escorted journalists and oversaw the creation of footage for propaganda purposes; (viii) communicated, negotiated, and signed agreements with representatives of international and Kosovo-Albanian governments, groups, and organisations, and (ix) participated in General Staff decision-making, including during negotiations for the release of KLA detainees.*³⁴⁴

115. These contributions are, objectively, non-criminal or neutral contributions. The SPO has failed to demonstrate a link between these alleged activities and the commission of crimes in pursuit of an objective to *gain and exercise control over all of Kosovo* through the commission of crimes. **THAÇI**'s liability would only arise through these kinds of neutral contributions if the SPO had alleged that **any contribution** to the KLA and PGoK is *per se* a contribution to the commission of crimes. However, the SPO has explicitly stated it “*does not levy accusations against the*

³⁴³ SPO PTB, para. 89. See also Indictment, paras. 50(a)-(h); SPO PTB, paras. 1, 90-266.

³⁴⁴ SPO PTB, para. 111.

*KLA or against the war it fought for Kosovo's independence".*³⁴⁵ As such, contributions to the KLA and the war effort (and the PGoK and efforts to rebuild post-war Kosovo) will not automatically be contributions to crimes. As held by the ICTY in finding that a charged JCE did not exist: "*[a] lot of the evidence rather shows that the collaboration was aimed at defending the Serbs and the traditionally Serbian territories and at preserving Yugoslavia, not at committing the alleged crimes.*"³⁴⁶

116. The SPO has missed a step. It has alleged that **THAÇI** shared the common purpose with "*other General Staff members*" and "*certain*" other KLA and PGoK members, and made contributions to the KLA and PGoK. But it has not taken the next step of showing how these contributions amount to a "*significant contribution*" **to the commission of crimes**, rather than to the work of these groups more generally, which Jack SMITH assured the Kosovar public were not considered by the SPO to be inherently criminal. Even if, for example, the SPO can demonstrate beyond a reasonable doubt that **THAÇI** "*communicated, negotiated, and signed agreements with representatives of international and Kosovo-Albanian governments,*" or that "*he participated in General Staff decision-making, including during negotiations for the release of KLA detainees*"³⁴⁷ the SPO has not taken the next step of demonstrating that these acts were (and were intended by **THAÇI** to be) a "*significant contribution*" **to the commission of crimes to gain and exercise control over all of Kosovo**, as opposed to a contribution to the legitimate political objective of seeking Kosovo's independence, and efforts to bring peace thereafter. The same goes for any evidence that **THAÇI** supported the armed resistance against MILOŠEVIĆ's apartheid regime by facilitating or

³⁴⁵ SPO Press Release, '*Specialist Prosecutor: SPO investigation focused solely on individuals, not KLA*', 17 September 2021, <https://www.scp-ks.org/en/specialist-prosecutor-spo-investigation-focused-solely-individuals-not-kl>. See also T-220520,p.1319 (Status Conference): "... the SPO is not charging the KLA as a whole [...] These people are charged as individuals, and the KLA is not being charged as an organisation, and we wanted to make that clear"; T-230403,pp.2162,2246 (SPO Opening Statement).

³⁴⁶ Šešeljić TJ,para.252.

³⁴⁷ SPO PTB,para.111.

contributing to the transfer of weapons into Kosovo; the SPO has failed to demonstrate that such actions were intended to contribute to the commission of crimes *to gain and exercise control over all of Kosovo* rather than to further military objectives.

117. This step is essential. Not every contribution “*would amount to a significant enough contribution to the crime for this to create criminal liability for the accused regarding the crime in question*”.³⁴⁸ MBARUSHIMANA, FDLR Executive Secretary and Spokesperson, was charged with indirect co-perpetration under Article 25(3)(d) of the Rome Statute. The Pre-Trial Chamber declined by majority to confirm the charges, as the Prosecution could not reasonably allege a “*significant contribution*” to the charged crimes.³⁴⁹

there are substantial grounds to believe that the Suspect, in his capacity as Executive Secretary of the FDLR and having the responsibility to act as the FDLR’s spokesperson, was actively involved in the Saint Egidio peace process and had the authority to represent the FDLR and speak on its behalf in its contact with external actors. However, the Prosecution has failed to demonstrate the impact Mr Mbarushimana’s involvement in the Saint Egidio peace process had on the crimes committed by the FDLR in 2009 or on the FDLR troops’ ability to continue to commit crimes.

118. And while the ICTY recognised that an accused’s contribution to the JCE only needs to be “*directed to the furthering of the common plan*”, which implies that the acts could also have served another purpose,³⁵⁰ the SPO has never grappled with the reality that the implementation of the alleged common purpose was running in parallel with an armed conflict in which the KLA was engaged in a legitimate fight for independence. The SPO’s failure to show how contributions to the KLA/PGoK amounted to a “*significant contribution*” **to the commission of crimes**, rather than to the work of these groups more generally, precludes a finding beyond a reasonable doubt that **THAÇI** made a significant contribution.

³⁴⁸ *Brdanin* AJ, para.427.

³⁴⁹ *Mbarushimana* Confirmation Decision, para.319.

³⁵⁰ *Tolimir* AJ, para.494.

2. *THAÇI's individual charged acts were not contributions to the crimes*

(a) General objections

119. In addressing individual allegations against **THAÇI**, the Defence relies, where expressly invoked, on the following objections concerning evidential value:

- (i) Rule 140(4)(a) precludes reliance, solely or decisively, on the statement of a witness not examined by the Defence;³⁵¹
- (ii) evidence admitted under Rules 153 or 155 attracts reduced weight due to the absence of cross-examination;³⁵²
- (iii) untested bar table evidence has limited probative value;³⁵³ and
- (iv) evidence or testimony not ultimately admitted cannot be relied upon.³⁵⁴

(b) Involvement in the LPK

120. The SPO alleges that in October 1991, **THAÇI** attended an LPK meeting where it was decided that an armed force was necessary to liberate Kosovo. **THAÇI** and Azem SYLA were entrusted with handling the organisation of the armed groups in Kosovo.³⁵⁵

121. First, the documents the SPO cites do not mention **THAÇI** attending this meeting.³⁵⁶ Other documents note his attendance³⁵⁷ but make no reference to **THAÇI** being entrusted with the organisation of armed groups in Kosovo.³⁵⁸ Other cited

³⁵¹ F01603,para.18; F01917,paras.14,218; IA030/F00009,para.72.

³⁵² F01603,paras.14,18,178; F01821,para.34; F01864,paras.11,69; F01904,para.56.

³⁵³ F01409,para.12; F02980,para.14; F03070,para.16.

³⁵⁴ F01603,paras.19,126; F01671,para.32; F03215,para.68.

³⁵⁵ SPO PTB,para.93.

³⁵⁶ SPO PTB,fn.277; P01817_ET,pp.40-41; P00269_ET.21.

³⁵⁷ P00012_ET,p.057945.

³⁵⁸ SPO PTB,fn.279.

documents³⁵⁹ state SYLA and **THAÇI** were entrusted to “*handle the organization of the KLA in Kosovo*”³⁶⁰ with no reference to a military role for **THAÇI**. This claim is only found in untested evidence admitted through the bar table; namely, a post-war book and interview of [REDACTED], whom the SPO chose not to call. The underlying sources therefore lack probative value and have limited weight.³⁶¹

122. Further, the SPO allegation that **THAÇI** attended a meeting where the LPK created a “*Special Sector*” to coordinate activities with the armed units in Kosovo in May 1993³⁶² relies primarily on the evidence of [REDACTED], whom the SPO dropped.³⁶³ Nor does documentary evidence support this allegation: P01874_ET contains no reference to meetings in May 1993³⁶⁴ or to **THAÇI**’s involvement in the creation of a “*Special Sector*”. P01857_ET and P01858_ET.2 neither pinpoint any meetings in May 1993 nor attribute to **THAÇI** any involvement in the creation of a “*Special Sector*”.³⁶⁵ On the contrary, they only list Ali AHMETI, Xhavit HALITI, Jashar SALIHU and Azem SYLA in the “*military sector*”.³⁶⁶

(c) Involvement in the KLA

(i) *Involvement prior to 1998*

123. The SPO alleges **THAÇI** was one of the founding members of the GS, and, as of 1995, formed part of the “*core trusted group*” comprising the GS.³⁶⁷ In support, the SPO relies exclusively on evidence falling within the categories addressed at

³⁵⁹ SPO PTB,fn.279, citing P01880_ET,p.26, P04205_ET,p.2.

³⁶⁰ P01880_ET,p.26; P04205_ET,p.2.

³⁶¹ See para.119(iii)-(iv).

³⁶² SPO PTB,para.94.

³⁶³ F02576,para.2.

³⁶⁴ SPO PTB,fns.282-283; P01874_ET,p.074629.

³⁶⁵ P01857_ET,pp.32,34,36; P01858_ET.2.

³⁶⁶ P01857_ET,p.36.

³⁶⁷ SPO PTB,paras.91,96.

paragraph 119, including statements of **SELIMI**³⁶⁸ and other untested sources, such as interviews with witnesses not examined³⁶⁹ and excerpts from memoirs.³⁷⁰

124. The primary evidence relied upon to allege that **THAÇI** was a founding member of the GS is SYLA's October 1999 interview with *Zëri*, which lists **THAÇI** among "[t]hose who decided on the declaration were also the first General Staff of the KLA."³⁷¹ However, in an interview conducted one month earlier, SYLA identified a different – smaller – founding group, not including **THAÇI**.³⁷²

125. That latter account is consistent with the remaining evidence, including the only witness alleged to have been present. **W04401** consistently identified the same six founding members³⁷³ and expressly rejected SYLA's later list, stating that neither **THAÇI** nor **VESELI** or **SELIMI** were members at the relevant time.³⁷⁴ This aligns with **W04401**'s earlier statements³⁷⁵ and with Nait **HASANI**'s account, another individual allegedly present.³⁷⁶ **Xhavit HALITI** also confirmed the lists provided by SYLA and **HASANI** in their interviews were the individuals comprising the GS when it was founded.³⁷⁷ As such, the only uncontradicted testimony before the Panel is that of **W04401**, also the only alleged founding member to testify in these proceedings, who confirmed **THAÇI** was not a founding member of the GS.³⁷⁸

126. Third, a reasonable inference arises that SYLA later altered the list of founding

³⁶⁸ SPO PTB,fn.290, citing P04200_ET,pp.2-3; fn.295 citing P04200_ET,p.3.

³⁶⁹ SPO PTB,fns.265,290,295, citing P00847_ET,p.3. *See also* SPO PTB,fn.290, citing P01857_ET,p.41, P01880_ET,p.35, P04206_ET,p.4; fn.291, citing P01857_ET,p.28.

³⁷⁰ SPO PTB,fn.290, citing P00012_ET,p.057954.

³⁷¹ P00847_ET,p.3.

³⁷² P01875_ET,p.067709.

³⁷³ T-241128,p.22969, T-241202,p.23133, T-241203,pp.23291-23292, T-241204,pp.23389-23390 (W04401).

³⁷⁴ T-241203,pp.23291-23292 (W04401)

³⁷⁵ P01871,para.6.

³⁷⁶ T-241204,pp.23427-23428 (W04401), referring to 1D00223_ET.

³⁷⁷ *See* P01857_ET,p.41; P04206_ET,p.4.

³⁷⁸ F02576,para.2.

members, adding **THAÇI**, for other purposes. As put to **W04401**, the October 1999 interview sought to link the PDK founders to the origins of the KLA days before the launch of the PDK³⁷⁹ as a new political party.³⁸⁰ **W04401** agreed that post-war interviews often involved exaggeration and self-attribution of merit³⁸¹ for political or personal gain.³⁸²

127. Fourth, none of the remaining cited evidence³⁸³ supports the claim that **THAÇI** was a (founding) member of the GS prior to 1998. The cited materials either do not mention **THAÇI**,³⁸⁴ or do not confirm him as a founder of the KLA,³⁸⁵ or relate to his membership in the GS at an unspecified period after his entry in March 1998.³⁸⁶ First-hand evidence indicates that **THAÇI** formally joined the GS only after the November 1998 restructuring.³⁸⁷ The SPO has therefore failed to prove beyond reasonable doubt that **THAÇI** was a founding member of the KLA or a member of the GS (or Central Staff) prior to 1998.

128. The SPO also asserts **THAÇI** fulfilled various roles in the KLA prior to 1998, including consultation on naming the KLA,³⁸⁸ political strategy from 1996,³⁸⁹ and liaison between GS members in Kosovo and those based elsewhere.³⁹⁰ Again, the SPO fails to demonstrate how these pre-Indictment activities establish **THAÇI's** link to crimes during the Indictment period. Rather, the cited sources either do not refer to

³⁷⁹ 1D00216_ET,p.DHT04822.

³⁸⁰ T-241205,p.23452 (W04401).

³⁸¹ T-241205,p.23453 (W04401).

³⁸² T-241204,pp.23389-23390 (W04401).

³⁸³ SPO PTB,fns.265,295.

³⁸⁴ SPO PTB,fn.290 citing P00012_ET,p.057954, which contains no discussion of **THAÇI**.

³⁸⁵ P00771,para.6.

³⁸⁶ P00739.4_ET,p.14.

³⁸⁷ T-241202,pp.23133-23134 (W04401).

³⁸⁸ SPO PTB,fn.286, citing P01880_ET,pp.26-27, P01857_ET,pp.37-38. Other cited items [REDACTED], are not admitted and may not be relied upon: *see* para.119(iv).

³⁸⁹ SPO PTB,fn.266, citing P00189_ET.1,p.U015-8806.

³⁹⁰ SPO PTB,fn.302, citing P04200_ET,p.3. Other cited items [REDACTED] are not admitted and may not be relied upon: *see* para.119(iv).

THAÇI³⁹¹ or confirm his political functions.

129. For example, **KRASNIQI**'s book refers to a meeting on the KLA's political aspects and stresses **THAÇI**'s role leading the "*political footing*",³⁹² consistent with other evidence showing that **THAÇI** held no military role prior to the war.³⁹³ **SELIMI**'s interview is of limited probative value pursuant to the objections in paragraph 119(i). Moreover, the cited material is non-specific: e.g. SYLA's general reference to a division of duties among the GS,³⁹⁴ or **SELIMI**'s reference to **THAÇI**'s "*important duties*" at an unspecified time,³⁹⁵ without identifying any military role. **W04401** instead placed **THAÇI** abroad, maintaining contact and visiting occasionally, without any involvement in crimes or military operations or a position within the military chain of command.³⁹⁶

(ii) *Involvement 1998 onward*

130. The SPO, relying on its interviews with **SELIMI** and **W04752**,³⁹⁷ alleges that the arrival of senior LPK volunteers in March 1998 marked a turning point that increased **THAÇI**'s authority within the GS.³⁹⁸ This allegation is not proven by the evidence.

131. **SELIMI**'s statements, read in context, do not demonstrate any increase in **THAÇI**'s authority. **SELIMI** explains that individuals joined from both within Kosovo and abroad, including from the LPK simply because it was more organised externally.³⁹⁹ He explained that non-LPK individuals also joined the Central Staff at

³⁹¹ See, e.g., P01857_ET,pp.37-38.

³⁹² P00189_ET.1,p.U015-8806.

³⁹³ See, e.g., T-241106,pp.22080-22081: **W01453** testified that in March 1998, he understood **THAÇI**'s role was to support the KLA "*politically and financially*".

³⁹⁴ P00847_ET,p.3.

³⁹⁵ P04200_ET,p.3.

³⁹⁶ P01871,para.6.

³⁹⁷ SPO PTB,fn.704 citing P00761.4_ET,p.3; P00761.7_ET,pp.3-4; P01355.7_ET,p.20.

³⁹⁸ SPO PTB,para.172.

³⁹⁹ P00761.4_ET,p.3; P00761.7_ET,p.3.

the time,⁴⁰⁰ reflecting operational inclusivity⁴⁰¹ rather than LPK dominance⁴⁰² or enhanced authority of **THAÇI**.

132. In any event, **SELIMI**'s remarks are expressly subjective and speculative. He prefaced his comments with "*I think*,"⁴⁰³ could not rank influence within the GS,⁴⁰⁴ omitted **THAÇI** from command positions at the time,⁴⁰⁵ and ultimately described **THAÇI** as "*more popular*", not more powerful.⁴⁰⁶ The passages relied upon relate to a later period, around Rambouillet, not March 1998.⁴⁰⁷ **THAÇI** was not assigned any GS role until months later, when he became political representative.⁴⁰⁸

133. **W04752**'s evidence does not support the SPO claim. His remarks concern the establishment of the KLA by the LPK⁴⁰⁹ but expressly acknowledge uncertainty as to any control over the GS. He does not address **THAÇI**'s authority in March 1998 and could not do so, having entered Kosovo only in late May 1998.⁴¹⁰ He stated he did not know how the Central Staff was formed.⁴¹¹ **W04752** confirmed that **THAÇI** was appointed head of the Political Directorate only in November 1998,⁴¹² well after the period relied upon by the SPO. He testified that the KLA and GS were open to all contributors, including non-LPK individuals,⁴¹³ undermining any claim of an LPK cell or increased authority of **THAÇI**.

⁴⁰⁰ P00761.7_ET,pp.3-4.

⁴⁰¹ P00761.7_ET,p.3.

⁴⁰² P00761.4_ET,p.3.

⁴⁰³ P00761.7_ET,p.3.

⁴⁰⁴ P00761.7_ET,pp.4-5.

⁴⁰⁵ P00761.4_ET,p.1.

⁴⁰⁶ P00761.7_ET,pp.6-7.

⁴⁰⁷ P00761.7_ET,pp.7-8.

⁴⁰⁸ 1D00050_ET.

⁴⁰⁹ P01355.7_ET,pp.19-20.

⁴¹⁰ T-240701,pp.17336-17338 (W04752).

⁴¹¹ T-240717,p.18391 (W04752).

⁴¹² P01355.7_ET,p.14; T-240703,pp.17548-17549 (W04752).

⁴¹³ T-240708,pp.17784-17788 (W04752).

134. The SPO's further allegation that **THAÇI** recruited, vetted, or tasked military professionals is also unsupported.⁴¹⁴ Two cited sources are not in evidence,⁴¹⁵ including evidence from [REDACTED], ultimately not relied upon by the SPO.⁴¹⁶ The remaining evidence⁴¹⁷ does not implicate **THAÇI**. **W04752** explained that he was recruited based on professional credentials,⁴¹⁸ was not LPK-affiliated, and that vetting concerned professional background, not political affiliation.⁴¹⁹ He expressly stated that he received no instructions from **THAÇI**; SYLA authorised his entry into Kosovo.⁴²⁰ **W04752** further confirmed that he led the group into Kosovo⁴²¹ and later coordinated officer appointments with existing zone commanders.⁴²²

135. Nor do **W04754**'s SPO interview,⁴²³ or SYLA's *Zëri* interview identify **THAÇI** as involved in recruiting, vetting, approving, or tasking military professionals, or in organising unity of command.⁴²⁴ The cited pages of **W04752**'s *Zëri* interview do not support the allegation.⁴²⁵ Moreover, **W04752** confirmed in court that in Drenicë/Drenica he received tasks from **W04401**.⁴²⁶ **W04752** stated commanders were already in Likoc/Likovac and asked for officers, with **W04752** being the coordinator for all officers.⁴²⁷

⁴¹⁴ SPO PTB,para.174.

⁴¹⁵ SPO PTB,fn.714, citing [REDACTED].

⁴¹⁶ F02808,para.2.

⁴¹⁷ P01355.1_ET,pp.16-18; P00607_ET,pp.3-4; P00608_ET; P03620.2_ET,pp.3-9; P00847_ET,p.3.

⁴¹⁸ T-240703,p.17546 (W04752); P01355.1_ET,p.18.

⁴¹⁹ T-240703,pp.17544-17545 (W04752); P01355.1_ET,pp.16-19.

⁴²⁰ T-240703,pp.17546-17547 (W04752).

⁴²¹ P00608_ET,p.3; T-240703,p.17548 (W04752).

⁴²² T-240715,pp.18259-18260 (W04752).

⁴²³ P03620.2_ET,pp.3-9.

⁴²⁴ P00847_ET,p.3.

⁴²⁵ P00607_ET; P00608_ET,pp.3-4.

⁴²⁶ T-240701,p.17344 (W04752).

⁴²⁷ T-240715,p.18260 (W04752)

(iii) Dukagjin Zone

136. The SPO alleges that, between 1994 and summer 1998, **THAÇI** and other GS members visited Jabllanicë/Jablanica, stayed at Lahi BRAHIMAJ's house, organised the transfer of weapons and personnel, coordinated operations, and exercised operational, personnel, and political authority.⁴²⁸

137. These allegations are unsupported. Most of the materials relied upon attract limited⁴²⁹ or no probative weight.⁴³⁰ More importantly, most cited materials do not mention **THAÇI** at all,⁴³¹ and none attribute to him any general authority over the KLA between 1994 and the summer of 1998.⁴³² In any event, much of the material originates from former KLA members who had an incentive, during and after the conflict,⁴³³ to exaggerate both their own roles and the level of KLA organisation for legitimacy and propaganda purposes.⁴³⁴ Descriptions of early KLA organisation were aspirational rather than reflective of operational reality.⁴³⁵

138. As to **THAÇI** specifically, he entered Kosovo only on 10–11 March 1998, having lived abroad since at least 1995.⁴³⁶ He returned voluntarily after the JASHARI massacre⁴³⁷ with members of the diaspora.⁴³⁸ **W01453** denied being the author of a document suggesting that **THAÇI** led this group to Kosovo,⁴³⁹ identifying several

⁴²⁸ SPO PTB, para.286.

⁴²⁹ See para.119(i) regarding P01881_ET; P01883_ET; P04200_ET.

⁴³⁰ See para.119(iv) regarding [REDACTED].

⁴³¹ P01881_ET; P04200_ET,p.10; P01745_ET,p.U003-9089; P03216_ET,pp.3,29; P00269_ET.2; P00269_ET.16; P00793,p.U0162109.

⁴³² P01813,pp.SPOE00227472–SPOE00227473; P01883_ET,p.SPOE00131832; P00771,paras.9,84–85; P01748_ET,p.U002-3548.

⁴³³ See, e.g., T-241104,pp.21844-21846 (W01453). See also T-241105,p.21974 (W01453), regarding P01813_ET as propaganda.

⁴³⁴ T-240222,pp.12856-12857 (W04576).

⁴³⁵ T-240222,pp.12856-12857 (W04576); T-241128,p.22977 (W04401).

⁴³⁶ P00739.4_ET,pp.4,14.

⁴³⁷ P00771,para.8; P00739.4_ET,p.14.

⁴³⁸ P00771,para.8; P00739.4_ET,p.14.

⁴³⁹ P01813_ET,pp.SPOE00227472–SPOE00227473.

errors and areas of exaggeration for propaganda purposes,⁴⁴⁰ and confirmed there were no orders, no command hierarchy, and that all participants acted as equals and volunteers.⁴⁴¹ **THAÇI** was not a commander.⁴⁴²

139. The evidence does not show that **THAÇI** exercised authority in Jabllanicë/Jablanica;⁴⁴³ he merely passed through *en route* to Drenicë/Drenica. Documents cited by the SPO do not attribute any operational role to him there.⁴⁴⁴ A handwritten diary relied upon by the SPO is of low probative value being unauthenticated, of uncertain date, and tendered through the bar table. Importantly, this document does not attribute any authority to “Snake”, other than stating that he and “the 10” “escorted us to the designated points/positions”.⁴⁴⁵ Nor does the evidence establish that **THAÇI** exercised authority in Drenicë/Drenica. **W01453** observed that there were no orientations or orders from **THAÇI**,⁴⁴⁶ who remained there because it was his area of origin.⁴⁴⁷

140. More broadly, the evidence does not show **THAÇI** holding any authority between 1994 and mid-1998.⁴⁴⁸ Following the JASHARI massacre,⁴⁴⁹ the KLA experienced a spontaneous influx of volunteers and decentralised organisation.⁴⁵⁰ As **THAÇI** explained, operational zones functioned autonomously, commanders were self-appointed, and the GS lacked the capacity to direct developments.⁴⁵¹ This was

⁴⁴⁰ T-241105,pp.21968-21971,21973-21974 (W01453).

⁴⁴¹ T-241104,pp.21842-21843 (W01453). *See also* T-241104,p.21839, T-241106,pp.22080-22084,22086-22087 (W01453).

⁴⁴² T-241106,pp.22083-22084 (W01453).

⁴⁴³ P01813_ET,p.SPOE00227472.

⁴⁴⁴ P00771,para.85.

⁴⁴⁵ P01748_ET,p.U002-3548.

⁴⁴⁶ T-241104,pp.21842-21843 (W01453).

⁴⁴⁷ P00771,para.85. *See also* T-250211,p.25026 (W04290).

⁴⁴⁸ *See* Section III(B)(2)(c)(i).

⁴⁴⁹ T-240930,pp.20466-20467 (W04278); T-251001,p.27454 (COVEY).

⁴⁵⁰ P00739.4_ET,p.14; T-250225,pp.25595-25597 (W04745); T-240930,pp.20469-20470 (W04278); T-240429,pp.15109-15111 (W03865); T-231113,pp.9945-9948 (W04765). *See also* Section V(B)(1).

⁴⁵¹ P00739.4_ET,pp.15,20-21.

confirmed by **W04752**, who testified that the GS was not known to the population, so the zone commanders –who had their own local power bases– “*had full authority and [were] more powerful than the [GS]*”.⁴⁵²

Incident between W04836 and HARADINAJ

141. The SPO alleges that the KLA, including **THAÇI**, took steps to intimidate, or assert dominance over, FARK units in Dukagjin in September 1998.⁴⁵³ The claims are both unsupported and taken out of context.

142. The Dukagjin zone was formed from the bottom up, not pursuant to orders from any higher authority.⁴⁵⁴ HARADINAJ was elected commander by local actors, not appointed by the GS or **THAÇI**,⁴⁵⁵ and no “*superior*” staff issued orders to the zone.⁴⁵⁶

143. The KLA, including **THAÇI**, did not intimidate or assert dominance over FARK units in the Zone.⁴⁵⁷ On the contrary, FARK was attempting to assert control of the KLA, including through the change in command,⁴⁵⁸ which was based on an agreement between **W04836** and HARADINAJ, reached without any consultation with, much less approval from, the GS.⁴⁵⁹ The evidence does not establish that the GS had authority to reverse this change by reinstating HARADINAJ as Commander;⁴⁶⁰

⁴⁵² T-240703,pp.17564-17565 (W04752).

⁴⁵³ Indictment,para.45.

⁴⁵⁴ T-240903,p.19511 (W01511); T-250325,p.25844 (W04403). *See also* Adjudicated Fact Nos.250-252,767.

⁴⁵⁵ T-240903,pp.19506-19507 (W01511); 1D00184_ET,pp.2-3; 1D00185_ET,pp.3-4.

⁴⁵⁶ T-250902,pp.19509-19510 (W01511).

⁴⁵⁷ Indictment,para.45.

⁴⁵⁸ T-240703,p.17601 (W04752); 1D00102_ET,p.8.

⁴⁵⁹ T-240903,pp.19546-19548 (W01511); T-240703,p.17596 (W04752). *See* Adjudicated Fact Nos.193-196,189-207,277-279.

⁴⁶⁰ [REDACTED]; T-240903,pp.19540,19548 (W01511); T-250325,pp.25872-25873 (W04403). *See also* T-251118,pp.28296-28297 (CLARK).

rather, it was for HARADINAJ to decide whether he would reclaim it.⁴⁶¹

144. FARK's attempt to take over the KLA in Dukagjin also included political activity by FARK officers, like the political declaration stating that the KLA in Dukagjin supported RUGOVA as its representative rather than DEMAÇI.⁴⁶² **W04752** confirmed in a 1999 interview that **W04836** had been involving himself in "*civilian affairs*."⁴⁶³ Importantly, this happened at the time international mediators were trying to identify Kosovar representatives to participate in negotiations with Serbia.⁴⁶⁴ A reasonable inference is that **THAÇI**'s involvement was aimed at ensuring that the KLA would be represented in the negotiations, consistent with his political role.

145. Despite this, the GS offered positions within the KLA to **W04836** and other FARK officers, including [REDACTED], offers they declined.⁴⁶⁵ This also undermines the SPO's claim that **THAÇI** threatened those who did not recognise the GS.⁴⁶⁶ The allegation that **THAÇI** threatened to fight **W04836** "*like the Serbs*"⁴⁶⁷ rests solely on **W04836**'s untested⁴⁶⁸ account⁴⁶⁹ and hearsay.⁴⁷⁰ Finally, the withdrawal of FARK units from Dukagjin resulted from Serbian offensives and lack of supplies from the BUKOSHI government, not from any KLA action.⁴⁷¹

(iv) *Shala Zone*

146. The SPO asserts that the GS, including **THAÇI**, visited the Shala zone in August

⁴⁶¹ [REDACTED].

⁴⁶² P00487_ET.8,p.0189-2761.

⁴⁶³ 1D00102_ET,p.U002-2987.

⁴⁶⁴ 1D00102_ET,p.U002-2981. *See also* T-251110,p.27672 (HILL); T-240903,pp.19524-19525 (W01511); 1D00425,p.DHT08914.

⁴⁶⁵ [REDACTED]; T-240703,pp.17596-17597,17605-17606 (W04752).

⁴⁶⁶ SPO PTB,para.197.

⁴⁶⁷ SPO PTB,para.198.

⁴⁶⁸ *See* para.119(ii).

⁴⁶⁹ SPO PTB,fn.817.

⁴⁷⁰ T-240903,p.19465 (W01511).

⁴⁷¹ [REDACTED]; T-240904,pp.19565-19566 (W01511); Adjudicated Fact No.281.

and late October 1998 for the purpose of inspecting after the September 1998 offensive, and advised on a “*form of special warfare*”.⁴⁷² The documents the SPO relies on, namely [REDACTED]’s SPO interviews and excerpts from **KRASNIQI**’s book,⁴⁷³ provide inconsistent accounts.

147. Specifically, while the book notes that **THAÇI** visited the Shala zone in August and October 1998,⁴⁷⁴ [REDACTED] expressly confirmed that he never saw **THAÇI** “*visit the [Shala] zone.*”⁴⁷⁵ Although [REDACTED] implied that other GS members carried out inspections during these visits, he characterised those as [REDACTED], acknowledging he did not personally attend such meetings.⁴⁷⁶

148. Moreover, [REDACTED] stated that he met **THAÇI** in [REDACTED]⁴⁷⁷ and [REDACTED] in [REDACTED] 1998, *i.e.* before the September 1998 offensive.⁴⁷⁸ Additionally, [REDACTED] did not know who **THAÇI** was before he met him in [REDACTED].⁴⁷⁹ Given these inconsistencies, there are reasonable doubts about when, if at all, **THAÇI** visited the Shala zone.

149. Finally, the cited pages of **KRASNIQI**’s book do not indicate that **THAÇI** was involved in appointing commanders in the Shala Zone or advising the zone commanders on “*a form of special warfare*”.⁴⁸⁰ The excerpt summarises the author’s own recollections and does not refer to any conversation with, or involvement of, **THAÇI**.

⁴⁷² SPO PTB, paras.80,225.

⁴⁷³ SPO PTB, fns.916-920.

⁴⁷⁴ P00189_ET.1, pp.U015-8859,U015-8863-U015-8864.

⁴⁷⁵ [REDACTED].

⁴⁷⁶ [REDACTED].

⁴⁷⁷ [REDACTED].

⁴⁷⁸ [REDACTED].

⁴⁷⁹ [REDACTED].

⁴⁸⁰ P00189_ET.1, pp.U015-8860-U015-8861.

(v) Llap Zone

150. The SPO alleges that in August 1998, a GS delegation, including **THAÇI**, visited the Llap Zone and formally appointed senior leadership there, inspected military exercises and advised the commanders about a “*form of special warfare*” concerning LDK members collaborating with Serb authorities. During this visit, they allegedly formally appointed Latif GASHI with duties including identifying and dealing with collaborators.⁴⁸¹ The SPO relied on its interviews with the witnesses [REDACTED],⁴⁸² **W04746**,⁴⁸³ **W04485**,⁴⁸⁴ **W04758**,⁴⁸⁵ excerpts from books,⁴⁸⁶ together with earlier witness statements from domestic trials,⁴⁸⁷ the latter not admitted into evidence.⁴⁸⁸

151. First, the evidence does not demonstrate that **THAÇI** was one of the members of the GS delegation that visited the Llap Zone in August 1998. The SPO did not call [REDACTED] to testify.⁴⁸⁹ **W04746** did not remember anyone but **KRASNIQI** and **W04752** attending that visit in August 1998⁴⁹⁰ or discussing the organisation of the KLA with **THAÇI** then.⁴⁹¹ **W04746** was not even familiar with **THAÇI**'s exact position in August 1998.⁴⁹² The only witness who claimed **THAÇI** had been present, **W04758**, confirmed he had not met **THAÇI** before,⁴⁹³ and did not “*have any formal communication to ask them about any specific matters*” during this alleged GS visit, since he “*did not know their positions or authority or responsibility*”.⁴⁹⁴

⁴⁸¹ SPO PTB, paras.80,205,209.

⁴⁸² SPO PTB, fns.836-838.

⁴⁸³ SPO PTB, fns.836-838.

⁴⁸⁴ P01766.1_ET, p.14.

⁴⁸⁵ P01755.1_ET, p.17; P01755.2_ET, pp.12,21,29; P01755.4_ET, p.6.

⁴⁸⁶ P00187_ET, pp.SPOE00055705-SPOE00055708, SPOE00055810. *See also* SPO PTB, fns.238-239 referring to P00189_ET.1, pp.U015-8859-U015-8862.

⁴⁸⁷ SPO PTB, fns.836-838.

⁴⁸⁸ *See* para.119(iv).

⁴⁸⁹ F02808, para.2. *See* para.119(iv).

⁴⁹⁰ T-230712, pp.5531-5532 (W04746).

⁴⁹¹ T-230712, pp.5532-5544 (W04746).

⁴⁹² T-230713, pp.5626-5627 (W04746).

⁴⁹³ T-241024, p.21138 (W04758).

⁴⁹⁴ T-241024, p.21139 (W04758); P01755.1_ET, pp.13-14; P01755.2_ET, pp.10,13.

152. Further, **W04746** confirmed that by the August visit, he had already been operating as zone commander. The GS delegation did not visit in an inspection or decision-making capacity,⁴⁹⁵ or give instructions to the zone commanders to detain collaborators.⁴⁹⁶ They discussed better organisation in light of officers joining from abroad.⁴⁹⁷ While the GS made appointments during August 1998, **W04746**, **W04752** and **W04758**, who attended the meeting, testified that Llap Zone appointments were the prerogative of the zone commander and had been previously established.⁴⁹⁸ **W04746** testified that the appointments in his zone were within his competence as zone commander, but for the sake of cooperation, he strived to inform the GS, which subsequently approved.⁴⁹⁹ Importantly, **W04746** and **W04758** confirmed their GS appointments were not issued by **THAÇI**, whom they barely knew at the time and whose role within the GS they did not know.⁵⁰⁰

153. Accounts in **W04651**'s book, on the other hand,⁵⁰¹ are neither objective nor contemporaneous; rather, as testified, they reflect the author's untested narrative, aimed at glorifying the war,⁵⁰² produced based on notes and interviews that he conducted almost a decade later, without independent corroboration.⁵⁰³ More importantly, there is no mention of the GS or **THAÇI** in the cited page,⁵⁰⁴ which discusses an entirely different meeting, held on 18 July 1998 among entirely different

⁴⁹⁵ T-230712,pp.5531-5532 (W04746).

⁴⁹⁶ T-230712,p.5562 (W04746).

⁴⁹⁷ T-230712,p.5532 (W04746).

⁴⁹⁸ T-230711,pp.5499-5500, T-230712,pp.5531-5532 (W04746); T-240703,pp.17578-17580 (W04752); T-241024,pp.21133-21138 (W04758).

⁴⁹⁹ T-230711,pp.5485,5500 (W04746).

⁵⁰⁰ T-230711,pp.5626-5627 (W04746); T-241024,pp.21138-21139 (W04758).

⁵⁰¹ See SPO PTB,fn.837-838, namely P00187_ET,pp.SPOE00055705-SPOE00055708,SPOE00055810.

⁵⁰² T-240826,p.18939 (W04651).

⁵⁰³ T-240826,pp.18937,18939-18941 (W04651).

⁵⁰⁴ SPO PTB,fn.837, citing P00187_ET,p.SPOE00055810.

participants,⁵⁰⁵ which **W04651** did not personally attend.⁵⁰⁶ **W04758** also confirmed that the accounts in **W04651**'s book⁵⁰⁷ do not represent an accurate account of events; he himself had tried to provide **W04561** with proposals for amendments.⁵⁰⁸

154. The SPO's claim that the GS appointed Latif GASHI as Head of Intelligence and tasked him to identify and report collaborators is unsupported.⁵⁰⁹ The cited interview of **W04485**⁵¹⁰ does not establish such an appointment; **W04485** stated that he did not know Latif GASHI during the war.⁵¹¹ Additionally, the SPO chose not to rely on the evidence of [REDACTED].⁵¹² The allegation is unsupported by any other witness evidence, and is contradicted by **W04758**, who knew of no intelligence being sent to the GS and confirmed that Latif GASHI did not collect information on collaborators.⁵¹³

155. Further, neither **THAÇI** nor the GS advised the commanders about a "*form of special warfare*" concerning LDK members collaborating with Serb authorities during the August visit.⁵¹⁴ The only cited evidence reveals no reference to the alleged instructions, nor any discussion on the subject of "*special warfare*" and LDK.⁵¹⁵ **W04746** provided a clear and unequivocal account of what was discussed during that visit⁵¹⁶ and a "*form of special warfare*" in relation to the LDK was not addressed at all. Nor did **W04752** refer to such discussions during that visit.⁵¹⁷

⁵⁰⁵ P00187_ET,p.SPOE000055810.

⁵⁰⁶ T-240826,pp.18927-18928,18947-18948 (W04651).

⁵⁰⁷ SPO PTB,fn.838, citing P01755.1_ET,p.17; P01755.2_ET,pp.12,21,29; P01755.4_ET,p.6.

⁵⁰⁸ P01755.1_ET,pp.14-16.

⁵⁰⁹ SPO PTB,para.205.

⁵¹⁰ SPO PTB,fn.838, citing P01766.1_ET,p.14.

⁵¹¹ P01766.1_ET,p.14.

⁵¹² F01291/A01,p.2.

⁵¹³ T-241024,p.21189, T-241031,pp.21725-21727 (W04758).

⁵¹⁴ SPO PTB,para.80,fn.238-239, para.209,fn.854.

⁵¹⁵ P00189_ET.1,pp.U015-8861-U015-8862.

⁵¹⁶ T-230712,pp.5532,5562 (W04746).

⁵¹⁷ T-240701,p.17390, T-240703,pp.17606-17607 (W04752).

156. On the contrary, **W04752** testified that when he joined in late May 1998, local staff and soldiers were predominantly LDK, and both the GS and the KLA were open to welcoming former JNA and FARK professionals, as well as LDK members.⁵¹⁸

157. The SPO, relying on its interviews of **W04746** and [REDACTED], further alleges the GS, including **THAÇI**, visited the Llap Zone again in October 1998 and held a meeting on military and political issues.⁵¹⁹ [REDACTED] was not called as a witness.⁵²⁰ **W04746** testified that the visit was a two-way discussion on the organisation of war and how to advance it,⁵²¹ as opposed to instructions from the GS, with **W04746** raising concerns on logistics and finances.⁵²² Notably, **W04746** was not aware of **THAÇI**'s role at that meeting.⁵²³

(vi) *Pashtrik Zone*

158. The SPO alleges that **THAÇI** was present and active in the Pashtrik Zone during 1998-1999. Specifically, from March/April 1998, **THAÇI** and other GS members allegedly had regular contact and met with [REDACTED] in Likoc/Likovac up to three times a week, as well as in Drenicë/Drenica, Malishevë/Mališevo and Klinë/Klina.⁵²⁴ The SPO did not call any witnesses to support this allegation.⁵²⁵

159. None of the three documents⁵²⁶ cited in support of the allegation that **THAÇI** visited Drenoc/Drenovac on at least three occasions between late April and early

⁵¹⁸ T-240708,pp.17784-17788 (W04752). *See also* T-241126,p.22757 (W03873).

⁵¹⁹ SPO PTB,para.212.

⁵²⁰ F02808,para.2. *See* para.119(iv).

⁵²¹ T-230713,p.5621 (W04746).

⁵²² T-230713,p.5625 (W04746).

⁵²³ T-230713,pp.5626-5627 (W04746).

⁵²⁴ SPO PTB,para.360,fns.1474-1475.

⁵²⁵ *See* para.119(iv).

⁵²⁶ SPO PTB,fn.1424, citing [REDACTED].

August 1998 were admitted.⁵²⁷ [REDACTED] claimed that **THAÇI** visited Drenoc/Drenovac three times at the end of May-June 1998,⁵²⁸ but failed to provide any concrete details of such visits. He admitted he did not know the composition of the GS or the identities of its members, undermining the reliability of his testimony. Although [REDACTED] referred to nicknames, he conceded that his information was obtained only after the war, through [REDACTED],⁵²⁹ rendering it hearsay of limited probative value. **W04753**, based in Drenoc/Drenovac at the time, testified he never met the GS then.⁵³⁰ Similarly, **W04752** testified that while they passed through Drenoc/Drenovac when they entered Kosovo on 29 May 1998, **THAÇI** did not stay in Drenoc/Drenovac, but went to Deçan/Dečani.⁵³¹

160. Further, the SPO asserts that **THAÇI** visited **W04765**'s Battalion 2 in Budakovë/Budakovo at the end of July 1998 and kept notes about the situation there.⁵³² The SPO relies solely on **W04765**'s uncorroborated testimony, which is of limited probative value, particularly as he provided no specific date. In addition, **W04765** claimed that **THAÇI** visited Budakovë/Budakovo with **W04752**, however **W04752** testified extensively about his wartime movements and did not mention this visit.⁵³³

161. In any event, **W04765** stated that **THAÇI** merely passed through Budakovë/Budakovo "out of curiosity" following the 3-4 July 1998 battles, not to inspect or direct operations.⁵³⁴ **W04765** acknowledged **THAÇI** lacked capacity or authority to organise the war or issue orders,⁵³⁵ describing him as young,

⁵²⁷ See para.119(iv).

⁵²⁸ [REDACTED].

⁵²⁹ [REDACTED].

⁵³⁰ T-231030,pp.9192-9193 (W04753).

⁵³¹ T-240703,p.17572 (W04752).

⁵³² SPO PTB,para.388.

⁵³³ P00707.1_ET,pp.15-16.

⁵³⁴ T-231116,p.10256 (W04765).

⁵³⁵ P00707.1,p.15; T-231116,pp.10256,10258,10277-10278 (W04765).

inexperienced, and focused on diplomacy rather than military operations.⁵³⁶

162. The SPO further alleges that **THAÇI** was regularly present in Divjakë/Divljaka and participated in meetings, some also attended by zone commanders.⁵³⁷ In one such meeting in late 1998 and 1999 attended by **THAÇI**, the GS appointed Pashtrik zone and brigade commanders.⁵³⁸ The SPO relies on its interviews with **W04744** and [REDACTED] regarding this meeting.⁵³⁹ **W04744** revised his prior account: having initially told the SPO that **THAÇI** appointed him Brigade 123 commander,⁵⁴⁰ he conceded under cross-examination that the appointment was made by **W04752**, with **THAÇI** merely communicating it.⁵⁴¹ He also confirmed that, between September-November 1998, brigade commander appointments were made exclusively by **W04752** and that no written order appointing him exists.⁵⁴² **W04752** confirmed to the Panel that it was he who appointed **W04744** acting commander of Brigade 123 in September 1998.⁵⁴³

163. Other evidence offers an alternative explanation. P01333_ET records that **W04744** was “*unanimously appointed*” by those who later formed the brigade staff, not by **W04752** or **THAÇI**,⁵⁴⁴ and the document was prepared by Sadri EMERLLAHU, who would have known if **THAÇI** had made the appointment.⁵⁴⁵ Similarly, [REDACTED] confirmed that [REDACTED] appointment as [REDACTED] was made by **W04752** pursuant to **W04290**’s decision.⁵⁴⁶ **THAÇI** was not in Kosovo at the time,⁵⁴⁷

⁵³⁶ T-231116,pp.10257,10277 (W04765).

⁵³⁷ SPO PTB,para.486.

⁵³⁸ SPO PTB,para.234.

⁵³⁹ SPO PTB,fn.957.

⁵⁴⁰ P01327.1_ET,pp.23-26.

⁵⁴¹ T-240624,pp.16974,17049,17052,17060 (W04744).

⁵⁴² T-240624,pp.17051,17061 (W04744).

⁵⁴³ T-240704,pp.17651-17652 (W04752).

⁵⁴⁴ P01333_ET,p.083234; T-240624,pp.17054-17055 (W04744).

⁵⁴⁵ T-240624,p.17052 (W04744).

⁵⁴⁶ [REDACTED].

⁵⁴⁷ T-240704,pp.17629-17630 (W04752); [REDACTED].

and [REDACTED] stated he did not meet **THAÇI** until [REDACTED] and never received orders from him.⁵⁴⁸

164. The SPO does not specify any dates or purposes for the other referenced meetings. In any event, the cited materials do not demonstrate **THAÇI**'s regular presence in Divjakë/Divljaka. Specifically, **W04752** testified that from November 1998 to March 1999, the GS was based predominantly in Divjakë/Divljaka but **THAÇI** was not in Kosovo during that period.⁵⁴⁹ He returned to Divjakë/Divljaka only on 12 March 1999 to meet with the GS and the zone commanders about the Rambouillet agreement,⁵⁵⁰ and left the following day for Paris.⁵⁵¹ In April 1999, although part of the GS was stationed in Divjakë/Divljaka and Devetak, **THAÇI** only passed through briefly⁵⁵² and did not meet with the zone commanders. His next visit to Divjakë/Divljaka was on 19 June 1999, for a meeting also attended by **W04147**, **RUBIN**, and Agim ÇEKU.⁵⁵³

165. Accordingly, the SPO has not proven beyond reasonable doubt that **THAÇI** maintained a regular presence in the Pashtrik Zone, visited battalions, attended routine meetings with KLA zone commanders/officers, or participated in any GS appointment meeting for the zone and brigade commanders.

Rahovec/Orahovac

166. The SPO alleges that, following the Rahovec/Orahovac attack, **THAÇI** and

⁵⁴⁸ [REDACTED].

⁵⁴⁹ P01069,p.075327; T-231116,pp.10259-10260 (W04765); T-230717,pp.5811,5842 (W04746).

⁵⁵⁰ T-240703,pp.17494-17496 (W04752); T-230713,pp.5635-5637 (W04746); P00182_ET,p.SPOE00226428; P00227_ET. *See also* 1D00301; P00492.4_ET,pp.28-29: **W04769** mentions one meeting with **THAÇI** in Divjakë in 1999, without details on the date/purpose; presumably the meeting about the Rambouillet agreement.

⁵⁵¹ P01294_ET; 1D00302; P04059,p.SITF00011667.

⁵⁵² T-240703,p.17504 (W04752); P01327.9_ET,p.4.

⁵⁵³ T-240325,p.13564 (W04147), citing P01089,p.120262.

others coordinated KLA units on the ground, with **THAÇI** allegedly ensuring the Rahovec/Orahovac–Malishevë/Mališevo road was cut off, and briefing **W04752** on the situation.⁵⁵⁴ The cited evidence does not support this allegation.⁵⁵⁵ **SELIMI** said **THAÇI** was “*perhaps*” there, but was unsure.⁵⁵⁶ **W04752** testified that **THAÇI** “*was extremely tired*” and left immediately after **W04752** arrived.⁵⁵⁷ **W04752** confirmed that **THAÇI** had no “*operational command of any units that participated in the Rahovec attack,*”⁵⁵⁸ that he was nearby but was **not** the one who blocked the Rahovec/Orahovac–Malishevë/Mališevo road, which was ultimately done to prevent further escalation of the attack.⁵⁵⁹

167. Further, **W04752** stated that certain GS members were present only to assist units establishing a defensive line, not to coordinate KLA units’ activities.⁵⁶⁰ He confirmed that the GS “*wasn’t [...] ordering the local units.*”⁵⁶¹ The evidence overwhelmingly shows the Rahovec/Orahovac attack was carried out without the GS’s knowledge, let alone its involvement or direction.⁵⁶² Rather, it was an initiative of local staffs, carried out during organisational anarchy.⁵⁶³

168. Finally, **W04752** confirmed that when he spoke with **THAÇI** there were no allegations of civilian abductions; **W04752** learned of such claims only in late August 1998, through the media.⁵⁶⁴

⁵⁵⁴ SPO PTB, para.381; Indictment, para.44.

⁵⁵⁵ SPO PTB, fn.1565.

⁵⁵⁶ P00761.9_ET, p.15. See para.119(i).

⁵⁵⁷ P01355.2_ET, pp.33-34; T-240703, p.17586 (W04752).

⁵⁵⁸ T-240703, p.17590 (W04752).

⁵⁵⁹ T-240703, p.17587 (W04752).

⁵⁶⁰ P01355.2_ET, p.31.

⁵⁶¹ T-240710, p.17922 (W04752).

⁵⁶² T-240703, pp.17584-17586, T-240710, pp.17921-17922, T-240716, pp.18342-18343 (W04752); P00643_ET, p.1; P01327.5_ET, pp.1-2.

⁵⁶³ T-230718, pp.6042-6045 (W02153); P01582.1, p.SPOE00200530.

⁵⁶⁴ T-240703, p.17587 (W04752).

(vii) *Nerodime Zone*

169. The SPO alleges that in March 1998, **THAÇI** entered Kosovo with a group of about 30, stayed several days in Drenicë/Drenica, and discussed KLA organisation with **W01453**, approving plans to organise forces in Lipjan/Lipljan and Shtime/Štimlje and instructing **W01453** to do so.⁵⁶⁵ It relies primarily on **W01453**'s ICTY statements and testimonies,⁵⁶⁶ **W04741**'s ICTY testimony in *Limaj*⁵⁶⁷ and ICTY investigator's notes from an interview with **THAÇI** in *Limaj*.⁵⁶⁸

170. The evidence does not support these claims. **W01453** previously stated he did not know who led the group; he referred to border guards assisting them, with no mention of **THAÇI**.⁵⁶⁹ At the time, no-one regarded **THAÇI** as part of the KLA "*top hierarchy*";⁵⁷⁰ decisions were made collectively, among equals.⁵⁷¹ Consistently, **W04741** testified that he led the group and acted on instructions from SYLA, again without reference to **THAÇI**.⁵⁷²

171. Nor does the evidence show that **THAÇI** approved or instructed **W01453**'s move to Lipjan/Lipljan and Shtime/Štimlje. **W01453** testified he decided independently to enter Kosovo,⁵⁷³ that the group comprised volunteers without commanders,⁵⁷⁴ and that **THAÇI** was not a commander.⁵⁷⁵ Once inside, members of the group discussed among themselves⁵⁷⁶ and went to areas they knew best;⁵⁷⁷ **W01453**

⁵⁶⁵ SPO PTB, paras.171,240.

⁵⁶⁶ P01814; P01815_ET; P01816.1_ET; P01817_ET; P01820_ET.

⁵⁶⁷ P01114.1_ET, pp.3558-3564.

⁵⁶⁸ P00771, paras.8-9,84-85.

⁵⁶⁹ P01817_ET, pp.3742-3743.

⁵⁷⁰ P01816.1_ET, pp.21,25.

⁵⁷¹ P01816.1_ET, pp.25-26; P01817_ET, p.3738.

⁵⁷² P01114.1_ET, p.3561.

⁵⁷³ T-241106, pp.22078-22082 (W01453).

⁵⁷⁴ T-241104, p.21839, T-241106, p.22087 (W01453).

⁵⁷⁵ T-241106, p.22084 (W01453).

⁵⁷⁶ T-241106, pp.22082-22084 (W01453).

⁵⁷⁷ T-241104, pp.21858, 21873 (W01453).

went to his hometown area and began recruiting on his own initiative.⁵⁷⁸ The move was not part of a bigger strategy⁵⁷⁹ nor approved by **THAÇI**;⁵⁸⁰ rather, it was part of a conversation between the men, including **THAÇI**, Fehmi LLADROVCI, and Bekim BERISHA.⁵⁸¹ This is further supported by **THAÇI**'s statements to ICTY investigators regarding Fatmir LIMAJ's move to Kleçkë/Klečka around this time.⁵⁸²

172. Moreover, **W01453** stated it was the main headquarters –not **THAÇI**– issuing instructions on recruiting people in zones in his *Milošević* testimony.⁵⁸³ **W01453** has consistently testified that he did not know the members or the location of the GS at that time.⁵⁸⁴ He explained that in his *Milošević* testimony, he “fell prey of the general propaganda to raise the profile of the political figures”.⁵⁸⁵

173. The SPO also claims that **THAÇI** later tasked **W01453** by phone to coordinate weapons transport from Albania.⁵⁸⁶ Yet, **W01453** testified he did not know the GS and could not have received orders from it,⁵⁸⁷ later explaining that any reference to the GS “through him”, referring to **THAÇI**, reflected an assumption rather than knowledge.⁵⁸⁸ **W01453** had consistently previously testified that he consulted and coordinated with LIMAJ about weapons supply.⁵⁸⁹ During cross-examination, it became clear that his sudden shifting account in 2005, from LIMAJ to **THAÇI**, was **W01453**'s attempt to help LIMAJ in his trial.⁵⁹⁰

⁵⁷⁸ T-241106,pp.22086-22087 (W01453).

⁵⁷⁹ T-241106,p.22087 (W01453).

⁵⁸⁰ T-241106,pp.22088-22089 (W01453).

⁵⁸¹ T-241104,pp.21853-21854 (W01453).

⁵⁸² P00771,para.15.

⁵⁸³ P01815_ET.

⁵⁸⁴ T-241105, pp.21899-21900, T-241106,p.22089 (W01453).

⁵⁸⁵ T-241104,pp.21845-21846 (W01453).

⁵⁸⁶ SPO PTB,para.242.

⁵⁸⁷ T-241104,p.21877 (W01453).

⁵⁸⁸ T-241105,p.21882 (W01453).

⁵⁸⁹ P01816.1_ET,p.42.

⁵⁹⁰ T-241106,pp.22098-22101 (W01453).

174. The SPO then relies on **W04741**'s SPO interview to assert that "*THAÇI intervened personally, together with other General Staff members, to resolve disputes between commanders and solve problems on the ground*".⁵⁹¹ In the cited passage, **W04741** discusses a disagreement with **W01453**, after which GS members including **THAÇI** went to speak to him to resolve the matter.⁵⁹² However, **W04741** explained that, when **THAÇI** and the others spoke with him, neither LIMAJ nor **W01453** were present; **W04741** was not told in advance of a meeting with the GS, and did not know why they were there: they could have been simply passing through the area.⁵⁹³ In any event, **W04741** recalled from the meeting that SYLA was the main person in the KLA at the time, whereas he was not even aware of **THAÇI**'s position.⁵⁹⁴

175. Finally, the SPO alleges that in March–April 1999, **THAÇI** attended GS meetings in Nerodime on Operation Arrow, made appointments to the PGoK and GS, and visited sites in Nerodime, escorted by the Brigade Military Police.⁵⁹⁵ Of the documents originally relied on, only **W01453**'s testimony in a domestic trial⁵⁹⁶ and **THAÇI**'s record of hearing in that investigation⁵⁹⁷ were admitted.

176. **W01453** recalled a Petrovë/Petrovo meeting with **THAÇI** present, but clarified this was after ÇEKU had taken over as GS Chief from **W04752**, *i.e.*, no earlier than April 1999.⁵⁹⁸ **THAÇI**'s record likewise confirms he entered Kosovo only in the first ten days of April 1999.⁵⁹⁹

⁵⁹¹ SPO PTB, para.111(a)(iv), fn.370, citing P01115.4_ET, pp.2-5.

⁵⁹² P01115.4_ET, pp.2-5.

⁵⁹³ T-240423, pp.14730-14731 (W04741).

⁵⁹⁴ T-240423, pp.14731-14732 (W04741).

⁵⁹⁵ SPO PTB, para.250.

⁵⁹⁶ SPO PTB, fn.1046 citing P01823, pp.SITF00009400–SITF00009403.

⁵⁹⁷ SPO PTB, fn.1046 citing P00769, pp.SITF00009008–SITF00009009. *See* para.119(i).

⁵⁹⁸ P01823.

⁵⁹⁹ P00769, p.SITF00009009. *See* para.119(i).

177. Further, the evidence does not support the allegation that **THAÇI** made appointments to the PGoK/GS in an April 1999 meeting about Operation Arrow. **SELIMI**'s evidence⁶⁰⁰ does not suggest that **THAÇI** appointed anyone.⁶⁰¹ **W04290** admitted he had no personal knowledge that **THAÇI** assigned roles or appointed individuals (including **ÇEKU**),⁶⁰² and accepted that **ÇEKU** was already in post before any alleged decree.⁶⁰³

178. Operation Arrow was planned and authorised by **W04572**, with approval from **W04401** and **W04290**. By April 1999, planning for Operation Arrow had been underway for months, and **W04752** confirmed it was not ordered by **THAÇI**, but the plan was signed by **W04290**.⁶⁰⁴ **THAÇI** was outside Kosovo as the operation proceeded⁶⁰⁵ and the PGoK had no practical oversight of the KLA at that stage.⁶⁰⁶

179. The evidence cited for the allegation that **THAÇI** visited Brigade 162 HQ escorted by the Military Police⁶⁰⁷ is not corroborated. **THAÇI**'s statement does not mention such a visit,⁶⁰⁸ and the unauthenticated "daily report"⁶⁰⁹ merely states that **THAÇI** and Ramë BUJA passed through on 8 April 1999, consistent with **W01453**'s account that they were returning from Rambouillet.⁶¹⁰ Finally, photographs from **W04576**'s book also do not prove such a visit. **W04576** explained that the photographs were extracted from recordings he found after the war.⁶¹¹ He did not participate

⁶⁰⁰ See para.119(i).

⁶⁰¹ P00772,p.SITF00009292.

⁶⁰² T-250211,pp.25035-25038,25045-25050 (W04290).

⁶⁰³ T-250213,pp.25271-25277 (W04290); P00112_ET.

⁶⁰⁴ T-240708,pp.17767-17768 (W04752); T250210,p.24983 (W04290).

⁶⁰⁵ T-240708,pp.17769-17771 (W04752).

⁶⁰⁶ T-240708,pp.17765-17766 (W04752).

⁶⁰⁷ P00769,pp.SITF00009008–SITF00009009; P02933_ET; P01015,p.036807.

⁶⁰⁸ P00769,pp.SITF00009008–SITF00009009.

⁶⁰⁹ P02933_ET.

⁶¹⁰ T-241105,pp.21996-21997 (W01453).

⁶¹¹ T-240221,p.12707 (W04576).

himself, could not verify the photographs' authenticity, and acknowledged they may have been edited or taken elsewhere.⁶¹² In any event, a recording shows **THAÇI** with ÇEKU and Ramë BUJA, consistent with **THAÇI's** account that they returned from Rambouillet and entered Kosovo on foot in early April 1999, passing in transit as opposed to visiting brigade HQs.⁶¹³

(viii) Albania

180. The SPO alleges that **THAÇI** was regularly in Kukës, including at the Metal Factory, and that in May/early June 1999 he briefly addressed KLA soldiers there.⁶¹⁴ These allegations have not been proven beyond reasonable doubt. The cited pages alleging **THAÇI** was regularly present in Kukës are not in evidence.⁶¹⁵

181. The SPO also relies on [REDACTED] and **W04379's** testimony.⁶¹⁶ The cited portion of [REDACTED]'s evidence does not mention **THAÇI**,⁶¹⁷ and he did not testify about any Metal Factory visit in these proceedings. **W04379**⁶¹⁸ also did not state he saw **THAÇI** at the Metal Factory, referring only to an unspecified place where soldiers gathered.⁶¹⁹ He could not recall any date or whom **THAÇI** met.⁶²⁰

182. The documentary record likewise does not support the claim. The four documents cited⁶²¹ do not place **THAÇI** in Kukës. In [REDACTED], **W01448** provides a specific list of eight senior KLA commanders whom he saw in Kukës, not including

⁶¹² T-240221,pp.12707-12709 (W04576).

⁶¹³ P00769,pp.SITF00009008–SITF00009009.

⁶¹⁴ SPO PTB,para.557.

⁶¹⁵ F03212,paras.55,58(g); F02937,paras.58-62,95(b). See para.119(iv).

⁶¹⁶ SPO PTB,fn.2249.

⁶¹⁷ [REDACTED].

⁶¹⁸ P00674.2_ET. See para.119(ii).

⁶¹⁹ P00674.2_ET,p.160.

⁶²⁰ P00674.2_ET,pp.161-162.

⁶²¹ SPO PTB,fn.2250.

THAÇI.⁶²² Similarly, in later testimony in domestic proceedings, **W01448** confirmed that he did not know nor remember any KLA commanders in Kukës besides [REDACTED], Sabit GEÇI, **VESELI**, Xhemshit KRASNIQI and [REDACTED].⁶²³ The two remaining cited documents were not admitted.⁶²⁴ [REDACTED]'s prior testimony contains redacted references and therefore provides no evidence relevant to this allegation.⁶²⁵

(d) **THAÇI** in the PGoK

(i) *Commander-in-Chief*

183. The SPO alleges that the GS appointed **THAÇI** as PGoK Prime Minister at the end of March 1999, thereby assuming the role of KLA Commander-in-Chief, with the KLA General Commander and Chief of Staff reporting to him.⁶²⁶

184. The SPO relies primarily on documents in which **THAÇI** is named or signed under the title 'Commander-in-Chief' to establish his role as such.⁶²⁷ This allegation is inconsistent with the constitutional framework which the PGoK itself acknowledged. The PGoK declared it was bound by the 1992 Kaçanik Constitution (as amended),⁶²⁸ which provides that the President, *i.e.* RUGOVA, not the Prime Minister, is the supreme commander of the armed forces.⁶²⁹ The SPO has produced no PGoK legislation or internal instrument transferring any command authority over the KLA (or any armed force) to the office of Prime Minister. Further, while there is limited evidence of reports sent in May 1999 by ÇEKU to SYLA, purported PGoK Minister of

⁶²² P00431,p.SITF0013860.

⁶²³ P00439,pp.SITF00016148-SITF00016149.

⁶²⁴ SPO PTB,fn.2250. *See* para.119(iv).

⁶²⁵ [REDACTED]. *See* para.119(ii).

⁶²⁶ SPO PTB,para.116.

⁶²⁷ SPO PTB,fn.432, citing P00112_ET,p.SPOE00054900, P01444, P00760,p.076569, P00880. Regarding [REDACTED], *see* para.119(iv).

⁶²⁸ P00515_ET.52,p.008551.

⁶²⁹ 1D00441,p.1D00-0288 (art.108).

Defence, there is no evidence that SYLA reported these, or anything else, to **THAÇI**. Nor is there evidence that these were reported to anyone else; this may be explained by the fact that SYLA should have been reporting to RUGOVA as the Commander-in-Chief, but RUGOVA was absent, and refusing to participate in the PGoK.⁶³⁰ In any event, no reasonable inference can be drawn (let alone the only reasonable inference) that SYLA was reporting to **THAÇI** in the absence of any evidence that this occurred, particularly since **THAÇI** was outside Kosovo from 20 May 1999.⁶³¹

185. The SPO relies on the Undertaking, which **THAÇI** signed as “*Commander-in-Chief UÇK*.” However, **DUNCAN**,⁶³² who drafted the Undertaking and led the negotiations with General John REITH,⁶³³ gave clear evidence that this was a political workaroud, not recognition of a real military role. **DUNCAN** explained ‘Commander-in-Chief’ was an “*overinflated, almost grandiose title that guerilla armies and leaders often use*”. From his personal experience, the tendency to overinflate the title was unsurprising; it was a “*grandiose title being given to somebody which had no reality.*”⁶³⁴

186. **DUNCAN** also explained why **THAÇI** could not have signed as Prime Minister.⁶³⁵ The NATO allies “*were not ready to recognise Kosovo itself, and they were certainly not ready to recognise Hashim Thaci as the Leader of Kosovo.*” That was why it was an ‘undertaking’, as they “*could not have a bilateral agreement between NATO and the Kosovar provisional government, which existed effectively in name only, but in political terms [...] there was no state of Kosovo. There was no government of Kosovo. Therefore, NATO could not have a bilateral agreement with a state that did not exist and a government that did not*

⁶³⁰ See para.64.

⁶³¹ See paras.513-518.

⁶³² T-250922,pp.27012-27016 (DUNCAN).

⁶³³ T-250922,pp.27029,27054-27056 (DUNCAN); 1D00262,para.30.

⁶³⁴ T-250922,pp.27075-27076 (DUNCAN).

⁶³⁵ T-250922,pp.27048,27076,27110 (DUNCAN). See also T-250923,p.27274 (DUNCAN).

exist."⁶³⁶ NATO did not recognise **THAÇI** as the Prime Minister,⁶³⁷ so somebody came up with the 'Commander-in-Chief' title to give **THAÇI** the appearance of legitimacy and authority,⁶³⁸ without raising issues of recognition for NATO.⁶³⁹

187. **DUNCAN** testified that it was clear that **THAÇI** was not the Commander-in-Chief because of the way the commanders treated **THAÇI** during the negotiations as the political wing, while deferring to **ÇEKU** as the military authority.⁶⁴⁰ **ÇEKU** and to some extent the zone commanders (not **THAÇI**) had command and control, which was why **DUNCAN** approached **ÇEKU** (not **THAÇI**) to negotiate the Undertaking. **ÇEKU** said that he could not do it without the zonal commanders.⁶⁴¹ **RUBIN** corroborated that the commanders were not deferential to **THAÇI**⁶⁴² and that, in practice, power lay with **ÇEKU**.⁶⁴³ **CLARK** likewise described **ÇEKU** as the person "*in charge.*"⁶⁴⁴

188. **DUNCAN** explained why he did not agree with the view of his former colleague, **W02135**, that **THAÇI** had signed the Undertaking as he was the leader of the KLA, the Commander-in-Chief, and **ÇEKU**'s boss.⁶⁴⁵ By his own admission, **W02135** was not present during the Undertaking negotiations, including when the changes to the KLA side of the signature block were made, and did not know what happened.⁶⁴⁶ Further, **W02135**'s view came from his general perception of how professional military officers should behave and how he would have expected **ÇEKU**

⁶³⁶ T-250922,p.27053 (DUNCAN). See also 1D00361,p.SITF00378572.

⁶³⁷ T-250922,p.27054 (DUNCAN).

⁶³⁸ [REDACTED].

⁶³⁹ [REDACTED].

⁶⁴⁰ T-250922,pp.27077-27079 (DUNCAN).

⁶⁴¹ T-250922,pp.27050-27053, T-250923,pp.27293,27317 (DUNCAN). See also 4D00186,p.SPOE00304504.

⁶⁴² T-250915,pp.26528-26529 (RUBIN).

⁶⁴³ T-250915,pp.26524-26528, T-250916,pp.26724,26778-26779 (RUBIN). See also 1D00288,p.DHT4109.

⁶⁴⁴ T-251118,p.28276 (CLARK).

⁶⁴⁵ T-250922,pp.27086-27088 (DUNCAN).

⁶⁴⁶ T-250922,pp.27079,27087-27088 (DUNCAN).

to have behaved.⁶⁴⁷

189. Given **DUNCAN**'s primary role in drafting and negotiating the Undertaking on behalf of NATO, and his stature and professional experience at that date, his evidence is highly credible and in and of itself creates a reasonable doubt that **THAÇI** was in fact the Commander-in-Chief despite the fact he had signed the Undertaking with that title. Moreover, it is in parts corroborated by **RUBIN** and **CLARK**.

190. Indeed **RUBIN**, who was present at the negotiations,⁶⁴⁸ clarified that he thought that one reason the KLA had named **THAÇI** as the 'Commander-in-Chief' was because they were trying to demonstrate democratic credentials, one of which was civilian control of the military.⁶⁴⁹ **RUBIN**'s best guess was that the signature block was not prepared for **THAÇI**, but for **ÇEKU**, and that this was not changed when they found out at the last minute that **THAÇI** had to sign.⁶⁵⁰ This is further supported by the fact that General **REITH** repeatedly referred to **ÇEKU** as the Commander or Commander-in-Chief of the KLA.⁶⁵¹

191. A statement signed by **THAÇI** as Commander-in-Chief on 20 September 1999 does not establish that he was, in fact, Commander-in-Chief; it relates directly to the Undertaking and it is thus unsurprising that it uses the same terminology.⁶⁵² Similarly, a letter dated 10 August 1999, purportedly sent by **THAÇI** as 'General Commander of the KLA' to **KOUCHNER**, asking for some command personnel to "*legally belt arms*",⁶⁵³ makes no reference to Commander-in-Chief. This document was admitted through the bar table and never put to any witness by the SPO, despite its relevance to two

⁶⁴⁷ T-250922,p.27088 (DUNCAN).

⁶⁴⁸ 1D00262,paras.28-33; T-250915,pp.26518-26520 (RUBIN).

⁶⁴⁹ 1D00262,para.34.

⁶⁵⁰ T-250916,pp.26775-26778 (RUBIN).

⁶⁵¹ T-250916,pp.26724,26779 (RUBIN).

⁶⁵² P00760,p.076569.

⁶⁵³ SPO PTB,para.116, citing P00880.

witnesses whose evidence was ultimately not relied upon,⁶⁵⁴ and despite mentioning **W04752**, who was examined by the SPO for almost 11 hours.

192. The only witnesses who could provide informed testimony about this document were called by the Defence. **COVEY** recalled this letter and testified that UNMIK did not perceive **THAÇI** to be the General Commander. According to **COVEY**, *“the title ‘Commander-in-Chief’ was fantasy. Mr Thaci had no visible control over the KLA.”*⁶⁵⁵ He saw this request from **THAÇI** as a mere gesture: *“He did not accompany it with any comments that lent urgency to it. He did not return to it in other exchanges. He did not follow up. He did not try to leverage his cooperation on other issues to get traction on this issue. That behaviour over the ensuing weeks confirmed for us that it was just carrying a bucket to execute a task that somehow served some other interest.”*⁶⁵⁶ Further, when shown to **DUNCAN**, he recalled the request from KFOR but not the specific document and said that it was an improper attempt by **THAÇI** to continue having a role in KLA demilitarisation, instead of **ÇEKU**.⁶⁵⁷

193. The SPO also alleges that, following a 27 April 1999 PGoK meeting, **THAÇI** appointed **W04290** as National Guard commander and Agim **ÇEKU** as KLA Chief of Staff.⁶⁵⁸

194. That allegation is not proven. The SPO relies on alleged PGoK Decrees 84/99 and 85/99,⁶⁵⁹ reproduced in *RFK/Kosovapress* compilations, were admitted through the bar table⁶⁶⁰ over Defence objections.⁶⁶¹ Decree 84/99, which purportedly appoints

⁶⁵⁴ [REDACTED].

⁶⁵⁵ 1D00391,para.10(s).

⁶⁵⁶ 1D00390,para.66; 1D00391,para.10(s); T-250930,pp.27355-27356 (COVEY).

⁶⁵⁷ T-250923,pp.27198-27199,27244-27245 (DUNCAN).

⁶⁵⁸ SPO PTB,para.120.

⁶⁵⁹ P00113_ET,pp.008558-008559. See also P00112_ET,pp.SPOE00054900-SPOE00054901.

⁶⁶⁰ F01268,paras.20-26; F01268/A03,1C3; F01268/A04,3I.

⁶⁶¹ F01596,paras.43-47,180.

ÇEKU as Chief of the GS,⁶⁶² contains no reference to 'Commander-in-Chief' and refers to **THAÇI** as Prime Minister. The document is a "news report" purportedly published in the middle of the NATO bombing campaign, when the PGoK was attempting to portray itself for propaganda purposes as a Western-style government with civilian control over its military.⁶⁶³ Notably, the document is an unsigned media reproduction, not an internal PGoK instrument, and was not authenticated through witnesses. Even on its face, the Decree attributes the appointments to the Government of Kosovo, not to **THAÇI** personally; at most, **THAÇI** is said to 'sign' a collective decision.

195. There is further doubt that the Decrees reflect reality: they refer to a functioning Ministry of Defence and to Prishtinë/Priština as the seat of government on 28 April 1999, when Prishtinë/Priština was under Serbian control, and the SPO case is that the PGoK did not establish itself there until July 1999.⁶⁶⁴ **DUNCAN** questioned the authenticity of the documents⁶⁶⁵ and described such titles and structures as part of a communications strategy rather than reflecting real command.⁶⁶⁶ **THAÇI** likewise denied knowledge of Decree 85/99 and stated the government did not meet during the bombing and the cited 'Ministry of Defence' was not operational.⁶⁶⁷

196. **W04290** had never seen Decree 85/99, did not know who appointed him, and never received a written decision.⁶⁶⁸ While **W04290** did not openly disagree with **SELIMI**'s evidence put to him by the Panel⁶⁶⁹ suggesting **THAÇI** made these appointments,⁶⁷⁰ his ambivalent approach to this account is not proof: **SELIMI** was

⁶⁶² P00112_ET,p.SPOE00054900; P00113_ET,p.008559.

⁶⁶³ See, e.g., T-250923,pp.27286-27287 (DUNCAN); T-250916,pp.26782-26783 (RUBIN).

⁶⁶⁴ SPO PTB,fn.454.

⁶⁶⁵ T-250922,pp.27141-27142, T-250923,pp.27285-27287 (DUNCAN).

⁶⁶⁶ T-250923,pp.27286-27287 (DUNCAN). See paras.565-566.

⁶⁶⁷ P00742.7_ET,pp.7-9. See also P00742.10_ET,pp.1-11, regarding concerns about the authenticity of these purported Decrees.

⁶⁶⁸ T-250210,pp.24916, T-250211,pp.25075-25076 (W04290).

⁶⁶⁹ This item was not relied on in SPO PTB,fn.446.

⁶⁷⁰ P00763.5,p.13.

not cross-examined and objections in paragraph 119(i) apply. Moreover, **W04290**'s response that he did not have reason to dispute the accounts of **SELIMI** and **W04752**⁶⁷¹ is due to **W04290** having no independent knowledge of what either had said about this matter until the evidence was led by the Panel.⁶⁷²

197. The only reliable evidence on appointments is the Defence-tendered stamped GS Order appointing both **W04290** and **ÇEKU** in April 1999.⁶⁷³ The SPO claims the GS appointed **THAÇI**, who is then alleged to have appointed **ÇEKU** as the head of the body that had just appointed **THAÇI**, creating an untenable 'appointment loop'. The coherent account is that the GS appointed both.

198. This is corroborated by **ÇEKU**, who stated less than a year after the war that he was appointed by the entire GS, after consultation with zone commanders.⁶⁷⁴ This account was accepted as plausible by **W04290**⁶⁷⁵ and **DUNCAN**⁶⁷⁶ and is consistent with the fact **ÇEKU** was already acting as Chief of the GS by early April 1999.⁶⁷⁷

199. It is also consistent with the absence of evidence that **THAÇI** issued orders to, or received reports from, **ÇEKU**. **W04290** likewise testified he never received any order from **THAÇI** while Prime Minister.⁶⁷⁸ **DUNCAN** and **COVEY**⁶⁷⁹ gave evidence that **THAÇI** was not **ÇEKU**'s boss (*contra* **W02135**'s evidence) raising further doubt about the SPO case that **ÇEKU** reported to him. **DUNCAN** said that **W02135**'s view reflected that of a Western military officer rather than the reality. The relationship he

⁶⁷¹ P01355.11_ET,pp.20-21.

⁶⁷² T-250213,pp.25240-25241 (W04290).

⁶⁷³ 1D00249.

⁶⁷⁴ 1D00243_ET,pp.4-5.

⁶⁷⁵ T-250211,pp.25039-25040 (W04290).

⁶⁷⁶ T-250923,pp.27233-27234 (DUNCAN).

⁶⁷⁷ 1D00249_ET; T-250213,pp.25267-25268 (W04290).

⁶⁷⁸ T-250211,p.25076 (W04290).

⁶⁷⁹ T-250930,p.27354 (COVEY).

observed between **THAÇI** and General ÇEKU was one of “*team players*” – one handled the political side and the other the military side.⁶⁸⁰ The SPO further rely on a purported PGoK ‘Defence Ministry’ organisation chart admitted through the bar table.⁶⁸¹ The page of the document relied upon does not support the proposition that the KLA General Commander and KLA Chief of Staff reported to **THAÇI**. There is no indication who the General Commander reported to and no mention of the positions of the KLA Chief of Staff, Commander-in-Chief or Prime Minister.

200. The SPO has not proven beyond a reasonable doubt **THAÇI** was the Commander-in-Chief of the KLA with the KLA General Commander and Chief of Staff reporting to him.

(ii) *THAÇI’s role and responsibilities within the PGoK*

201. It is undisputed that on 2 April 1999, the ‘Prime Minister’ formally announced the composition of the PGoK.⁶⁸² However, the SPO alleges that **THAÇI** claimed responsibility for leading and governing Kosovo on behalf of PGoK.⁶⁸³ The first exhibit, admitted through the bar table,⁶⁸⁴ is Decree 81/99, purportedly issued by “*the Government of Kosovo*” and published by *RFK*.⁶⁸⁵ The SPO misread the document: the Decree attributes responsibility to the PGoK, not to **THAÇI** personally,⁶⁸⁶ and merely reflects the political agreement between the LDK, KLA and LBD to establish the PGoK.⁶⁸⁷

202. Moreover, the Decree is plainly aspirational. It asserts powers to enact and

⁶⁸⁰ T-250922,pp.27085-27088 (DUNCAN).

⁶⁸¹ See SPO PTB,fn.433, citing P03916_ET,p.SPOE00228172.

⁶⁸² SPO PTB,para.117.

⁶⁸³ SPO PTB,para.121.

⁶⁸⁴ P00515_ET.52, admitted in F01716,para.50(c).

⁶⁸⁵ See para.119(iii).

⁶⁸⁶ P00515_ET.52,p.008551.

⁶⁸⁷ 1D00069_ET.

enforce 'law' during the liberation war, despite Kosovo not being an independent state and the PGoK lacking any legislature, enforcement capacity, or international recognition. It therefore cannot establish actual governance. The excerpt of an alleged *Kosovapress* interview published by *RFK*⁶⁸⁸ was likewise not put to any witness.⁶⁸⁹ In any event, it simply reports that Kosovo had "*one government*," namely the PGoK, again echoing the founding agreement rather than demonstrating that **THAÇI** personally assumed or exercised governing authority.

203. The SPO further alleges that **THAÇI**'s competencies were both "*representational and operational*" as illustrated by his alleged order for general mobilisation soon after the NATO bombardment began, and involvement in drawing up military plans.⁶⁹⁰ The Panel was presented with no witness evidence that **THAÇI** issued any mobilisation order.⁶⁹¹ Moreover, the document is a *Kosovapress* reproduction of an alleged GS order issued in Prishtinë/Priština on 29 March 1999, when Prishtinë/Priština was under Serbian control and there is no evidence the GS operated there.⁶⁹² The SPO has adduced no evidence of the mass mobilisation or conscription it describes ever being attempted.⁶⁹³ On the contrary, the evidence shows the KLA functioned as a volunteer force.⁶⁹⁴ At most, the document is propaganda, aspirational and of limited probative value.

204. As to planning, the SPO relies on three items, one of which is not in evidence.⁶⁹⁵

⁶⁸⁸ P00515_ET.60,p.008742.

⁶⁸⁹ See para.119(iv).

⁶⁹⁰ SPO PTB,para.118.

⁶⁹¹ SPO PTB,fn.437, citing P03620.3_ET,p.7. The relevant portion was redacted from the admitted version: F03212,paras.50,55. See para.119(ii).

⁶⁹² P00114_ET,pp.SPOE00054519-SPOE00054520.

⁶⁹³ P00114_ET,para.2: "[c]itizens between the ages of 18 and 50 shall be required to report to the Kosovo Liberation Army ranks."

⁶⁹⁴ See para.443.

⁶⁹⁵ SPO PTB,fn.438, citing [REDACTED]. See para.119(iv).

The first is [REDACTED].⁶⁹⁶ In response to a leading (and misleading) question that asserted that [REDACTED] alleged **THAÇI** was Commander-in-Chief, [REDACTED] stated only that [REDACTED].⁶⁹⁷ The passage in fact refers to the “*new government*” and **THAÇI** as “*commander*”, and states that military tasks were assumed by the Minister of Defence, not the Prime Minister.⁶⁹⁸

205. The alleged 18 April 1999 letter from the GS to **CLARK**⁶⁹⁹ does not mention **THAÇI** or support the proposition that he drafted military plans. In any event, **CLARK** testified that **THAÇI** was “*a political person*” without “*even a rudimentary understanding of military operations*”.⁷⁰⁰

206. The SPO’s related claim, that **THAÇI** implemented this mobilisation ‘order’ by tasking an alleged Minister of Defence and establishing a National Guard,⁷⁰¹ rests on similarly unreliable material.⁷⁰² It is an unsigned media reproduction, framed as a decision of the Government as a whole, and purportedly based on a proposal by a Minister of Defence whose existence and functionality the SPO has not proven.⁷⁰³ Crucially, **W04290** testified that the National Guard was never formed during the war and the alleged decision remained unimplemented even after the KLA’s transformation, confirming the Decree’s content did not reflect operational reality but rather political messaging.⁷⁰⁴

207. Finally, the additional documents cited were either not admitted or are inherently questionable, including a June 1999 draft threatening penalties for non-

⁶⁹⁶ SPO PTB,fn.438, citing P01173_ET,p.SPOE00231518. *See also* [REDACTED].

⁶⁹⁷ [REDACTED].

⁶⁹⁸ P01173_ET,pp.SPOE00231518-SPOE00231520.

⁶⁹⁹ P03784_ET.

⁷⁰⁰ 1D00430,para.23.

⁷⁰¹ *See* para.195.

⁷⁰² *See* para.119(iii).

⁷⁰³ T-250922,p.27142 (DUNCAN).

⁷⁰⁴ T-250211,pp.25077-25079, T-250213,pp.25238-25239 (W04290).

joining,⁷⁰⁵ irreconcilable with the KLA's volunteer nature⁷⁰⁶ and left unauthenticated (despite being attributed to **W04752**). Pursuant to Resolution 1244, ÇEKU reported to and was under the overall responsibility of **W02135**, who had ultimate oversight over KLA demobilisation rather than the PGoK Ministry of Defence. The self-declared PGoK had no capacity to compel demobilisation or enforce such measures.⁷⁰⁷

208. The SPO alleges that **THAÇI** later appointed Deputy Minister of Defence (LIMAJ), citing purported Decree 87/99 published in *Kosovapress*.⁷⁰⁸ The Decree was repeated (with incorrect spellings) in a BBC report which the SPO also cites.⁷⁰⁹ Both versions were admitted through the bar table over Defence objections, and never put to a witness.⁷¹⁰

209. This document should be treated with caution. The SPO could have sought its authentication or confirmation through **W04752** but chose not to. While it is said that the decision was "*signed by*" **THAÇI**, it is clearly not signed, it is a hearsay report of what allegedly occurred, not a document with a typed signature block and a handwritten signature. It is also clear from the plain language used that the appointment was decreed –*i.e.* decided– by the Government of Kosovo as a whole. If **THAÇI** did indeed sign this Decree (which is disputed), he was effecting a collective decision; this was a procedural step in the appointment process. There is also reasonable doubt as to whether this Decree reflects the reality of how the PGoK worked or whether it is simply a form of propaganda in which the PGoK was trying to suggest to Kosovans and perhaps the world that it was more organised and functional than it actually was. As stated above in respect of Decrees 84/99 and 85/99

⁷⁰⁵ P00909.

⁷⁰⁶ See para.443.

⁷⁰⁷ T-250922,pp.27093-27094,27120, T-250923,pp.27199,27255-27257 (DUNCAN).

⁷⁰⁸ SPO PTB,para.120,fn.447, citing P00813_ET.13.

⁷⁰⁹ P04177.

⁷¹⁰ See F01716,para.50(c); F03214,para.89(c)(i),item 42. See also para.119(iii).

and adopted here, this appointment purports to be made “*at the proposal of the Ministry for Defence*”. Defence evidence has raised doubt as to the existence of a “*Ministry of Defence*”.⁷¹¹ It is also purportedly to be issued by the Government of Kosovo “*at Pristina*” on 3 May 1999. The KLA was not in Prishtinë/Priština on 3 May 1999; the city was under Serbian control. The fact that the Decree is repeated in a BBC report adds nothing.⁷¹² It just shows that this Decree was read out loud, not that its contents were true.

210. The SPO has also not proven beyond reasonable doubt that **THAÇI** appointed **SELIMI** as Minister of Public Order.⁷¹³ No witness supports this claim, and the documentary record shows only that **THAÇI** announced the cabinet composition pursuant to the 23 February 1999 agreement and subsequent consultations among the relevant political entities.⁷¹⁴ Nor is there any evidence that **THAÇI** exercised authority over **SELIMI** in that role: the record contains no orders from **THAÇI** to **SELIMI** and no reports from **SELIMI** to **THAÇI**.

211. The SPO’s claim that **VESELI**, as SHIK Chief, reported to **THAÇI** as Prime Minister rests solely on **VESELI**’s own untested statement,⁷¹⁵ echoed in **SELIMI**’s untested SPO interview.⁷¹⁶ The SPO adduced no independent corroboration from any non-co-accused witness; nor evidence of any actual reporting. Pursuant to the objections in paragraph 119(i), this allegation has not been proven.

⁷¹¹ T-250922,pp.27141-27142, T-250923,pp.27285-27287 (DUNCAN). Regarding concerns about authenticity: P00742.7_ET,pp.10-13; P00742.10_ET,pp.1-11.

⁷¹² P04177.

⁷¹³ SPO PTB,para.147.

⁷¹⁴ 1D00070_ET; 4D00060.

⁷¹⁵ SPO PTB,para.162 citing: P00789,p.SITF00398189. *See also* SPO PTB,fn.673, citing [REDACTED] (not in evidence).

⁷¹⁶ P00763.5_ET,pp.12-13.

(iii) Functionality of the PGoK

212. The SPO further alleges that **THAÇI** and the PGoK issued political regulations and legal edicts, appointed mayors, and met with international representatives concerning PGoK structures and functions.⁷¹⁷ It relies on a series of documents addressed below.⁷¹⁸

213. Most of the purported PGoK decrees and decisions, admitted through the bar table,⁷¹⁹ are drafts, and unsigned by **THAÇI**. This raises doubts that they were ever ‘issued’, especially given witness testimony that the PGoK was more aspiration than reality.⁷²⁰ The SPO has not established that **THAÇI** ever saw, knew of, or authorised these documents. Even if ‘issued’, the Panel has heard evidence that they lacked legal validity, having been issued by the ‘government’ of a state that did not exist and was unrecognised internationally.⁷²¹ The SPO’s largely untested case regarding the PGoK’s nature and ambition must be assessed alongside the evidence of senior international diplomats, whose testimonies raise a reasonable doubt as to the SPO’s portrayal of the PGoK and its alleged ‘Ministers’.⁷²²

214. In any event, the cited documents do not prove beyond reasonable doubt that **THAÇI** had, or exercised, any real governmental powers. First, the SPO relies on an unreferenced extract from a biography of Sergio DE MELLO stating that the KLA issued “*political regulations and legal edicts*” and that **THAÇI** “*appointed mayors*”.⁷²³ However, the author also quotes DE MELLO stating that neither RUGOVA nor **THAÇI** had “*any official status until democratic elections could be held. The UN was ‘the*

⁷¹⁷ SPO PTB, para.122.

⁷¹⁸ SPO PTB, fn.456.

⁷¹⁹ See para.119(iii).

⁷²⁰ See paras.565-566.

⁷²¹ T-250122,p.24162 (W02183); T-251002,p.27629 (COVEY).

⁷²² See also Section V(C)(3)(a).

⁷²³ P00760,p.076671.

only source of authority in Kosovo”.⁷²⁴

215. Second, the SPO relies on a draft Decree seized from **KRASNIQI**'s residence concerning “*personal numbers*”,⁷²⁵ admitted through the bar table, and untested with a witness.⁷²⁶ It is a draft,⁷²⁷ annexed to a memo, with an unsigned signature block for **THAÇI** as Prime Minister. The SPO has not shown that **THAÇI** was aware of it, signed it, or that it was issued. Its probative value is very low.

216. Third, the SPO relies on a page of the UN Secretary-General's report on UNMIK dated 12 July 1999,⁷²⁸ which was not put to a witness.⁷²⁹ It does not support the SPO allegation as it relates to the overall security situation noting that the security problem largely results from the absence of law and order institutions and agencies.

217. Fourth, the SPO relies on a purported “*Decree for organisation of local government*” dated 31 July 1999, with an unsigned signature block for “*President Hashim Thaci*”.⁷³⁰ The SPO further alleges that the Karadak Zone Municipal Statute was based on this purported Decree.⁷³¹ It relies solely on a 5 October 1999 internal UNMIK memorandum regarding “*preparation of unauthorized documentation*”⁷³² which attaches a purported translation.⁷³³ This Decree was admitted through the bar table,⁷³⁴ and lacks any probative value. The SPO provides no original decree. The document lacks any stamp or other indicia of authenticity, misspells **THAÇI**'s name,

⁷²⁴ P00760,p.076671.

⁷²⁵ P03940_ET,pp.SPOE00227453-SPOE00227456.

⁷²⁶ F03191/COR,para.136(b)(iii), Proposed Exhibit 29. See para.119(iii).

⁷²⁷ F03065/A03, entry 30; F03191/COR,para.112. See also P03940_ET,p.SPOE00227461: “*SUBJECT: Draft of decree concerning personal numbers*” (emphasis added).

⁷²⁸ P00760,p.076677.

⁷²⁹ See also 1D00390,para.34.

⁷³⁰ P04131,pp.SITF00173037-SITF00173040.

⁷³¹ SPO PTB,para.258.

⁷³² P04131,pp.SITF00173018-SITF00173020.

⁷³³ SPO PTB,fn.1083.

⁷³⁴ F03213. See para.119(iii).

misidentifies him as “*President*” rather than Prime Minister, and contains no signature.⁷³⁵ The cover memorandum is marked “*for comments*” and merely asserts the Decree was “*issued*” by “*Hashim Tachi (sic)*” and “*provided by the OSCE,*”⁷³⁶ without explaining the basis for that belief or any verification undertaken. The SPO has not established beyond reasonable doubt the Decree existed, or that **THAÇI** participated in its drafting, approval, or dissemination.

218. **COVEY** had not seen it, but explained it would have been contrary to UNMIK’s mandate, and dates from a time when UNMIK’s dialogue with **THAÇI** had barely begun.⁷³⁷ **COVEY**’s evidence remained that **THAÇI** ultimately turned from the PGoK to UNMIK,⁷³⁸ and that UNMIK assessed early on that **THAÇI** was “*trying roles on for size*”, was ambitious and bright, but lacking real-world experience, working by feel toward an ambition UNMIK doubted he could achieve.⁷³⁹ The Decree therefore cannot be relied upon for either of the two cited propositions.

219. Fifth, the SPO relies on a purported draft Decree of the PGoK Ministry of Justice “*Concerning the Residence and Abode of Citizens*” dated 7 August 1999,⁷⁴⁰ seized from **KRASNIQI** and admitted through the bar table over Defence objections.⁷⁴¹ It contains an unsigned signature block for “*Prime Minister Hashim Thaci*” and blank spaces for execution details. There is no evidence this draft was issued, implemented, or brought to **THAÇI**’s attention, let alone signed. At its highest, it reflects an aspiration by an unknown author about how such a government might function.

⁷³⁵ P04131,pp.SITF00173037-SITF00173040.

⁷³⁶ P04131,pp.SITF00173018-SITF00173020.

⁷³⁷ T-251001,pp.27526-27527 (COVEY).

⁷³⁸ 1D00390,para.44.

⁷³⁹ T-251001,pp.27558-27559 (COVEY).

⁷⁴⁰ P03939_ET.

⁷⁴¹ F03191/COR,item 29. See para.119(iii).

220. Sixth, the SPO PTB cited a statement not in evidence,⁷⁴² and two paragraphs of **W02183**'s statement,⁷⁴³ suggesting that at **THAÇI**'s first meeting with UNMIK in June 1999, he presented a PGoK organigram, and effectively conveyed the message that the PGoK had been established to exercise total control of Kosovo, telling the internationals "*thank you for your help, but now we are in charge.*"⁷⁴⁴ The Panel should attribute little weight to **W02183**'s account. First, **W02183** acknowledged under questioning by the Panel that he does not actually recall anyone saying "*thank you for your help, but now we are in charge*"; this was only his "*impression*".⁷⁴⁵ Second, all **W02183** could describe about the purported organigram was that it was "*simple*", conceding he could not recall any details.⁷⁴⁶

221. **W02183**'s evidence is also largely impressionistic and reflects both his lack of experience⁷⁴⁷ and a misunderstanding of the PGoK's formation. Although the SPO maintains **THAÇI** was appointed Prime Minister at the end of March 1999 and announced the PGoK on 2 April 1999,⁷⁴⁸ **W02183** believed after meeting **THAÇI** in June that the PGoK was merely "*planned*" or "*about to be formed*".⁷⁴⁹ While testifying, **W02183** accepted his statement had been made without knowing key details about the PGoK's formation, including that he had not previously seen the 23 February 1999 agreement,⁷⁵⁰ did not know that RUGOVA co-created the PGoK,⁷⁵¹ and was unaware its creation was supported by the U.S.⁷⁵²

⁷⁴² SPO PTB,fn.456, citing [REDACTED].

⁷⁴³ P01968,paras.25,80.

⁷⁴⁴ SPO PTB,para.123. *See also* fn.465 citing P01968,paras.25,80.

⁷⁴⁵ T-250121,p.24139 (W02183).

⁷⁴⁶ P01969,para.13.

⁷⁴⁷ P01968,para.3.

⁷⁴⁸ SPO PTB,paras.116-117.

⁷⁴⁹ T-250120,pp.23896-23898 (W02183).

⁷⁵⁰ T-250120,pp.23898-23899 (W02183); 1D00069_ET.

⁷⁵¹ T-250120,pp.23900,23912 (W02183); 1D00227.

⁷⁵² T-250120,pp.23902-23903 (W02183); 1D000148,p.DHT01539. *See* paras.25,567-569.

222. **W02183** was also asked about meetings between **KOUCHNER** and **THAÇI** on 4 and 5 August 1999, and **COVEY** and **THAÇI** on 6 August 1999.⁷⁵³ There is no evidence **W02183** attended the 6 August meeting; his evidence is only an interpretation of the report. He correctly notes that **THAÇI** told **COVEY** that self-established local administrations were functioning and asked UNMIK to recognise them rather than deploy an international structure. However, his characterisation of this as a “*fait accomplis*” is opinion, not evidence of intent or control.⁷⁵⁴

223. The reliability of **W02183**'s interpretation must be weighed against substantially more credible evidence. At the time, he was a young legal adviser to **DE MELLO** on only his second international posting, not a seasoned diplomat or political adviser.⁷⁵⁵ By contrast, **COVEY**, who actually participated in the meeting, had almost 30 years' experience in the U.S. foreign service.⁷⁵⁶ As **COVEY** explained,⁷⁵⁷ **THAÇI** turned his attention away from the PGoK and towards UNMIK,⁷⁵⁸ given that it was in **THAÇI**'s interests to work with and not against UNMIK,⁷⁵⁹ which is consistent with the broader context of **THAÇI**'s interactions with UNMIK throughout summer 1999.

224. In addition, as shown above, the evidence of **WILLIAMS**, **RUBIN** and **COVEY** raises reasonable doubt that the PGoK was created by the KLA unilaterally to exert total control as assumed by **W02183**.⁷⁶⁰ Their evidence is corroborated by contemporaneous evidence, which shows that around the same time, **DE MELLO** held a formal meeting with KLA representatives who endorsed UNMIK and committed to

⁷⁵³ P01968, paras.79-80; P01977, para.4.

⁷⁵⁴ P01968, paras.79-80.

⁷⁵⁵ P01968, para.3.

⁷⁵⁶ T-251001,p.27559, T-251002,p.27594 (COVEY). *See also*, 1D00390,pp.1-2; 1D00392.

⁷⁵⁷ *See* Section V(C)(3)(a).

⁷⁵⁸ 1D00390, paras.16(c),42,44,47,50-52; T-251001,p.27527 (COVEY). *See also* 1D00531,p.DHT05505.

⁷⁵⁹ 1D00390, paras.69-71; T-251002,p.27594 (COVEY). *See also* Section III(A)(1)(b).

⁷⁶⁰ *See* Section V(C)(3)(a).

multiparty democracy.⁷⁶¹

225. Finally, the Panel admitted a purported PGoK 'law' on excise duties and turnover taxes dated 18 July 1999, signed by **THAÇI** and said to enter into force on 23 July 1999.⁷⁶² The document was not cited in the SPO PTB, which makes no claim that the PGoK used criminal means to collect taxes. **THAÇI** was thus not given adequate notice of any such allegations. It was admitted through the bar table over Defence objections and never put to any witness by the SPO,⁷⁶³ though it was shown to **COVEY** by the Panel. **COVEY** testified it had no standing because Resolution 1244 supplanted the PGoK entirely.⁷⁶⁴ While **KOUCHNER** allegedly told **THAÇI** on 18 July that "*Government ministers*" issuing decrees with seals was unhelpful,⁷⁶⁵ **COVEY** explained that such contestation was expected: a push-and-shove to test legitimacy and UNMIK's capacity to administer.⁷⁶⁶

226. **COVEY** was also shown an UNMIK memo dated 6 September 1999 reporting regional administrations confronted with illegal acts including illegal tax collection, extortion, "*information sessions*" and illegal evictions, sometimes facing uncooperative attitudes from the KLA-appointed 'government'.⁷⁶⁷ **COVEY** confirmed receiving such information⁷⁶⁸ but KFOR could not determine who was responsible. KFOR was similarly unable to tell whether these were Mafia-like criminal acts, linked to local KLA elements, or if it was more centrally organised.⁷⁶⁹

⁷⁶¹ 1D00228,p.DHT04939, discussing a 17 June meeting.

⁷⁶² P03934_ET.

⁷⁶³ F03191/COR; F03145/A03,Item 24. See para.119(iii).

⁷⁶⁴ T-251002,pp.27621-27622 (COVEY).

⁷⁶⁵ P01980,p.SPOE00246108. See also T-251002,p.27620 (COVEY).

⁷⁶⁶ T-251002,p.27623 (COVEY).

⁷⁶⁷ P01223,para.2.

⁷⁶⁸ T-251002,pp.27617-27618 (COVEY). See also P01210,para.64.

⁷⁶⁹ T-251002,p.27619 (COVEY).

227. The memo does not suggest these acts were carried out pursuant to any PGoK 'law'. Nor could KFOR identify perpetrators, and no other evidence identifies them. In any event, there is no evidence **THAÇI** exercised effective control over unknown perpetrators.⁷⁷⁰ Finally, **COVEY** was also shown a purported summons for an "informative talk" in Klinë/Klina Municipality dated 20 August 1999 bearing a Ministry of Public Order stamp.⁷⁷¹ Absent more, there is no evidence **THAÇI** knew of this summons or exercised effective control over whoever issued it.

228. The SPO further alleges, relying solely on a former UNMIK official, that **THAÇI** approached any interaction as if UNMIK needed to negotiate with the PGoK. The SPO did not call that UNMIK official to give evidence⁷⁷² and thus this allegation as pleaded has not been proven.⁷⁷³ The evidence simply does not demonstrate the existence of functioning PGoK structures, or that **THAÇI** exercised any authority through them.

(e) **THAÇI's statements**

229. The Defence refers to its arguments on the SPO's failure to demonstrate the authorship and dissemination of KLA 4public statements and the missing link between statements and alleged crimes.⁷⁷⁴

(i) *Communiqués & Political Declarations*

230. The SPO alleges that, shortly after Political Declaration No. 17 of 3 November 1998 (asserting the KLA had its own institutions), **THAÇI** stated there could be no "solid and politically accepted solution" without KLA participation.⁷⁷⁵

⁷⁷⁰ See Section V(C)(3).

⁷⁷¹ P04107; T-251002,pp.27627-27629 (COVEY). See also para.294.

⁷⁷² [REDACTED], see F02693,para.2.

⁷⁷³ SPO PTB,para.124. See para.119(iv).

⁷⁷⁴ See Section III(B)(3). *Contra* Adjudicated Fact No.228.

⁷⁷⁵ SPO PTB,para.51.

231. This alleged statement comes from a BBC article quoting the ARTA news agency website. It reports that, at his request, **HILL** met KLA representatives on 6 November 1998 in Dragobil/Dragobilje, including **THAÇI**, Ramë **BUJA**, and spokesman **KRASNIQI**,⁷⁷⁶ and provided a draft agreement on Kosovo's interim status.⁷⁷⁷

232. The statement was therefore a legitimate remark made at the end of a meeting with **HILL**, within the framework of ongoing negotiations with U.S. authorities. At that time, the KLA was the primary armed force resisting Serbian control and capable of exerting pressure. Following the October 1998 **HOLBROOKE-MILOŠEVIĆ** interim agreement,⁷⁷⁸ the KLA unilaterally committed to comply with Resolution 1199,⁷⁷⁹ including self-restraint, enabling intensified diplomacy led by **HILL**.⁷⁸⁰ The U.S. recognised the need to engage the KLA, and **HILL** had sought representatives who could speak for it since summer 1998, without success.⁷⁸¹

233. The 6 November 1998 Dragobil/Dragobilje meeting was accordingly significant, described by **W04401** as "*the first official meeting of our army with the International Community.*"⁷⁸² The KLA was briefed on the U.S. proposal⁷⁸³ and later reviewed and commented on it; its delayed response reflected the need to consult internally.⁷⁸⁴

⁷⁷⁶ 4D00040.

⁷⁷⁷ T-251110,pp.27688,27690 (HILL).

⁷⁷⁸ 1D00446,p.DHT11723; Adjudicated Fact No.97.

⁷⁷⁹ P00750. See Adjudicated Fact No.89.

⁷⁸⁰ P00298_ET.

⁷⁸¹ T-251110,p.27662 (HILL). See paras.144,520504,520.

⁷⁸² P00852_ET.

⁷⁸³ P00305_ET,p.2.

⁷⁸⁴ T-240326,pp.13781-13782 (W04147).

234. The need to include the KLA was further confirmed by its participation at Rambouillet, promoted by the Contact Group.⁷⁸⁵ **THAÇI**'s statement did not exclude other Kosovar Albanian actors: the LDK and LBD joined the Rambouillet delegation, and later signed the PGoK agreement with the KLA.⁷⁸⁶

235. The SPO further alleges that **THAÇI** twice phoned **SELIMI**: first claiming Abedin REXHA was injured in an argument with Gani GECI, whom he called a "dog", and later reading Communiqué 59, saying he added the false claim that GECI led Serbian massacres "[s]o we can fully destroy him".⁷⁸⁷

236. The SPO PTB relied solely on **SELIMI**'s SPO interview.⁷⁸⁸ While the SPO may also seek to rely on **SELIMI**'s later televised debate,⁷⁸⁹ and **W04240**'s SPO interview and testimony, these sources merely repeat **SELIMI**'s claims rather than corroborating them.⁷⁹⁰ Because **SELIMI** is the originating source for the supporting material, objections under Rule 140(4) apply.⁷⁹¹ In any event, **SELIMI** had a clear motive to fabricate, and his account is neither reliable nor credible.

237. **SELIMI** first made these specific allegations against **THAÇI** only in 2019 during his SPO interview,⁷⁹² then repeated them a week later on national television.⁷⁹³ This timing is significant: **SELIMI** had been in conflict with Gani GECI since 1998 and blamed him for Abedin REXHA's death.⁷⁹⁴ Indeed, rather than "disagreeing" with it because it was "not correct", as he claimed to the SPO, **SELIMI** in October 1999 publicly

⁷⁸⁵ 1D00262, paras.17,21-22.

⁷⁸⁶ 1D00069.

⁷⁸⁷ SPO PTB, para.55.

⁷⁸⁸ See SPO PTB, fns.168-169, citing P00761.7_ET, pp.21-23.

⁷⁸⁹ See P01750_ET.

⁷⁹⁰ P01740.7_ET, pp.2-3; P01741, para.24.

⁷⁹¹ See para.119(i).

⁷⁹² P00761.7_ET, p.23.

⁷⁹³ P01750, aired 27 November 2019.

⁷⁹⁴ T-241022, pp.20831-20833 (W04240); P00760_ET.6, p.076627.

endorsed Communiqué 59, stating it “clearly” described Abedin’s murder as committed by Gani GECI.⁷⁹⁵

238. Having endorsed Communiqué 59 months after its publication, **SELIMI**’s 2019 claims suddenly implicating **THAÇI**, at a time when **THAÇI** and **SELIMI** were fierce political opponents, cannot be viewed as coincidental or detached from that longstanding dispute.

239. Gani GECI confirmed his long-standing conflicts with **SELIMI**, **KRASNIQI**, and **LIMAJ** arising from their accusations that he was a traitor.⁷⁹⁶ Both GECI and his brother further noted that in 2017 these individuals abruptly began speaking favourably of him.⁷⁹⁷ It was precisely then that **SELIMI**, through **LIMAJ**, **KRASNIQI**, and **Milaim ZEKA**, told GECI that **THAÇI** authored Communiqué 59.⁷⁹⁸ As confirmed by **W04240**, by then, all were **THAÇI**’s political opponents.⁷⁹⁹ Their sudden shift in 2017, coinciding with their political realignments, demonstrates a clear incentive to redirect blame.

240. By contrast, there is no credible evidence linking **THAÇI** to drafting Communiqué 59. **W04240**’s allegations are entirely based on second-hand hearsay.⁸⁰⁰ Further, **W04240**’s July 2018 post, 15 months after **ZEKA**’s claim, shows the **GECIs** did not truly believe **THAÇI** was involved.⁸⁰¹ **THAÇI** was never in dispute with the **GECI** family and even acted as mediator between Gani GECI and **Azem SYLA** in 2013.⁸⁰² He

⁷⁹⁵ P01749_ET,p.7.

⁷⁹⁶ T-241022,pp.20835-20836 (W04240).

⁷⁹⁷ T-241022,pp.20835-20836 (W04240).

⁷⁹⁸ T-241022,pp.20818-20819,20837-20838 (W04240).

⁷⁹⁹ 1D00197_ET; 1D00198_ET; T-241022,pp.20839-20843 (W04240).

⁸⁰⁰ T-241022,pp.20817-20819,20837-20838,20841 (W04240).

⁸⁰¹ 1D00199_ET; T-241022,pp.20855-20857 (W04240).

⁸⁰² 1D00196_ET; T-241022,pp.20822-20826 (W04240).

also issued an apology on behalf of the KLA GS at their request,⁸⁰³ conduct inconsistent with authorship or dissemination of the communiqué. **W04290**, **SELIMI**'s paternal uncle, signed a reaction countering accusations that GECI was a traitor⁸⁰⁴ and testified he did not know who wrote Communiqué 59.⁸⁰⁵

241. The narrative implicating **THAÇI** only emerged in 2017–2018, precisely when **SELIMI** and the others stood to benefit politically from discrediting him, knowing the SPO was investigating **THAÇI**. The timing and motivation significantly undermine reliability of this narrative, and the SPO has failed to prove this allegation beyond reasonable doubt.

(ii) *Statements about the LDK*

242. The SPO claims that the GS Information Directorate “*under Hashim THAÇI*” dismissed LDK-organised elections as “*décor for the occupier*” intended to “*curb and undermine the liberation war*”, relying on Political Declaration No. 4⁸⁰⁶ and Communiqué 46,⁸⁰⁷ published in *Zëri*.⁸⁰⁸ There is no credible evidence that **THAÇI** drafted, approved, or disseminated either document.

243. In addition, **THAÇI** was not a member of the Central Staff⁸⁰⁹ and became head of the Political Directorate only in November 1998.⁸¹⁰ Even Political Declaration No. 7 of 13 August 1998 merely listed him as a political representative, while assigning **DEMAÇI** a leading role in the creation of institutions.⁸¹¹ **HILL** viewed such

⁸⁰³ 1D00200_ET; T-241022,pp.20858-20859 (W04240).

⁸⁰⁴ P00760_ET.2; T-250211,pp.24966-24967 (W04290).

⁸⁰⁵ T-250211,pp.25093-25094 (W04290); 1D00248_ET,p.1.

⁸⁰⁶ P00272_ET.

⁸⁰⁷ P00285_ET.

⁸⁰⁸ SPO PTB,para.34.

⁸⁰⁹ T-241202,pp.23133-23134, T-241203,pp.23290-23292 (W04401).

⁸¹⁰ T-231116,pp.10256-10258 (W04765).

⁸¹¹ 1D00050_ET.

declarations largely as public-relations efforts to satisfy U.S. frustration over the KLA's failure to name negotiators and did not accept that those listed truly spoke for the KLA.⁸¹² These documents cannot be attributed to **THAÇI**.

244. The SPO further alleges that, on the day [REDACTED] were arrested, **THAÇI** publicly attacked political rivals as "*autonomist elements*" engaged in "*propaganda and special warfare*",⁸¹³ relying on an excerpt from **W04410**'s book, a video recording, a transcript, and a purported KLA Military Police press release.⁸¹⁴

245. **W04410** confirmed that **THAÇI**'s first public appearance was broadcast only on *RTSH (Radio Televizioni Shqiptar)* on 24 November 1998, within a documentary **W04410** prepared.⁸¹⁵ Crucially, the broadcast footage,⁸¹⁶ the only reliable evidence of what the public saw, was shorter than the raw footage⁸¹⁷ and contains no references to "*special warfare*" or "*autonomous elements*".⁸¹⁸ The claim that **THAÇI** publicly made those attacks is therefore unfounded.

246. In any event, **W04410** testified that by September 1998, Serbian propaganda claimed the KLA had been destroyed, while international proposals advanced autonomy.⁸¹⁹ His documentary, and **THAÇI**'s appearance, were intended to counter that Serbian "*special warfare*" narrative.⁸²⁰ **W04410** could not confirm who "*autonomous (sic) elements*" referred to and could not exclude that it meant international actors promoting autonomy.⁸²¹

⁸¹² T-251110,pp.27679-27681 (HILL). See paras.144,232,520504,520.

⁸¹³ [REDACTED].

⁸¹⁴ [REDACTED].

⁸¹⁵ P01264_ET,p.SPOE00128751.

⁸¹⁶ P01261, at 02:37.

⁸¹⁷ P01252.1_ET,pp.17-18; P01256.

⁸¹⁸ P01261, at 02:37; P01261_ET,p.1.

⁸¹⁹ T-240605,pp.16803-16805 (W04410).

⁸²⁰ P01264_ET,pp.SPOE00128750-SPOE00128751; T-240605,pp.16804-16805 (W04410).

⁸²¹ T-240605,p.16805 (W04410).

247. The excerpt from **W04410**'s book,⁸²² where he purports to persuade **THAÇI** to remove references to collaborators and traitors from the draft, is unreliable: his accounts of who drafted **THAÇI**'s speech were inconsistent;⁸²³ he wrote the version twenty years later from memory; and could not ultimately confirm that the quoted words were used.⁸²⁴ **W04410**'s credibility is further undermined by a personal grievance against **THAÇI** (due to **THAÇI**'s refusal to finance documentaries⁸²⁵ and his opposition to **W04410**'s candidacy for director of Radio TV Kosovo),⁸²⁶ and by the broader context of prosecutions and the Marty Report at the time of writing.⁸²⁷ Given contemporaneous media allegations against **THAÇI**, the book offered an avenue to amplify resentment, diminishing its probative value.

248. The alleged Military Police press release⁸²⁸ has not been linked to **THAÇI**: there is no evidence he authored, approved, or made the statements attributed to it, and [REDACTED]'s testimony casts doubt on its authorship.⁸²⁹ It cannot sustain the allegation.

249. The SPO also alleges **THAÇI** publicly accused RUGOVA and BUKOSHI of "betrayal", "desertion", "fratricide", "covert operations", attacking them for "political and national irresponsibility" and sabotaging the war, calling them "Belgrade's autonomy supporting satellites", while urging the public not to fall prey to "special war", telling leaders to emerge from "Prishtina basements".⁸³⁰ The SPO's case depends on selective,

⁸²² P01264_ET,pp.SPOE00128750-SPOE00128751.

⁸²³ P01264_ET,pp.SPOE00128750-SPOE00128751, *however see* T-240605,pp.16811-16814 (W04410).

⁸²⁴ T-240605,p.16813 (W04410).

⁸²⁵ 1D00159_ET,pp.DHT04004-DHT04006; T-240605,pp.16807-16808 (W04410).

⁸²⁶ 1D00159_ET,p.DHT04006; T-240605,pp.16810-16811 (W04410).

⁸²⁷ 1D00159_ET,p.DHT04005; T-240605,pp.16809-16810 (W04410).

⁸²⁸ P00303_ET,p.043862.

⁸²⁹ [REDACTED].

⁸³⁰ SPO PTB,paras.62-64.

out-of-context quoting. In the *Koha* interview of 31 December 1998, **THAÇI** used “*fratricide*” in response to a question on coordination with BUKOSHI, criticising him for linking cooperation to personal control of diaspora funds and for provoking conflict by creating FARK disguised in KLA uniforms and emblems,⁸³¹ an issue observed by both local and international actors.⁸³² References to “*fratricide*” were consistently tied to diaspora donations and allegations of FARK withholding funds to replace the KLA with a parallel force.⁸³³ Although *Koha* mentions “*covert operations*” and “*Belgrade’s autonomy-supporting satellites*”, it does not accuse BUKOSHI, RUGOVA, or the LDK of covert actions to damage the KLA.⁸³⁴ Rather, **THAÇI** questioned RUGOVA’s refusal to meet with the KLA or Adem DEMAÇI and asked why RUGOVA would not cooperate.⁸³⁵ None of the cited sources use the term ‘desertion’ in relation to RUGOVA or BUKOSHI. The remaining documents cited are not attributable to **THAÇI**: there is no evidence he authored or issued them, they do not relate to his statements,⁸³⁶ or they do not contain the allegations the SPO claims.⁸³⁷

250. As to the March 1999 statement urging the public not to fall prey to “*special war*” and telling opposition leaders to leave “*Prishtina basements*”,⁸³⁸ the SPO misreads context and timing. Further, contrary to the SPO position, **THAÇI** explicitly calls for action in his role as “*head of the Kosovo Delegation at the Rambouillet and Paris Conference*”;⁸³⁹ he does not use the title ‘Prime Minister’, which appears to have been applied as a heading by the publication. The statement was issued on 27 March 1999,

⁸³¹ P04142,p.019597.

⁸³² T-250918,pp.26995-26997 (WILLIAMS), referring to DHT03646-DHT03648,pp.DHT03646-DHT03647; P04045,p.SITF00011656.

⁸³³ P00310_ET,pp.1-2; P00516,p.019603; P00811_ET.19,p.SPOE00053663.

⁸³⁴ P04142,p.019598.

⁸³⁵ P04142,p.019596.

⁸³⁶ See, e.g., P04166_ET,p.SPOE00056451. Regarding P01109,p.U002-2860, **W04401** confirmed the notes were written by him: T-241202,p.23037.

⁸³⁷ See, e.g., P00595_ET.

⁸³⁸ SPO PTB,para.63; P00741_ET.4.

⁸³⁹ P00741_ET.4.

at the start of NATO bombing and amid Serbian escalations and widespread misinformation. Testimonial evidence confirms “*special war*” referred to Serbian warfare and propaganda against the liberation cause,⁸⁴⁰ confirmed by **THAÇI**’s own reference to “*Serbian murderous military, police and paramilitary forces*”.⁸⁴¹ His appeal was aimed at preventing panic⁸⁴² and encouraging unity across the political spectrum, calling on leaders to guide the population and pursue freedom, independence, and democratic order.⁸⁴³

251. The SPO likewise misrepresents an 11 May 1999 interview, alleging **THAÇI** accused RUGOVA of irresponsibility and BUKOSHI of sabotage.⁸⁴⁴ The exchange about RUGOVA concerned only the organisation of his Western visits,⁸⁴⁵ not sabotage of the war. The “*sabotage*” criticism of BUKOSHI reflected widespread public and cross-party criticism that he diverted or withheld diaspora funds intended for the war effort.⁸⁴⁶ As resources were urgently needed, it was foreseeable the armed resistance would press most forcefully for their release; as **WILLIAMS** noted, such pleas are effective “*if you give it an edge*”.⁸⁴⁷ The statements sought release of funds, not incitement to crimes.

252. The same applies to remarks about BUKOSHI’s “*clique*.”⁸⁴⁸ **THAÇI** responded to a question about competing governments, reaffirming that the only legitimate structure was the PGoK, formed at Rambouillet as the result of the consensus on the main political subjects of Kosovo.⁸⁴⁹ He encouraged the LDK to appoint a

⁸⁴⁰ T-240605,pp.16804-16805 (W04410).

⁸⁴¹ P00741_ET.4.

⁸⁴² P00739.7_ET,pp.6-10.

⁸⁴³ P00741_ET.4.

⁸⁴⁴ SPO PTB,para.64.

⁸⁴⁵ P00813_ET.24,p.SPOE00055117.

⁸⁴⁶ T-251110,pp.27659-27660 (HILL).

⁸⁴⁷ T-250918,pp.26980-26981 (WILLIAMS).

⁸⁴⁸ SPO PTB,para.64; P00813_ET.24,p.SPOE00055118.

⁸⁴⁹ P00813_ET.24,pp.SPOE00055116,SPOE00055118.

representative⁸⁵⁰ and clarified that self-proclaimed alternatives lacked international approval and fell outside the agreed framework. Critically, the SPO has shown no temporal or geographic nexus between the cited remarks and any charged crimes.⁸⁵¹

253. The SPO further claims **THAÇI** praised *Kosovapress* while attacking BUKOSHI and that *RFK* criticisms of political clans were supported by the GS and **THAÇI**'s government.⁸⁵² It relies on two *RFK* articles tendered through the bar table that were never put to witnesses and remain unauthenticated, undated, and unattributed.⁸⁵³

254. Although P00515_ET.54 claims **THAÇI** praised *Kosovapress*, the video of the visit does not show any such statement. Instead, *Kosovapress* editor Berat LUZHA asked for assistance and complained they lacked funds and communications.⁸⁵⁴ While **THAÇI** may have had the title of 'Prime Minister', the PGoK did not have any resources to contribute to funding this agency. **W04410** testified the footage was likely filmed in May but broadcast in June 1999,⁸⁵⁵ and the encounter was incidental due to a Serbian offensive.

255. In any event, support for local agencies was legitimate given the wartime "information darkness".⁸⁵⁶ **W04410** explained that *Kosovapress* and *RFK* played a crucial public information role alongside international outlets such as *CNN* and *BBC*, particularly against Serbian propaganda.⁸⁵⁷

256. This does not establish that **THAÇI** endorsed all content, including alleged

⁸⁵⁰ P00813_ET.24,p.SPOE00055116.

⁸⁵¹ See Section III(B)(3)(b).

⁸⁵² SPO PTB,para.66.

⁸⁵³ SPO PTB,fns.198-199, citing P00515_ET.54, P00515_ET.59. See also para.119(iii).

⁸⁵⁴ P01293_ET,p.7.

⁸⁵⁵ T-240605,pp.16746-16748 (W04410).

⁸⁵⁶ T-240605,p.16746 (W04410).

⁸⁵⁷ T-240605,pp.16745-16746 (W04410).

attacks on political clans. P00515_ET.59 is unattributed and unsourced, and *RFK* engaged in war propaganda to enhance legitimacy. It is reasonable to infer that claiming GS/PGoK support could have served that aim.

257. Moreover, *Kosovapress* and *RFK* began operating on 4 January 1999,⁸⁵⁸ while **THAÇI** was outside Kosovo; he did not shape their editorial line, and there is no evidence of KLA control over editorial policy. **W04410** confirmed **THAÇI** lacked authority over media and could not compel coverage; journalists acted independently.⁸⁵⁹ In any event, the SPO has not proven any causal nexus between these media items and the specific crimes charged.

258. Finally, the SPO alleges **THAÇI** removed RUGOVA's photograph from guest rooms and was "*fighting more against RUGOVA's photographs than against Serbian forces*", relying on transcripts of interviews with [REDACTED].⁸⁶⁰ The SPO ultimately did not rely on either witness,⁸⁶¹ and other witnesses had no direct knowledge of any such conduct.⁸⁶² Accordingly, the SPO has failed to prove beyond reasonable doubt that **THAÇI** removed RUGOVA's photograph or made the alleged statement.

(iii) "*Failures and Denials*"

259. The SPO asserts that in summer 1999, **THAÇI** "*took weeks*" to yield to international pressure and publicly condemn the violence in Kosovo,⁸⁶³ but fails to identify any date for this alleged delay. This is contradicted by the evidence: **THAÇI** publicly condemned the violence less than one week after KFOR's arrival, including

⁸⁵⁸ P01264_ET,p.SPOE00128784; P00187_ET,p.SPOE00055742; P00515_ET.73,p.008932.

⁸⁵⁹ T-240605,pp.16775-16778,16780-16781 (W04410).

⁸⁶⁰ SPO PTB,para.79,fn.234.

⁸⁶¹ F02325,para.2; F02808,para.2.

⁸⁶² [REDACTED]; T-240903,p.19558 (W01511).

⁸⁶³ SPO PTB,para.264.

in a statement dated 17 June 1999.⁸⁶⁴ Moreover, **THAÇI** did not return to Kosovo until 19 June 1999,⁸⁶⁵ meaning he issued public statements even before re-entering the country. Further, within days of his return, he accompanied DE MELLO to Mitrovicë/Mitrovica and spoke to Albanian crowds to calm tensions, conduct for which DE MELLO praised him.⁸⁶⁶

260. The SPO further alleges that **THAÇI**'s summer 1999 statements show "*consciousness of guilt*", because he purportedly failed to condemn crimes by KLA members or instruct them to stop. It claims his statements were "*qualified*," aimed at distancing the KLA, gaining political advantage, and appeasing the international community.⁸⁶⁷ The SPO cites a PGoK declaration announced by **THAÇI**. This is misplaced. In that declaration, **THAÇI**, on behalf of the PGoK, "*expresses indignation at the killing of civilians in Kosova independent of the nationality of the victims.*"⁸⁶⁸ **THAÇI**'s claim highlighted by the SPO that Serbian paramilitary forces remained in Kosovo⁸⁶⁹ was correct according to SHAPE's understanding of the situation as evidenced by **DURKEE**. Indeed, these paramilitaries were putting pressure on Serbian civilians that remained in Mitrovicë/Mitrovica and northern Kosovo not to cooperate with UNMIK and KFOR as they wanted to retain Serbian control over those territories.⁸⁷⁰

261. As set out below⁸⁷¹ and in the cited PGoK Declaration, **THAÇI** in summer 1999 was publicly and repeatedly condemning all crimes, regardless of perpetrator or motive. If KLA members (including KLA police) were among those responsible, then

⁸⁶⁴ 1D00086. See also para.411.

⁸⁶⁵ See para.517.

⁸⁶⁶ See also para.411.

⁸⁶⁷ SPO PTB, paras.264,266.

⁸⁶⁸ 1D00257, para.4.

⁸⁶⁹ 1D00257, para.3.

⁸⁷⁰ T-251113, pp.28061,28064,28074-28075,28082-28085 (DURKEE).

⁸⁷¹ See paras.410-416.

his condemnation of “*all criminality*” necessarily encompassed their conduct.⁸⁷²

262. In any event, Defence evidence has raised reasonable doubt that the violence in summer 1999 was organised KLA violence, as opposed to spontaneous acts by individuals or the work of criminal groups. COVEY observed that THAÇI’s early condemnations were “*surprising*” and “*welcome*”. In his professional assessment, while skepticism would have been “*easy*”, THAÇI’s condemnations were not merely a “*credentialing exercise*” aimed at appeasing the international community, contrary to the SPO’s characterisation.⁸⁷³ Accordingly, there is reasonable doubt that THAÇI’s public statements in summer 1999 demonstrate “*consciousness of guilt*”.

263. In claiming that THAÇI’s statements were “*qualified*” and focused on distancing the KLA from crimes, the SPO asserts that in the summer of 1999, the PGoK leadership including THAÇI was seeking international support for the establishment of a Kosovo Police Service, in which KLA members would be given priority.⁸⁷⁴ This is not evidence of failures or denials; the establishment of a police service was foreshadowed at Rambouillet, and during Undertaking negotiations. At Rambouillet, W02144 testified that when he met senior KLA leaders in Kosovo, (rather than those in Paris) to secure their agreement, they were promised a future role in Kosovo notwithstanding the requirement to demobilise. Although they did not yet know what the KLA would become, the internationals consistently emphasised that a police force would be created, and the KLA sought to have its members integrated into it.⁸⁷⁵

264. This became more explicit in the Undertaking, where the KLA requested that special consideration be given to individual KLA members proposed for the Kosovo

⁸⁷² See para.294.

⁸⁷³ T-251002,p.27610 (COVEY).

⁸⁷⁴ SPO PTB,para.264, citing P01980,p.SPOE00246109.

⁸⁷⁵ T-240528,pp.16176-16178 (W02144).

police force.⁸⁷⁶ **DUNCAN** described that this was partly how NATO got the KLA to agree to demilitarise.⁸⁷⁷ This was reinforced by [REDACTED].⁸⁷⁸ [REDACTED] stated: [REDACTED].⁸⁷⁹

265. The SRSG and **COVEY** also agreed there had to be a role for former KLA in the police,⁸⁸⁰ and **THAÇI**'s support was important for the creation of the Kosovar police service and police training academy.⁸⁸¹ **THAÇI**'s support was not evidence of any failures or denials on his part, but rather the opposite.

(iv) Post-Indictment period statements

266. **W04868** claimed that **THAÇI** gave a speech on 3 October 1999 that allegedly contained remarks against a multi-ethnic society which included Serbs.⁸⁸²

267. First, the allegation is neither pleaded in the Indictment, nor mentioned in the PTB. The Defence only learned about it over one year into the trial, a mere month before the expected start of the testimony of **W04868**. Moreover, it falls outside the temporal scope of the Indictment and has been refuted by evidence.

268. **W04868** had already showed an obtuse reluctance to concede that he might have made a mistake in his recording of **THAÇI**'s speech when confronted with contradictory evidence in his SPO interview.⁸⁸³ While testifying, **W04868** could not place the alleged remarks in a video of **THAÇI**'s speech, but insisted that the comments could be interpreted in such a way.⁸⁸⁴ A full transcript of the video

⁸⁷⁶ P01444,para.25(a).

⁸⁷⁷ T-250922,pp.27041,27044-27046,27083-27084 (DUNCAN).

⁸⁷⁸ [REDACTED].

⁸⁷⁹ [REDACTED]. See also 1D00430,para.29; [REDACTED].

⁸⁸⁰ P01980,para.II(5); T-250930,pp.27363-27365 (COVEY).

⁸⁸¹ 1D00390,paras.47,55. See also 1D00495,p.DHT05770.

⁸⁸² F02451/A01,p.2.

⁸⁸³ P01510.1_ET,pp.25-26.

⁸⁸⁴ T-240819,pp.18660-18663 (W04868).

including interventions by the other speakers, as well as local reporting on the event,⁸⁸⁵ demonstrates that no such remarks were made by anyone, contrary to **W04868**'s earlier claim.⁸⁸⁶ Despite being presented with evidence to the contrary, **W04868** maintained his position,⁸⁸⁷ further detracting from his credibility.

269. Further, in **W04868**'s recording **THAÇI** calls "*on all Albanians to fight for freedom in the Presevo valley in Serbia*".⁸⁸⁸ The SPO relied on **THAÇI**'s March 2000 comments as recorded in General REINHARDT's diary⁸⁸⁹ to suggest that **THAÇI** said "*similar things*" to those reported by **W04868**. While the SPO suggested that "*Kosovo Albanians talking about how violence in the Presevo Valley could not be tolerated was dangerous*", **CLARK** did not agree and explained that "*they had a right to talk about the impact of Serb actions on Albanians in a neighbouring region*".⁸⁹⁰

270. Notably, a New York Times article reporting on cross-border developments in March 2000 recorded **THAÇI** as saying he "*respect[ed] the right of the Albanians in Presevo*", but noting that "*[n]ow as the president of a political party in Kosovo, [his] concerns only cover[ed] the territory of Kosovo*", stressing that "*Albanians did not want violence*".⁸⁹¹

(f) Legal Sector/Military Court

271. The SPO claims that **THAÇI** and LIMAJ represented in early November 1998 that a military court had already been created and that the KLA was complying with IHL.⁸⁹² However, **W04408** testified that they stated only that the KLA was "*in the*

⁸⁸⁵ See 1D00177_ET.

⁸⁸⁶ T-240819,p.18662 (W04868).

⁸⁸⁷ T-240819,pp.18665-18668 (W04868).

⁸⁸⁸ P01518,p.105939,para.3.

⁸⁸⁹ T-251118,p.28230 (CLARK), referring to P04497,pp.SPOE40016149-SPOE40016150.

⁸⁹⁰ T-251118,p.28226 (CLARK).

⁸⁹¹ 1D00181,p.DHT04063. See also 1D00182, noting a statement renouncing the military struggle had come "*after several hours of talks between the Presevo Valley leaders and Kosovo politician Hashim Thaci, a former leader of the Kosovo Liberation Army*", with U.S. diplomats "*present in an adjacent room*".

⁸⁹² SPO PTB,para.141.

process of building these judicial institutions” and that it respected the Geneva Conventions.⁸⁹³

272. **W04408** further agreed that armed groups commonly portray themselves as more organised than they are,⁸⁹⁴ and confirmed that at the end of 1998/beginning of 1999 the KLA’s judicial system was still “*in process*” of being established.⁸⁹⁵ This aligns with extensive evidence that the KLA began restructuring after the summer 1998 Serbian offensive,⁸⁹⁶ most intensively in November 1998 after the October ceasefire, including efforts to formalise legal and judicial structures.⁸⁹⁷

273. Evidence also shows that, after **W04408** raised HRW’s concerns about alleged KLA violations, **THAÇI** acted promptly.⁸⁹⁸ The next day he met KLA members, including **W04264**, who were travelling to a GS work meeting.⁸⁹⁹ The following day, the GS decided to appoint **W04264** as “*Chief of the Judicial Sector in the Cabinet of the Commander of the KLA GS*”, followed by his formal appointment on 19 November 1998 and the subsequent creation of a military court.⁹⁰⁰

274. **W04752** corroborated that, around this time, the GS was discussing legal procedures for disciplinary and serious offences.⁹⁰¹ The objective was to establish a proper military court, impose discipline, and address international concerns, although wartime conditions prevented it from becoming fully functional.⁹⁰²

275. Consistently, on 28 November 1998, **W04752** issued an order requiring all KLA

⁸⁹³ T-230906,pp.7323-7324 (W04408) (emphasis added).

⁸⁹⁴ T-230911,pp.7646-7647 (W04408).

⁸⁹⁵ T-230906,p.7411 (W04408).

⁸⁹⁶ T-230906,p.7408, T-230907,p.7584 (W04408).

⁸⁹⁷ T-240703,p.17539, T-240704,pp.17643-17644 (W04752).

⁸⁹⁸ T-230906,p.7324 (W04408).

⁸⁹⁹ P00895_ET,pp.U002-0163-U002-0164.

⁹⁰⁰ P01175_ET.

⁹⁰¹ P01356_ET,p.6060; T-240704,p.17642, T-240716,pp.18355-18356 (W04752).

⁹⁰² T-240704,p.17643 (W04752).

units to prevent improper treatment of civilians and prohibiting arrest or detention without brigade-level authorisation.⁹⁰³ He testified the order was issued in part due to contacts with internationals,⁹⁰⁴ was distributed to all zone commanders, and was reinforced through in-person meetings,⁹⁰⁵ though he lacked enforcement tools if commanders refused compliance.⁹⁰⁶

276. These steps show that, following the **THAÇI-W04408** meeting, the KLA took measures to address international concerns regarding civilian treatment. **THAÇI**, however, could not have implemented them on the ground, as he was outside Kosovo from mid-November 1998 to early March 1999, dealing with other matters.⁹⁰⁷

277. Moreover, implementation fell outside **THAÇI**'s remit. The evidence consistently shows he had no role in overseeing the military court's activities, and there is no proof of any involvement.⁹⁰⁸

(g) Notice of crimes

278. The SPO alleges that, on 23 July 1998, while detainees were allegedly still held in Malishevë/Mališevo, **THAÇI** met Austrian Embassy representatives at KLA HQ in Malishevë/Mališevo. It claims that allegations of KLA detentions/abductions were raised, **THAÇI** was warned such abuses would harm the KLA cause, and that he asserted the KLA would respect the Geneva Conventions because it was a regular army.⁹⁰⁹

⁹⁰³ 1D00029_ET.

⁹⁰⁴ T-240704,p.17640 (W04752).

⁹⁰⁵ T-240704,p.17645 (W04752).

⁹⁰⁶ T-240717,p.18473 (W04752). *See also* T-240529,pp.16318-16319 (W02144).

⁹⁰⁷ T-240704,pp.17629-17630 (W04752). *See also* [REDACTED].

⁹⁰⁸ T-240704,p.17644 (W04752); P01955.2_ET,pp.14-15; P01955.9_ET,p.4.

⁹⁰⁹ SPO PTB,para.382.

279. The SPO bases these assertions entirely on **W02144**'s statement.⁹¹⁰ Yet its account is misleading. **W02144** testified that he does not recall what he specifically said to **THAÇI** and that he would not have raised concrete allegations about particular crimes.⁹¹¹ **W02144** further admitted he did not know **THAÇI**'s position⁹¹² or responsibilities within the KLA.⁹¹³ When **W02144** explained he was seeking KLA leaders, **THAÇI** did not present himself as one.⁹¹⁴

280. These admissions create reasonable doubt that the meeting involved any meaningful discussion of compliance. It is unclear why **W02144** would raise compliance concerns with a person whose authority he did not know and who did not claim leadership. Indeed, **W02144** conceded he only *believes* he raised the issue "*en passant*" and is not sure he did so at all.⁹¹⁵

281. That doubt is reinforced by **W02144**'s cable [REDACTED] dated 24 July 1998, the day after the meeting, which describes the discussion (including the KLA's willingness to cooperate in a government of national unity or round table) but contains no reference to the Geneva Conventions.⁹¹⁶

282. In any event, once the October ceasefire was in place, the KLA undertook significant steps toward compliance with international law, including establishing legal and judicial mechanisms. Thus, even if the issue was raised, subsequent developments indicate follow-up by the KLA rather than neglect.⁹¹⁷

⁹¹⁰ SPO PTB, fns.1570-1572.

⁹¹¹ P01210, para.27; T-240528, pp.16130-16131 (W02144).

⁹¹² P01210, para.25; T-240528, p.16129 (W02144).

⁹¹³ T-240528, p.16128 (W02144).

⁹¹⁴ T-240528, pp.16128-16129 (W02144).

⁹¹⁵ T-240528, p.16131 (W02144).

⁹¹⁶ P01217_ET, p.1. *See also* T-240528, p.16130 (W02144).

⁹¹⁷ *See* Section III(B)(2)(f).

283. The SPO further alleges that, following the arrest of [REDACTED], [REDACTED] to **THAÇI** urging punishment of those responsible.⁹¹⁸ It relies on [REDACTED],⁹¹⁹ admitted through the bar table,⁹²⁰ and its interview of [REDACTED], whom the SPO did not call and whose statements were not admitted.⁹²¹

284. Although it purports to be from [REDACTED], the only version of [REDACTED] is reproduced in a commercially sold publication released in [REDACTED] 1999.⁹²² It is not an official archive or repository of primary documents.⁹²³ There is no evidence [REDACTED] was ever [REDACTED] brought to the attention of **THAÇI**. It bears no proof of dispatch or acknowledgment. The SPO interviewed the purported author but, tellingly, chose not to call him.⁹²⁴ If the author could confirm authenticity, transmission, or receipt, the SPO would be expected to adduce that evidence; its failure to do so supports an adverse inference.

285. Further, at the time of the [REDACTED] incident and the date of the alleged [REDACTED], **THAÇI** was not in Kosovo and did not return until after [REDACTED].⁹²⁵ He therefore could not plausibly have been aware of the incident or the alleged request. The claim that **THAÇI** saw or received [REDACTED] is unsubstantiated and not proven beyond reasonable doubt.

286. The SPO contends that, during the summer of 1999, international actors raised concerns with **THAÇI** that KLA or ex-KLA members were arresting and detaining. The SPO relies first on a meeting between SRSG DE MELLO and **THAÇI** on 13 July

⁹¹⁸ SPO PTB, para.504.

⁹¹⁹ [REDACTED].

⁹²⁰ See para.119(iii).

⁹²¹ F02434, para.4.

⁹²² [REDACTED].

⁹²³ [REDACTED].

⁹²⁴ F02434, para.4.

⁹²⁵ 1D00251,p.DHT05018; P01264_ET,pp.SPOE00128796-SPOE00128797; T-250213,pp.25276-25277 (W04290).

1999. According to the meeting record, DE MELLO informed **THAÇI** that KFOR had freed several Serb and Roma detainees held near Prishtinë/Priština and urged **THAÇI** to use his influence to dissolve all detention centres. **THAÇI** allegedly promised to do whatever he could and issue an official statement.⁹²⁶ This document should be accorded little weight since the Defence was unable to meaningfully challenge the account. The SPO dropped the witness who had [REDACTED].⁹²⁷ It was instead admitted through **W02144**, who did not attend the meeting, was not even working for UNMIK at the time, and therefore could not be cross-examined on the meeting's content.

287. The SPO also relies on the minutes of the first KTC meeting on 17 July 1999, where DE MELLO stated that "*illegal detention centres*" had been discovered.⁹²⁸ Yet the statement is entirely general: it identifies no perpetrators (including no reference to the KLA), gives no locations, and provides no detail about victims or circumstances. Similarly, it cites a press briefing noting that KFOR had discovered two detention centres, but again without detail as to who ran them, their location, or the detainees. The briefing records that **THAÇI** denied the KLA was involved and welcomed the identification of the locations and the freeing of detainees.⁹²⁹

288. COMKFOR stated that he regularly raised concerns about violent incidents, including detentions, with **THAÇI**, but his evidence adds no detail beyond the records he cites.⁹³⁰ In addition, the Defence was unable to cross-examine **W02135**, which limits the weight of his evidence.⁹³¹

⁹²⁶ P01227,p.012645,para.1; T-240528,pp.16101-16102 (W02144).

⁹²⁷ F02325,para.2.

⁹²⁸ P01229,para.II(2).

⁹²⁹ 1D00239,p.DHT04157.

⁹³⁰ P02517,paras.42,45 citing P01229; P02517,paras.56,59 citing P00755. *See also* T-251113,pp.28058-28061 (DURKEE).

⁹³¹ *See* para.119(iv).

289. **W02161** testified that she raised human rights issues in meetings with **THAÇI**, including one in August 1999, but provided no detail as to the specific issues raised.⁹³² She also referred to a meeting where OSCE briefed **THAÇI** on findings from “*As Seen As Told*”, but did not identify which incidents or findings were discussed.⁹³³ She gave no date for that meeting, and it is reasonable to infer it occurred after the Indictment period, since the report covers events from mid-June to the end of October 1999 and was published in December 1999.⁹³⁴

290. The evidence therefore establishes only that general concerns about detentions were raised with **THAÇI** during the Indictment period. Those general statements do not permit identification of whether the concerns related to any of the charged detention sites or crimes, and thus cannot be said to have put **THAÇI** on notice of the charged conduct.

291. By contrast, the evidence shows that on 19 July 1999, **ÇEKU**, not **THAÇI**, was specifically put on notice by **W02135** of an alleged KLA detention centre at Ponoshec/Ponosevac in breach of the Undertaking.⁹³⁵ As **DUNCAN** observed, the issue after the Undertaking was not whether misconduct existed, but who ordered it; **W02135**'s letter does not suggest **ÇEKU** was ordering it.⁹³⁶ In any event, Ponoshec/Ponosevac is not a charged site, and there is no evidence this allegation was brought to **THAÇI**'s attention.⁹³⁷

⁹³² T-231205,pp.10604-10605 (W02161).

⁹³³ T-231205,pp.10602-10603 (W02161).

⁹³⁴ P00743.4,p.076687; T-231205,pp.10605-10607, T-231206,p.10696 (W02161).

⁹³⁵ P02523.

⁹³⁶ T-250923,pp.27206-27207 (DUNCAN).

⁹³⁷ This also applies to crimes relayed to **ÇEKU** or others cited in the meetings referred to in P02517,paras.44,46,49,53,61, that **THAÇI** did not attend.

292. There is, moreover, no evidence that **THAÇI** was personally or directly involved in any of the charged detentions in the summer of 1999.

293. Finally, as set out below,⁹³⁸ the record raises reasonable doubt that the alleged detention facilities were KLA sites at all, as opposed to breaches of the Undertaking by rogue KLA elements, imposters, or criminal gangs. It also raises reasonable doubt that **THAÇI** exercised effective control over the alleged perpetrators of such detentions.

294. The SPO also alleges that international representatives raised concerns directly with **THAÇI** regarding illegal arrests and detentions by the KLA/Ministry of Public Order police.⁹³⁹ It is undisputed that arrests and detentions occurred in summer 1999. It is also undisputed that an UNMIK code cable records COMKFOR raising general concerns about PU involvement in illegal arrests/detentions during a 27 July 1999 meeting with the SRSG, **THAÇI**, and ÇEKU.⁹⁴⁰ The SPO's reliance on [REDACTED] is misplaced given that **THAÇI** was not present.⁹⁴¹ Further, neither the cable nor [REDACTED] provide any operational detail, location, date, perpetrators beyond "PU", or victims, such that the concerns can be tied to any crimes charged in the Indictment or shown to have put **THAÇI** on notice of them.

295. The SPO also fails to prove beyond reasonable doubt that **THAÇI** had effective control over these unspecified "police" actors in summer 1999. COMKFOR himself was uncertain. **W02135** only speculated that such forces likely operated with KLA leadership acquiescence, but he expressly did not know whether the PU were formally part of the KLA, whether they operated under the civilian government, or whether

⁹³⁸ See para.586.

⁹³⁹ SPO PTB, para.154. See also SPO PTB, para.264.

⁹⁴⁰ P00755, para.I(1)(d).

⁹⁴¹ SPO PTB, fn.637, citing P02524, para.12; P02525, paras.4,19,20; P04245, para.6. Footnote 637 also cites [REDACTED], which are not in evidence (see para.119(iv)).

control existed.⁹⁴²

296. **COVEY** likewise could not recall the exchange in the 27 July meeting clearly and described **THAÇI**'s alleged "*temporising and vague*" responses as consistent with the understanding that he had "*very little influence but was reluctant to say so*", not indicative of control.⁹⁴³ Even **W02183**, while interpreting **THAÇI**'s "*evasive*" answer as an attempt to minimise responsibility, could not confirm that **THAÇI** or **ÇEKU** had direct control⁹⁴⁴ over the black-shirted policemen or the Atlantic Brigade.⁹⁴⁵ **DURKEE** similarly explained that **W02135** repeatedly raised Undertaking violations seeking "*top-down guidance*" to "*influence*" operational zone commanders who acted autonomously.⁹⁴⁶ Influence, however, is not the same as control.⁹⁴⁷

297. As for alleged PU crimes, **COVEY** was shown an unsigned municipal-level summons dated 20 August 1999 bearing a purported Ministry of Public Order stamp.⁹⁴⁸ It does not relate to any charged crime, was not put to any witness by the SPO, and **COVEY** did not recall detentions specifically tied to the Ministry. He further noted it appeared municipal in origin, and UNMIK did not recognise any authority of the PGoK or its ministries to issue such summonses.⁹⁴⁹

298. In short, while COMKFOR raised general concerns about "*so-called*" PU illegality in summer 1999, the SPO has not proven beyond reasonable doubt that those concerns related to charged crimes or that **THAÇI** had effective control over those claiming to be 'police/PU.'

⁹⁴² P02517, paras.56,62.

⁹⁴³ T-251002, pp.27626-27627 (COVEY).

⁹⁴⁴ P01968, para.90.

⁹⁴⁵ P01968, para.59.

⁹⁴⁶ T-251113, pp.28060-28061 (DURKEE).

⁹⁴⁷ *Orić* TJ, para.311; *Hadžihasanović* TJ, para.80.

⁹⁴⁸ P04107_ET. *See also* F03213, para.21, fn.55.

⁹⁴⁹ T-251002, pp.27268-27629 (COVEY).

(h) Alleged involvement in crimes

299. The SPO alleges that, in the second half of 1998, **THAÇI** attended meetings between the GS and zone commanders where orders were given to establish detention centres and detain collaborators,⁹⁵⁰ relying on **W04758**'s prior statement,⁹⁵¹ **W04752**'s interview,⁹⁵² and **W04746**'s SPO interview (not admitted).⁹⁵³

300. This allegation is not supported by the evidence. **W04758** described only two meetings with **THAÇI** and GS members⁹⁵⁴ (August⁹⁵⁵ and October 1998, with **W04752** and Ramë BUJA)⁹⁵⁶ and neither his prior statement nor his testimony contain any claim that detention centres or collaborators were discussed. **W04758** confirmed those topics were not discussed,⁹⁵⁷ and **W04758** stated he had no information on any alleged reporting by the Llap Zone to the GS regarding detentions or collaborators.⁹⁵⁸

301. **W04758** further explained that he stayed at the October meeting only briefly,⁹⁵⁹ discussing only military positions with **W04752**.⁹⁶⁰ He did not know **THAÇI**'s role,⁹⁶¹ did not speak with him,⁹⁶² and regarded **W04752**, not **THAÇI**, as the leader.⁹⁶³ He confirmed no GS instructions on detention centres or collaborators were given at either meeting and that he never personally saw or received a GS order to detain collaborators.⁹⁶⁴ **W04758** clarified that, since he never saw the order, he "*referred to it*

⁹⁵⁰ SPO PTB,para.74.

⁹⁵¹ P01754.

⁹⁵² P01355.5_ET,pp.13-14.

⁹⁵³ SPO PTB,fn.222, citing 082894-TR-ET Part 2 RED,pp.7,9-10,15-17.

⁹⁵⁴ T-241024,pp.21132-21133, T-241031,pp.21636-21639 (W04758).

⁹⁵⁵ P01755.1_ET,pp.13-14.

⁹⁵⁶ P01755.7_ET,p.14.

⁹⁵⁷ P01755.2_ET,pp.10-17; P01755.7_ET,pp.20-21; T-241024,p.21158 (W04758).

⁹⁵⁸ P01755.7_ET,p.14; T-241024,pp.21157-21158,21168-21169 (W04758).

⁹⁵⁹ P01755.7_ET,pp.14-15.

⁹⁶⁰ P01755.7_ET,p.15.

⁹⁶¹ P01755.7_ET,p.15. *See also* P01755.1_ET,p.21; P01755.2_ET,p.13.

⁹⁶² T-241024,p.21139 (W04758).

⁹⁶³ P01755.7_ET,pp.15-16.

⁹⁶⁴ T-241024,pp.21139,21159 (W04758).

*just as a communiqué, Communiqué 53 or Communiqué 54".*⁹⁶⁵

302. However, shown Communiqués 53 and 54 (22 and 24 September 1998),⁹⁶⁶ **W04758** testified there was no temporal connection between the communiqués and detentions.⁹⁶⁷ The communiqués post-date the Bajgorë/Bajgora detentions,⁹⁶⁸ which **W04758** confirmed occurred earlier and ended within a day of the last release.⁹⁶⁹ There is therefore no nexus between these communiqués and detentions in Llap Zone.⁹⁷⁰ **W04758** instead recalled a GS order dated 28 November 1998 prohibiting arrests or detentions without a brigade commander's order,⁹⁷¹ and testified that the Llap Zone established a detention centre before that date by decision of the zone commander, without GS involvement or approval.⁹⁷²

303. **W04746** similarly testified that he did not recall GS orders concerning detention centres or collaborators given during the August or October 1998 visits;⁹⁷³ the October meeting focused on improving organisation as officers arrived from abroad.⁹⁷⁴ **W04746** recalled only a later meeting with DRINI where **W04752** gave instructions,⁹⁷⁵ but **THAÇI** was not listed as present,⁹⁷⁶ and the meeting could not have occurred before December 1998 after Bajgorë/Bajgora detention facilities were established (August 1998) and moved to Llapashticë/Lapaštica (late October–early November 1998), again without GS involvement.⁹⁷⁷ He also confirmed communiqués were directed to the

⁹⁶⁵ T-241024,p.21152 (W04758). *See also* T-241024,pp.21141,21155 (W04758).

⁹⁶⁶ P00157_ET; P00173_ET.

⁹⁶⁷ T-241024,pp.21141-21147,21176 (W04758).

⁹⁶⁸ T-241024,p.21162 (W04758); P01754,p.SPOE00088349.

⁹⁶⁹ T-241024,pp.21146-21147 (W04758).

⁹⁷⁰ *See also* Section III(B)(3)(b).

⁹⁷¹ T-241024,pp.21159-21160 (W04758); P00741_ET.3.

⁹⁷² T-241024,pp.21161-21163,21166-21167 (W04758).

⁹⁷³ T-230712,p.5562 (W04746).

⁹⁷⁴ T-230712,p.5532 (W04746).

⁹⁷⁵ T-230714,pp.5738,5740 (W04746).

⁹⁷⁶ T-230712,p.5566 (W04746).

⁹⁷⁷ T-230717,p.5865 (W04746).

public, not zone commanders,⁹⁷⁸ and that detention sites pre-existed Communiqué 54,⁹⁷⁹ confirming no nexus.⁹⁸⁰

304. The SPO's reliance on **W04752**'s interview is misplaced:⁹⁸¹ the referenced meeting was a GS-only meeting without zone commanders,⁹⁸² and **W04752** listed the participants without including **THAÇI**.⁹⁸³ The meeting occurred in November 1998, and zone commanders were informed about "*collaborators*" only in December 1998,⁹⁸⁴ undermining the SPO's claim of meetings throughout the second half of 1998.

305. The SPO alleges that "[u]nder pressure," **THAÇI** personally demonstrated his authority by (reluctantly) closing detention facilities.⁹⁸⁵ The only admitted evidence⁹⁸⁶ states only that **THAÇI** promised to issue a public statement calling for dissolution of detention centres and return of Serb flats,⁹⁸⁷ evidence of cooperation with international authorities rather than proof he closed any facilities. DE MELLO's 30 July 1999 press briefing similarly records that **THAÇI** denied involvement, welcomed identification of the centres, and welcomed release of detainees.⁹⁸⁸ **W02183** had no reason to dispute this,⁹⁸⁹ and the SPO has not proven otherwise. Even if there was evidence of **THAÇI** closing detention facilities, which there is not, this would not demonstrate effective control over subordinate structures given the wall of evidence that **THAÇI** did not have the ability to prevent or punish any detentions or abuses by perpetrators of the

⁹⁷⁸ T-230713,p.5647 (W04746).

⁹⁷⁹ T-230717,p.5849 (W04746).

⁹⁸⁰ T-230714,pp.5726-5727 (W04746).

⁹⁸¹ SPO PTB,fn.222, citing P01355.5_ET,pp.13-14.

⁹⁸² P01355.5_ET,pp.10-11,13.

⁹⁸³ P01355.5_ET,pp.11-13.

⁹⁸⁴ P01355.5_ET,p.11.

⁹⁸⁵ SPO PTB,para.125.

⁹⁸⁶ SPO PTB,para.125,fn.462, citing 1D00242,p.SITF00172903; [REDACTED] were also cited, but not admitted (see para.119(iv)).

⁹⁸⁷ 1D00242,p.SITF00172903.

⁹⁸⁸ 1D00239,p.DHT04157.

⁹⁸⁹ T-250120,pp.23991-23993 (W02183).

KLA or PGoK in the summer of 1999.⁹⁹⁰

306. The SPO also relies on a 20 January 1999 report by **W04752** to the Deputy Commander of the KLA⁹⁹¹ to suggest **THAÇI**'s Political Directorate could take "*preventive measures*" against traitor elements,⁹⁹² but the SPO misquotes it out of context. The morale section begins by stating the Political Directorate had conducted no morale analysis,⁹⁹³ showing it did not regard itself as responsible. **W04752** confirmed **THAÇI**'s Political Directorate role (from December 1998)⁹⁹⁴ was limited to international communications and negotiations,⁹⁹⁵ while combat morale lay with a separate department.⁹⁹⁶ **W04752** testified that he did not deal with the Political Directorate at all in his duties,⁹⁹⁷ and the Political Directorate was not lined up below the Chief of Staff.⁹⁹⁸ This evidence is consistent with the broader record of **THAÇI**'s role in the Political Directorate being confined to communication and negotiations with the internationals.⁹⁹⁹

307. The cited passage is framed as "[*w*e think" and as "[*their*] assessment",¹⁰⁰⁰ reflecting the author's aspirations rather than an account of actual Political Directorate policy or action, an issue the SPO did not test with **W04752**.¹⁰⁰¹ Further, **THAÇI** was not in Kosovo from mid-November 1998 to March 1999 (including January 1999),¹⁰⁰² and **W04752** testified that **DEMAÇI** managed public opinion.¹⁰⁰³ The SPO fails to prove

⁹⁹⁰ See Section V(C)(3).

⁹⁹¹ SPO PTB,fn.252, citing P00617_ET,p.SPOE00228802.

⁹⁹² SPO PTB,para.85.

⁹⁹³ P00617_ET,p.SPOE00228802.

⁹⁹⁴ T-240703,p.17549, T-240716,p.18375, T-240717,p.18462 (W04752).

⁹⁹⁵ T-240703,p.17614, T-240704,pp.17633-17634, T-240716,pp.18339-18340 (W04752).

⁹⁹⁶ T-240703,p.17559 (W04752).

⁹⁹⁷ T-240704,p.17635, T-240715,p.18280 (W04752).

⁹⁹⁸ T-240704,pp.17633-17635 (W04752).

⁹⁹⁹ See, e.g., T-231116,pp.10257-10258 (W04765). See also Section V(C)(2)(b).

¹⁰⁰⁰ P00617_ET,p.SPOE00228802.

¹⁰⁰¹ T-240702,p.17479 (W04752).

¹⁰⁰² See paras.513-518.

¹⁰⁰³ T-240716,pp.18339-18340 (W04752).

the report refers to **THAÇI** rather than **DEMAÇI**.

308. Finally, the SPO alleges **THAÇI** could give orders to Drenoc/Drenovac soldiers, with [REDACTED].¹⁰⁰⁴ The SPO relies only on [REDACTED] (not admitted) SPO interview,¹⁰⁰⁵ but during testimony, [REDACTED] did not testify **THAÇI** had such authority.¹⁰⁰⁶ His claims about GS authority in Drenoc/Drenovac are unreliable: they are hearsay-based,¹⁰⁰⁷ poorly grounded,¹⁰⁰⁸ and affected by [REDACTED],¹⁰⁰⁹ while his own evidence confirms [REDACTED].¹⁰¹⁰

309. **W04752**'s testimony further refutes GS control in Drenoc/Drenovac in May–July 1998: commanders were locally appointed,¹⁰¹¹ units were uncoordinated,¹⁰¹² and Drenoc/Drenovac functioned mainly as a transit line rather than a GS-controlled structure.¹⁰¹³ Despite **W04752** spending three days in Drenoc/Drenovac after entering Kosovo in May 1998 to help impose structure, local staff continued operating largely independently through June and July 1998.¹⁰¹⁴

310. The SPO has not established beyond reasonable doubt that **THAÇI** issued military orders: **W04410**, who travelled with **THAÇI** across zones, never saw **THAÇI** give military orders.¹⁰¹⁵

¹⁰⁰⁴ SPO PTB, para.344.

¹⁰⁰⁵ SPO PTB, fn.1430, citing [REDACTED]. *See also* para.119(iv).

¹⁰⁰⁶ [REDACTED].

¹⁰⁰⁷ *See, e.g.*, [REDACTED].

¹⁰⁰⁸ [REDACTED]. *See also* T-240703, pp.17572-17573 (W04752).

¹⁰⁰⁹ [REDACTED].

¹⁰¹⁰ [REDACTED].

¹⁰¹¹ T-240703, p.17573 (W04752).

¹⁰¹² T-250703, p.17574 (W04752).

¹⁰¹³ T-240703, pp.17574-17575 (W04752).

¹⁰¹⁴ T-240709, p.17875 (W04752).

¹⁰¹⁵ T-240705, p.16783 (W04410). *See also* Section V(C)(2)(b)(i).

(i) Specific incidents

(i) {REDACTED}

311. The SPO alleges that [REDACTED], delivered an order to Drenoc/Drenovac [REDACTED] to arrest [REDACTED], who was beaten while in detention and killed by KLA members.¹⁰¹⁶ The SPO relies on [REDACTED]¹⁰¹⁷ and [REDACTED]'s¹⁰¹⁸ SPO interviews.

312. While testifying, [REDACTED] did not state that [REDACTED] participated in [REDACTED]'s arrest; he only referred broadly to an alleged [REDACTED] order. His evidence is largely hearsay, contradicted by [REDACTED], and unreliable [REDACTED].

313. [REDACTED] attempted to [REDACTED], but his account is inconsistent. He told the Panel [REDACTED].¹⁰¹⁹ Yet in his prior interview, [REDACTED] said [REDACTED] a materially different account.¹⁰²⁰ When confronted, he claimed [REDACTED],¹⁰²¹ confirming [REDACTED] was deliberate, whether by [REDACTED] or others.

314. [REDACTED] also admitted that [REDACTED],¹⁰²² [REDACTED].¹⁰²³ Further undermining his testimony, [REDACTED] testified that [REDACTED] told him responsibility for prisoners in Drenoc/Drenovac rested with [REDACTED],¹⁰²⁴ indicating local command responsibility [REDACTED].

¹⁰¹⁶ SPO PTB, para.351.

¹⁰¹⁷ [REDACTED]. This item was not admitted (*see* para.119(iv)).

¹⁰¹⁸ [REDACTED].

¹⁰¹⁹ [REDACTED].

¹⁰²⁰ [REDACTED].

¹⁰²¹ [REDACTED].

¹⁰²² [REDACTED].

¹⁰²³ [REDACTED].

¹⁰²⁴ [REDACTED].

315. [REDACTED]'s testimony is directly contradicted by [REDACTED]. Whereas [REDACTED] described a large-scale arrest involving [REDACTED],¹⁰²⁵ [REDACTED] stated only four individuals conducted the arrest [REDACTED],¹⁰²⁶ he did not see [REDACTED],¹⁰²⁷ and that only [REDACTED].¹⁰²⁸

316. Crucially, [REDACTED] denied [REDACTED] direction.¹⁰²⁹ He testified that [REDACTED],¹⁰³⁰ motivated by [REDACTED],¹⁰³¹ and that [REDACTED].¹⁰³² He further stated that, given the structure in Drenoc/Drenovac, [REDACTED],¹⁰³³ undermining [REDACTED]'s claim that [REDACTED]. [REDACTED] confirmed [REDACTED] but did not know what happened thereafter.¹⁰³⁴

317. [REDACTED] categorically described [REDACTED].¹⁰³⁵ Accordingly, the SPO has failed to prove beyond reasonable doubt any involvement of [REDACTED] in the arrest or disappearance of [REDACTED].

(ii) [REDACTED]

318. The SPO alleges that on or about [REDACTED] 1998, [REDACTED] was detained in Drenoc/Drenovac, accused of being a collaborator, and mistreated. It further alleges that [REDACTED], was detained on or about [REDACTED] 1998. According to the SPO, on or about [REDACTED] 1998, **THAÇI, VESELI, and SELIMI** allegedly took both men in the direction of the GS. Neither man was seen again: partial

¹⁰²⁵ [REDACTED].

¹⁰²⁶ [REDACTED].

¹⁰²⁷ [REDACTED].

¹⁰²⁸ [REDACTED].

¹⁰²⁹ [REDACTED].

¹⁰³⁰ [REDACTED].

¹⁰³¹ [REDACTED].

¹⁰³² [REDACTED].

¹⁰³³ [REDACTED].

¹⁰³⁴ [REDACTED].

¹⁰³⁵ [REDACTED].

remains of [REDACTED] were discovered in [REDACTED], while [REDACTED]'s remains have never been found.¹⁰³⁶

319. The SPO relies primarily on interviews and evidence originating from [REDACTED], including [REDACTED], supported by secondary material allegedly stemming from [REDACTED]'s correspondence, and later publications such as [REDACTED].

320. As set out below, the SPO cannot establish beyond reasonable doubt that **THAÇI** committed, aided and abetted, or otherwise contributed to any of the crimes charged in relation to [REDACTED]. The case rests on layers of hearsay, often relayed by [REDACTED] who witnessed none of the alleged detentions or subsequent events, whose understanding was shaped by inconsistent and evolving accounts provided years later [REDACTED]. In these circumstances, the SPO's narrative, unsupported by direct evidence, cannot satisfy the burden of proof.

321. The SPO's account begins with the assertion that [REDACTED] was detained in Drenoc/Drenovac on or about [REDACTED] 1998, accused of collaboration, mistreated, and ultimately transported toward the GS by **THAÇI**, **VESELI**, and **SELIMI**. Yet the evidence supporting even [REDACTED]'s detention in Drenoc/Drenovac is exceptionally weak. The SPO relies on [REDACTED],¹⁰³⁷ who did not witness any arrest and relied entirely on what [REDACTED] was told.

322. [REDACTED] confirmed [REDACTED] lost all contact with [REDACTED] on [REDACTED] 1998¹⁰³⁸ and that [REDACTED] told [REDACTED] one or two days later that [REDACTED] had been detained in Drenoc/Drenovac.¹⁰³⁹ However,

¹⁰³⁶ SPO PTB, para.352; Indictment, paras.41,149.

¹⁰³⁷ SPO PTB, fn.1448, citing [REDACTED].

¹⁰³⁸ [REDACTED].

¹⁰³⁹ [REDACTED].

[REDACTED] gave a materially different account in [REDACTED], [REDACTED] told [REDACTED] only that [REDACTED] had [REDACTED] in Drenoc/Drenovac.¹⁰⁴⁰ Confronted with that contradiction, [REDACTED] asserted, without rational explanation, that [REDACTED] lied.¹⁰⁴¹ This inconsistency alone renders [REDACTED] account unreliable.

323. The remaining evidence does not establish either collaboration allegations or mistreatment. [REDACTED] provided no detail about any beating or basis for detention;¹⁰⁴² he merely stated that [REDACTED] someone told him [REDACTED] was in Drenoc/Drenovac,¹⁰⁴³ and [REDACTED] he was told [REDACTED], yet he could not identify who gave either account.¹⁰⁴⁴ [REDACTED] testified [REDACTED] never received information that [REDACTED] was beaten or mistreated.¹⁰⁴⁵ [REDACTED] did not mention any accusation of [REDACTED] as a collaborator and confirmed he was not told why [REDACTED] was detained.¹⁰⁴⁶ Critically, none of this evidence provides any motive or proof linking **THAÇI** to [REDACTED]'s alleged detention or treatment.

324. The record, including evidence relied upon by the SPO, supports an alternative and more plausible motive for any confrontation involving [REDACTED], one unrelated to **THAÇI**. In particular, [REDACTED]¹⁰⁴⁷ confirms [REDACTED].¹⁰⁴⁸ [REDACTED]'s involvement is significant: he had a [REDACTED].¹⁰⁴⁹ This alternative motive alone creates reasonable doubt as to the SPO theory.

¹⁰⁴⁰ [REDACTED].

¹⁰⁴¹ [REDACTED].

¹⁰⁴² [REDACTED].

¹⁰⁴³ [REDACTED].

¹⁰⁴⁴ [REDACTED].

¹⁰⁴⁵ [REDACTED].

¹⁰⁴⁶ [REDACTED].

¹⁰⁴⁷ [REDACTED].

¹⁰⁴⁸ [REDACTED].

¹⁰⁴⁹ [REDACTED].

325. The SPO case regarding [REDACTED] is even weaker. Not a single testifying witness was present during [REDACTED]'s alleged arrest. [REDACTED] each relayed only what they were told by others. The SPO narrative is therefore a speculative reconstruction built on multiple layers of hearsay. On the SPO's own theory, only two witnesses allegedly possessed direct knowledge of [REDACTED]'s disappearance: [REDACTED]¹⁰⁵⁰ and **SELIMI**.¹⁰⁵¹

326. Despite interviewing [REDACTED], the SPO chose not to call him. That omission is significant: it leaves a conspicuous gap in the evidentiary record with the SPO relying on [REDACTED]'s statements via hearsay and shielding them from cross-examination. Instead, the SPO relies largely on **SELIMI**'s interview,¹⁰⁵² despite Rule 140(4) limitations.¹⁰⁵³ In any event, as the evidence demonstrates, [REDACTED] and **SELIMI** provided inconsistent, shifting accounts, shaped by clear self-interest, undermining reliability.

327. The SPO relies on [REDACTED] as a central witness implicating **THAÇI**, yet [REDACTED] has no first-hand knowledge.¹⁰⁵⁴ [REDACTED] account derives almost entirely from [REDACTED] alleged conversations with [REDACTED]¹⁰⁵⁵ and [REDACTED],¹⁰⁵⁶ [REDACTED]. According to [REDACTED]'s alleged account, [REDACTED] and [REDACTED] was present,¹⁰⁵⁷ an understanding shared by [REDACTED]. [REDACTED] nevertheless maintained he had [REDACTED],¹⁰⁵⁸ illustrating the uncertainty and inconsistency underlying [REDACTED]'s understanding of events.

¹⁰⁵⁰ [REDACTED].

¹⁰⁵¹ [REDACTED].

¹⁰⁵² [REDACTED].

¹⁰⁵³ See para.119(i).

¹⁰⁵⁴ [REDACTED].

¹⁰⁵⁵ [REDACTED].

¹⁰⁵⁶ [REDACTED].

¹⁰⁵⁷ [REDACTED].

¹⁰⁵⁸ [REDACTED].

328. [REDACTED] further reflect [REDACTED]'s alleged claim that on [REDACTED] 1998 **THAÇI** arrived to take [REDACTED] and [REDACTED] toward the GS.¹⁰⁵⁹ That accusation is unreliable on its face. There is no credible evidence that before [REDACTED] anyone suspected **THAÇI** of involvement. Rather, the record shows that the narrative alleging **THAÇI**'s involvement emerged in [REDACTED].

329. [REDACTED] confirmed [REDACTED] met [REDACTED] in [REDACTED] only because [REDACTED] was encouraged, indeed pushed, by [REDACTED],¹⁰⁶⁰ against a background of rumours that the [REDACTED], had reported [REDACTED],¹⁰⁶¹ at a time when [REDACTED].¹⁰⁶² [REDACTED] admitted [REDACTED] approached [REDACTED] for help with [REDACTED],¹⁰⁶³ and [REDACTED] accepted that [REDACTED] told [REDACTED] explicitly that [REDACTED] had provided **THAÇI**'s name and [REDACTED].¹⁰⁶⁴ [REDACTED] also found it striking that [REDACTED] had offered no information in [REDACTED]¹⁰⁶⁵ but [REDACTED],¹⁰⁶⁶ and [REDACTED].¹⁰⁶⁷

330. [REDACTED] confirmed [REDACTED] told [REDACTED]¹⁰⁶⁸ and that [REDACTED].¹⁰⁶⁹ Those admissions undermine any meaningful identification and recollection of who travelled in the vehicle.¹⁰⁷⁰ His further assertion that **THAÇI** asked [REDACTED] to assist in escorting both men¹⁰⁷¹ conveniently [REDACTED], at a time

¹⁰⁵⁹ [REDACTED].

¹⁰⁶⁰ [REDACTED].

¹⁰⁶¹ [REDACTED].

¹⁰⁶² [REDACTED].

¹⁰⁶³ [REDACTED].

¹⁰⁶⁴ [REDACTED].

¹⁰⁶⁵ [REDACTED].

¹⁰⁶⁶ [REDACTED].

¹⁰⁶⁷ [REDACTED].

¹⁰⁶⁸ [REDACTED].

¹⁰⁶⁹ [REDACTED].

¹⁰⁷⁰ [REDACTED].

¹⁰⁷¹ [REDACTED].

when he knew [REDACTED]. The SPO cannot simultaneously claim that [REDACTED] was reliable when speaking to [REDACTED], but so unreliable that they chose not to call him to testify.

331. These concerns are reinforced by issues surrounding [REDACTED] itself: [REDACTED].¹⁰⁷² During examination, [REDACTED] became defensive but could not explain this.¹⁰⁷³ Moreover, although [REDACTED] met [REDACTED], and despite the alleged claim that [REDACTED] had told [REDACTED] back in [REDACTED] that **THAÇI** took [REDACTED] away, [REDACTED] asked [REDACTED] no questions,¹⁰⁷⁴ an omission inconsistent with [REDACTED] stated purpose of seeking reliable information, and inconsistent with [REDACTED] claim that [REDACTED] had given [REDACTED].

332. The broader context further reveals motive. [REDACTED] accepted that since [REDACTED] and **THAÇI** were known to be on poor terms¹⁰⁷⁵ and that [REDACTED] had changed [REDACTED],¹⁰⁷⁶ [REDACTED],¹⁰⁷⁷ and expected **THAÇI** to resolve it.¹⁰⁷⁸ [REDACTED] **THAÇI** reflect frustration and threats, including [REDACTED].¹⁰⁷⁹ [REDACTED] acknowledged [REDACTED] meeting with [REDACTED] occurred under [REDACTED]'s direction shortly after this threat,¹⁰⁸⁰ and that [REDACTED].¹⁰⁸¹ [REDACTED] further accepted [REDACTED].¹⁰⁸²

333. [REDACTED] accepted that [REDACTED],¹⁰⁸³. [REDACTED] confirmed

¹⁰⁷² [REDACTED].

¹⁰⁷³ [REDACTED].

¹⁰⁷⁴ [REDACTED].

¹⁰⁷⁵ [REDACTED].

¹⁰⁷⁶ [REDACTED].

¹⁰⁷⁷ [REDACTED].

¹⁰⁷⁸ [REDACTED].

¹⁰⁷⁹ [REDACTED].

¹⁰⁸⁰ [REDACTED].

¹⁰⁸¹ [REDACTED].

¹⁰⁸² [REDACTED].

¹⁰⁸³ [REDACTED].

[REDACTED] did not know [REDACTED],¹⁰⁸⁴ that he was not present during the alleged arrest,¹⁰⁸⁵ and that his later account [REDACTED] differed from what he told [REDACTED].¹⁰⁸⁶ [REDACTED] admitted the versions could not be reconciled and that [REDACTED] had suspicions about his account already [REDACTED].¹⁰⁸⁷ [REDACTED]'s own statements to authorities also revealed he had no actual knowledge of [REDACTED]'s disappearance.¹⁰⁸⁸ His claims are therefore unreliable,¹⁰⁸⁹ particularly where they could not be tested by cross-examination.

334. The SPO attempt to corroborate [REDACTED] through [REDACTED] likewise fails. [REDACTED] stated in [REDACTED] interview (adopted during [REDACTED] testimony) that [REDACTED] first met [REDACTED] in [REDACTED],¹⁰⁹⁰ but then changed [REDACTED] evidence in cross-examination, claiming a [REDACTED] meeting with [REDACTED] where [REDACTED].¹⁰⁹¹ [REDACTED] cannot confirm the claim, while [REDACTED] denied attending.¹⁰⁹² [REDACTED] did not correct [REDACTED] during proofing,¹⁰⁹³ nor mention [REDACTED] participating in the meeting or having any information regarding [REDACTED].¹⁰⁹⁴ Neither [REDACTED]¹⁰⁹⁵ nor [REDACTED]¹⁰⁹⁶ mentioned [REDACTED] in this regard.

335. [REDACTED] a meeting with [REDACTED],¹⁰⁹⁷ contradicting [REDACTED] trial version. The timing is also notable: [REDACTED] supposed [REDACTED]

¹⁰⁸⁴ [REDACTED].

¹⁰⁸⁵ [REDACTED].

¹⁰⁸⁶ [REDACTED].

¹⁰⁸⁷ [REDACTED].

¹⁰⁸⁸ [REDACTED].

¹⁰⁸⁹ [REDACTED].

¹⁰⁹⁰ [REDACTED].

¹⁰⁹¹ [REDACTED].

¹⁰⁹² [REDACTED].

¹⁰⁹³ [REDACTED].

¹⁰⁹⁴ [REDACTED].

¹⁰⁹⁵ [REDACTED].

¹⁰⁹⁶ [REDACTED].

¹⁰⁹⁷ [REDACTED].

implication (prior to [REDACTED]) only emerged after [REDACTED].

336. [REDACTED] also introduced in proofing, for the first time, an allegation that [REDACTED] told [REDACTED] on [REDACTED],¹⁰⁹⁸ an allegation absent from all [REDACTED]. When challenged, [REDACTED] could not explain why [REDACTED] omitted it,¹⁰⁹⁹ why [REDACTED] never,¹¹⁰⁰ why [REDACTED],¹¹⁰¹ or why [REDACTED] failed to mention it in [REDACTED]¹¹⁰² or at [REDACTED].¹¹⁰³

337. The SPO's hearsay-based narrative also fails to grapple with alternative motives supported by the record. Despite being informed by [REDACTED] that [REDACTED],¹¹⁰⁴ the SPO disregarded this line. [REDACTED]–[REDACTED],¹¹⁰⁵ and evidence indicates Drenoc/Drenovac in [REDACTED] 1998 [REDACTED].¹¹⁰⁶ This alternative explanation alone raises reasonable doubt.

338. There is also evidence that [REDACTED],¹¹⁰⁷ [REDACTED].¹¹⁰⁸ It is plausible [REDACTED] gravitated toward a narrative casting [REDACTED],¹¹⁰⁹ rather than confront the possibility that he had been killed [REDACTED], who as [REDACTED] described, were [REDACTED].¹¹¹⁰

339. In the absence of contemporaneous evidence linking [REDACTED] to the disappearances prior to [REDACTED] accusation, the SPO relies on [REDACTED] to

¹⁰⁹⁸ [REDACTED].

¹⁰⁹⁹ [REDACTED].

¹¹⁰⁰ [REDACTED].

¹¹⁰¹ [REDACTED].

¹¹⁰² [REDACTED].

¹¹⁰³ [REDACTED].

¹¹⁰⁴ [REDACTED].

¹¹⁰⁵ [REDACTED].

¹¹⁰⁶ [REDACTED].

¹¹⁰⁷ [REDACTED].

¹¹⁰⁸ [REDACTED].

¹¹⁰⁹ [REDACTED].

¹¹¹⁰ [REDACTED].

suggest motive: [REDACTED]¹¹¹¹ and [REDACTED] alleging [REDACTED].¹¹¹² [REDACTED] years later,¹¹¹³ with no contemporaneous reference supporting their significance. [REDACTED] was interviewed but not called, and [REDACTED].¹¹¹⁴ He also [REDACTED].¹¹¹⁵ [REDACTED] reflects [REDACTED], providing motive to [REDACTED].¹¹¹⁶

340. Witness testimony further undermines the allegation. [REDACTED], testified that [REDACTED] described [REDACTED] as smooth¹¹¹⁷ and mentioned no confrontation.¹¹¹⁸ He was also unaware of [REDACTED].¹¹¹⁹

341. Moreover, even if [REDACTED], rumours about [REDACTED] being a spy and criticism of [REDACTED] were already circulating in [REDACTED], as confirmed by both [REDACTED]¹¹²⁰ and [REDACTED].¹¹²¹ Accordingly, even assuming *arguendo* that [REDACTED], it would not have been due to [REDACTED] at the time. The only clear personal motive shown in the evidence is that of [REDACTED].

342. Ultimately, the SPO's revenge theory is illogical: [REDACTED], leaving no basis for any revenge motive. If anything, resentment would more plausibly lie with [REDACTED], not [REDACTED].

343. The SPO's claim that [REDACTED] is unsupported.¹¹²² The first information

¹¹¹¹ [REDACTED].

¹¹¹² [REDACTED].

¹¹¹³ [REDACTED].

¹¹¹⁴ [REDACTED].

¹¹¹⁵ [REDACTED].

¹¹¹⁶ [REDACTED].

¹¹¹⁷ [REDACTED].

¹¹¹⁸ [REDACTED].

¹¹¹⁹ [REDACTED].

¹¹²⁰ [REDACTED].

¹¹²¹ [REDACTED].

¹¹²² SPO PTB, para.353; Indictment, paras.41,149.

[REDACTED] after his disappearance was from [REDACTED].¹¹²³ By then, [REDACTED] had already contacted [REDACTED] and received [REDACTED].¹¹²⁴ [REDACTED] confirmed information [REDACTED] was shared rapidly,¹¹²⁵ and [REDACTED] testified that [REDACTED] on [REDACTED]'s disappearance.¹¹²⁶ [REDACTED] at that time, it is reasonable to infer [REDACTED]. There is no evidence [REDACTED], or believed he possessed something different.

344. [REDACTED]¹¹²⁷ and was only [REDACTED], well after the Indictment period.¹¹²⁸ It was not [REDACTED]. Later meetings [REDACTED] do not establish that [REDACTED].¹¹²⁹ [REDACTED] indicate [REDACTED]'s alignment with [REDACTED]¹¹³⁰ and [REDACTED], but that does not establish knowledge or concealment. The SPO has not shown [REDACTED] deprived either man of liberty, refused to acknowledge their fate, or possessed information beyond what [REDACTED] already held.

345. In sum, the SPO case rests on hearsay, inconsistent and shifting accounts, [REDACTED] motivated narratives, and unreliable secondary sources. The [REDACTED], against a background of [REDACTED] motives, further undermines credibility. On the totality of the evidence, the SPO falls far short of proving **THAÇI's** involvement beyond reasonable doubt.

(iii) *Ukë BYTYÇI*

346. The SPO alleges that, around 24 June 1998, **THAÇI** attended a meeting at the

¹¹²³ [REDACTED].

¹¹²⁴ [REDACTED].

¹¹²⁵ [REDACTED].

¹¹²⁶ [REDACTED].

¹¹²⁷ [REDACTED].

¹¹²⁸ [REDACTED].

¹¹²⁹ *See* [REDACTED].

¹¹³⁰ [REDACTED].

KLA HQ in Breshanc/Brešance with prominent LDK members Abdyl RAMA and Ukë BYTYÇI. The SPO asserts the meeting's purpose was for BYTYÇI to make a public statement supporting the KLA, and **THAÇI** insisted that BYTYÇI give a more decisive statement about the KLA.¹¹³¹ The SPO relied on four documents: **W04410**'s¹¹³² and [REDACTED]'s¹¹³³ SPO interviews and **W04410**'s book.¹¹³⁴ None proves the SPO case beyond reasonable doubt.

347. First, **W04410** did not state **THAÇI** "*insisted*" that BYTYÇI give a more decisive statement. During his interview, **W04410** merely stated that **THAÇI** and BYTYÇI discussed the contents of BYTYÇI's proposed statement and that BYTYÇI accepted certain of **THAÇI**'s suggestions.¹¹³⁵ Similarly, while **W04410**'s book refers to some discussion between them,¹¹³⁶ it confirms both **THAÇI** and BYTYÇI eventually "*left pleased and they shook hands in a sign of willingness to cooperate for the sake of the liberation war*".¹¹³⁷ After BYTYÇI's statement was recorded, everyone was "*relaxed because the goal had been achieved*".¹¹³⁸

348. **W04410** also confirmed that BYTYÇI "*had expressed his free will, his free will that he wanted to join the KLA*",¹¹³⁹ no one "*had made*" BYTYÇI make the statements he made and "*[t]here were no threats at all*".¹¹⁴⁰ Other evidence indicates BYTYÇI was one of the primary founders of the KLA Lisi unit in the Suhareka region.¹¹⁴¹

¹¹³¹ SPO PTB, para.230; Indictment, para.43.

¹¹³² P01252.3_ET, pp.6-10.

¹¹³³ [REDACTED].

¹¹³⁴ P01264_ET, pp.SPOE00128634-SPOE00128635.

¹¹³⁵ P01252.3_ET, p.10.

¹¹³⁶ P01264_ET, p.SPOE00128634.

¹¹³⁷ P01264_ET, p.SPOE00128635.

¹¹³⁸ P01264_ET, p.SPOE00128635.

¹¹³⁹ P01252.3_ET, p.8.

¹¹⁴⁰ P01252.3_ET, pp.8-9.

¹¹⁴¹ T-240624, pp.17032-17033 (W04744).

349. **W04410**'s statements are corroborated by the contemporaneous video of the statement that **BYTYÇI** eventually made. It does not show any injuries nor any signs of **BYTYÇI** being mistreated.¹¹⁴²

350. Second, [REDACTED] was not present for the recording of **BYTYÇI**'s statement. [REDACTED] confirmed that [REDACTED] never spoke to **BYTYÇI** about how the recording was made.¹¹⁴³ [REDACTED]'s testimony is double hearsay, originating from other people who had allegedly discussed this incident with **BYTYÇI**. The SPO failed to prove beyond reasonable doubt that **BYTYÇI**'s statement was based on any pressure by **THAÇI**.

351. The SPO also failed to demonstrate that, during the meeting with **BYTYÇI** and **THAÇI**, **Abdyl RAMA** refused to give a public statement [REDACTED].¹¹⁴⁴ The SPO relied solely on [REDACTED]'s SPO interview,¹¹⁴⁵ which is not credible evidence. First, again, [REDACTED] was not present during the relevant events, and [REDACTED] entire testimony is hearsay. Second, [REDACTED] confirmed that **Abdyl RAMA** did not tell [REDACTED]. When asked why [REDACTED] told the SPO that **Abdyl RAMA** was [REDACTED], [REDACTED]'s response was [REDACTED].¹¹⁴⁶

352. [REDACTED] confirmed [REDACTED] had no reason to dispute the [REDACTED], that **Abdyl RAMA** never told [REDACTED] that [REDACTED].¹¹⁴⁷ [REDACTED]'s statements are also corroborated by **W04410**'s book, according to which after **Abdyl RAMA** stated he preferred not to make any statement, no one

¹¹⁴² See P00323.

¹¹⁴³ [REDACTED].

¹¹⁴⁴ SPO PTB, para.230; Indictment, para.43.

¹¹⁴⁵ SPO PTB, fn.943, citing [REDACTED].

¹¹⁴⁶ [REDACTED].

¹¹⁴⁷ [REDACTED].

“insist[ed] any further”.¹¹⁴⁸ Finally, [REDACTED] testified that [REDACTED] has no knowledge of THAÇI being involved in the incident related to Abdyl RAMA.¹¹⁴⁹

(iv) Qirez/Ćirez

Relevant factual context

353. On 20 September 1998, a parliamentary delegation arrived in Qirez/Ćirez¹¹⁵⁰ amid extreme and deteriorating conditions. A Serbian offensive, including shelling, had displaced the entire Drenicë/Drenica population, including civilians and local KLA fighters, into Qirez/Ćirez. Serbian attacks and mass displacement created a humanitarian disaster.¹¹⁵¹

354. Despite this crisis, the delegation obtained approval for the visit from Serbian authorities, including Police Service 92.¹¹⁵² It did not inform the KLA of the visit or seek KLA approval. Delegation members knew the KLA had an office in Prishtinë/Priština and could have easily reached it.¹¹⁵³ However, they chose not to.

355. Local KLA units allowed the delegation to enter Qirez/Ćirez,¹¹⁵⁴ meet local LDK representatives, and engage with the population.¹¹⁵⁵ Only after members of the delegation made speeches, possibly including calls to disarm,¹¹⁵⁶ did KLA soldiers stop them and inquire into their aims at Qirez/Ćirez.¹¹⁵⁷

356. Following these inquiries, part of the delegation, including women and

¹¹⁴⁸ P01264_ET,p.SPOE00128635.

¹¹⁴⁹ [REDACTED].

¹¹⁵⁰ SPO PTB,paras.459,461,463; 1D00038_ET,p.DHT01418-ET.

¹¹⁵¹ [REDACTED]; 1D00037_ET; 1D00038_ET,p.DHT01419-ET.

¹¹⁵² P00681_ET,p.034138; [REDACTED]; T-231107,pp.9523-9524 (W03825).

¹¹⁵³ T-231107,p.9525 (W03825); [REDACTED].

¹¹⁵⁴ P00680,p.034241; T-231107,p.9545 (W03825); [REDACTED].

¹¹⁵⁵ 1D00038_ET,p.DHT01419-ET; T-231107,p.9546 (W03825); [REDACTED].

¹¹⁵⁶ T-231107,pp.9539-9540 (W03825).

¹¹⁵⁷ 1D00038_ET,p.DHT01419-ET; 1D00062_ET,p.116760.

journalists, was allowed to leave.¹¹⁵⁸ The remaining thirteen members were transported that same day to Baicë/Banjica.¹¹⁵⁹ In Baicë/Banjica, there was a brief “altercation” lasting about one minute between the delegates and unidentified masked individuals.¹¹⁶⁰ It caused no serious harm.¹¹⁶¹

357. On 22 September 1998, two days later, the delegates in Baicë/Banjica were released.¹¹⁶² The next day, **W03825** and others held a press conference in Prishtinë/Priština where **W03825** confirmed that the KLA treated the delegation properly in Qirez/Ćirez and Baicë/Banjica.¹¹⁶³ The press conference was filmed by journalists. The video shows no injuries among the delegates, confirming they did not suffer serious harm in Qirez/Ćirez or Baicë/Banjica.¹¹⁶⁴

358. In summary, it is undisputed that the delegation was stopped in Qirez/Ćirez, thirteen members were held in Baicë/Banjica for approximately 48 hours, and were involved in a short altercation with masked individuals. That is the end of the matter. The members of the delegation were subsequently released, without suffering any severe physical or mental harm. The SPO seeks to characterise these events as war crimes and crimes against humanity. Its case fails because it has not proved beyond reasonable doubt either the elements of the alleged crimes, or **THAÇI**'s participation, direction, or leadership.

Imprisonment (crime against humanity)

359. Imprisonment requires a severe deprivation of liberty of such gravity that it violates fundamental rules of international law, and it must be committed as part of a

¹¹⁵⁸ 1D00062_ET,p.116760; T-231106,pp.9343,9345 (W03825).

¹¹⁵⁹ SPO PTB,para.461.

¹¹⁶⁰ T-231107,pp.9560-9561 (W03825).

¹¹⁶¹ T-231107,pp.9563,9570-9571 (W03825).

¹¹⁶² SPO PTB,para.467; 1D00038_ET,pp.DHT01419-ET-DHT01420-ET; P00321_ET,p.8.

¹¹⁶³ 1D00038_ET,pp.DHT01418-ET-DHT01419-ET; P00321_ET,p.8.

¹¹⁶⁴ P00321, at 16:52-20:53.

widespread or systematic attack against a civilian population, with the perpetrator's knowledge.¹¹⁶⁵ The SPO alleges THAČI committed imprisonment because he purportedly "led" the detention of thirteen delegates between 20-22 September 1998.¹¹⁶⁶ That allegation is unsupported.

360. First, the detention lasted approximately 48 hours¹¹⁶⁷ and cannot reasonably be characterised as a "severe deprivation of liberty" of the gravity required to violate fundamental international law. Article 41(3) of the Law, for example, permits detention for up to 48 hours without judicial review, (and Article 196(3) of the SFRY Criminal Procedure Code, in force at the time, provided that the maximum period of police detention was three days). The SPO cannot maintain that 48-hour detention without judicial review is lawful when exercised by the SPO, yet inherently unlawful when the same duration is at issue here.

361. Second, the SPO has failed to prove the detention was part of a widespread or systematic attack against a civilian population. On the contrary, it is a reasonable conclusion that the KLA stopped and questioned the delegation for legitimate reasons about how the visit was organised. The delegation relied on Serbian approvals, yet avoided notifying the KLA.¹¹⁶⁸ This fact, on its own, was sufficient to raise questions about the delegation's intentions. Further, the delegation was suspected of encouraging the Qirez/Ćirez population, under imminent Serbian attack, to disarm and cease resistance.¹¹⁶⁹ This was a sufficient basis for the KLA to inquire into the delegation's purpose. These concerns are corroborated by contemporaneous evidence. At the 23 September 1998 press conference,¹¹⁷⁰ and later in cross-examination,¹¹⁷¹

¹¹⁶⁵ ICC Elements,art.7(1)(e).

¹¹⁶⁶ Indictment,para.76.

¹¹⁶⁷ SPO PTB, paras.461,463,467; 1D00038_ET,p.DHT01420-ET; P00321_ET,p.8.

¹¹⁶⁸ See para.354.

¹¹⁶⁹ T-231107,pp.9539-9540 (W03825).

¹¹⁷⁰ P00321_ET,p.8; 1D00038,p.DHT01419-ET.

¹¹⁷¹ T-231107,pp.9526-9527 (W03825).

W03825 confirmed the KLA was concerned by the delegation's failure to inform it.

362. The lack of any widespread or systematic attack is further confirmed by the KLA's conduct: it had previously allowed other parliamentary delegations to meet the local population in other areas,¹¹⁷² and initially allowed this delegation to speak to people in Qirez/Ćirez.¹¹⁷³ It was only after the members of the delegation made speeches that possibly included invitations to disarm,¹¹⁷⁴ that KLA soldiers stopped the delegation and started to inquire about its aims.¹¹⁷⁵ If detention were part of an organised attack against Opponents, the KLA would not have permitted such visits or public speeches.

363. Further, there is no evidence of KLA actions against LDK representatives in Qirez/Ćirez before 20 September 1998. [REDACTED],¹¹⁷⁶ confirmed [REDACTED] was not aware of any mistreatment of local LDK members.¹¹⁷⁷ It is implausible that the KLA carried out a widespread attack against political opponents while leaving local LDK activity untouched.

364. It is undisputed **THAÇI** was in the Qirez/Ćirez area after the parliamentarians were stopped by the KLA. The SPO failed to prove beyond reasonable doubt **THACI** had any role in any criminal conduct related to the detention of the delegation in Qirez/Ćirez, much less the leading role. **W03825** expressly confirmed he did not see **THAÇI** in Qirez/Ćirez at all.¹¹⁷⁸

365. Although **W03825's** earlier EULEX statement suggested otherwise,¹¹⁷⁹ he

¹¹⁷² T-231107,pp.9520-9521 (W03825).

¹¹⁷³ 1D00038_ET,p.DHT01419-ET; T-231107,p.9546 (W03825); [REDACTED].

¹¹⁷⁴ T-231107,pp.9539-9540 (W03825).

¹¹⁷⁵ 1D00038_ET,p.DHT01419-ET; 1D00062_ET,p.116760.

¹¹⁷⁶ [REDACTED].

¹¹⁷⁷ [REDACTED].

¹¹⁷⁸ T-231107,pp.9551-9552 (W03825).

¹¹⁷⁹ P00680,p.034243.

admitted this description was politically motivated¹¹⁸⁰ and intended as revenge against **THAÇI**.¹¹⁸¹ It should be afforded no weight. Similarly, [REDACTED] initially testified the only KLA figures [REDACTED] could identify in Qirez/Ćirez were [REDACTED].¹¹⁸² This is consistent with contemporaneous documents indicating Sabit GEÇI, not **THAÇI**, was responsible. A newspaper article from 22 September 1998 reported that the person in charge introduced himself as head of the KLA secret service;¹¹⁸³ [REDACTED] confirmed that this referred to Sabit GEÇI.¹¹⁸⁴ A U.S. cable from 25 February 1999 similarly attributes responsibility to Sabit GEÇI¹¹⁸⁵ and does not mention **THAÇI**. No contemporaneous diplomatic cables implicate **THAÇI**.¹¹⁸⁶

366. [REDACTED].¹¹⁸⁷ That claim is not credible: [REDACTED] testified the ID collector did not identify himself;¹¹⁸⁸ [REDACTED] did not know **THAÇI** in 1998;¹¹⁸⁹ [REDACTED] alleged [REDACTED] recognised him only in [REDACTED];¹¹⁹⁰ yet admitted [REDACTED] did not recognise him from Rambouillet¹¹⁹¹ or from his later role as Prime Minister, occurring shortly after the incident.¹¹⁹² It is implausible [REDACTED] would identify him [REDACTED] years later but fail to recognise him in prior, widely publicised appearances.

367. The SPO's reliance on [REDACTED]'s allegation that **THAÇI** led the KLA group that stopped the parliamentary delegation is also misplaced.¹¹⁹³

¹¹⁸⁰ T-231107,pp.9542-9543 (W03825).

¹¹⁸¹ T-230828,pp.9599-9601,9603 (W03825); 1D00063,p.108990.

¹¹⁸² [REDACTED].

¹¹⁸³ P00319_ET,p.034158. *See also* [REDACTED].

¹¹⁸⁴ [REDACTED].

¹¹⁸⁵ P01077,p.075365.

¹¹⁸⁶ [REDACTED].

¹¹⁸⁷ [REDACTED].

¹¹⁸⁸ [REDACTED].

¹¹⁸⁹ [REDACTED].

¹¹⁹⁰ [REDACTED].

¹¹⁹¹ [REDACTED].

¹¹⁹² [REDACTED].

¹¹⁹³ SPO PTB,fn.1835, citing [REDACTED].

[REDACTED],¹¹⁹⁴ [REDACTED],¹¹⁹⁵ [REDACTED]. [REDACTED] is speculation.¹¹⁹⁶

Cruel treatment/other inhumane acts/torture: elements not proved

368. The SPO alleges severe beating and psychological abuse in Qirez/Ćirez constituting cruel treatment and other inhumane acts, and torture.¹¹⁹⁷ **W03825** confirmed there was no mistreatment or threats in Qirez/Ćirez,¹¹⁹⁸ consistent with his contemporaneous 23 September 1998 press conference where he stated the delegates were not threatened and the KLA behaved appropriately.¹¹⁹⁹ [REDACTED] similarly testified the delegation was treated well¹²⁰⁰ and no one was beaten,¹²⁰¹ corroborated by the [REDACTED].¹²⁰² In any event, the SPO has not proven **THAÇI** had any role in the detention itself.

369. For Baicë/Banjica, **W03825**, the only witness who testified live about treatment there described only a small altercation with masked individuals¹²⁰³ and confirmed no one suffered injuries requiring medical attention,¹²⁰⁴ including one of the delegates who was himself a doctor.¹²⁰⁵ His later claims of serious injuries were politically motivated; several delegates (political opponents) approached authorities in September 2001 shortly before elections,¹²⁰⁶ and even UNMIK recognised allegations could have been raised to discredit **THAÇI**.¹²⁰⁷ **W03825** confirmed the truth was

¹¹⁹⁴ [REDACTED].

¹¹⁹⁵ [REDACTED].

¹¹⁹⁶ [REDACTED].

¹¹⁹⁷ Indictment, paras.110-111; SPO PTB, para.463.

¹¹⁹⁸ T-231107, pp.9549-9550 (W03825).

¹¹⁹⁹ P00321_ET, p.8.

¹²⁰⁰ [REDACTED].

¹²⁰¹ [REDACTED].

¹²⁰² 1D00040.

¹²⁰³ T-231107, pp.9560-9561 (W03825).

¹²⁰⁴ T-231107, pp.9563,9570-9571,9574 (W03825).

¹²⁰⁵ T-231107, p.9564 (W03825).

¹²⁰⁶ T-231108, pp.9603-9604,9608-9611 (W03825).

¹²⁰⁷ 1D00067, p.SITF00055810.

reflected in the 23 September 1998 press conference,¹²⁰⁸ where the filmed video shows no injuries¹²⁰⁹ and contradicts his later claims.¹²¹⁰

370. During the same press conference, **W03825** also confirmed that the KLA “behaved appropriately towards” the delegation.¹²¹¹ The contemporaneous PLK (Liberal Party of Kosovo) steering committee minutes further confirm appropriate KLA conduct and record that **W03825** expressed gratitude to KLA soldiers.¹²¹² The absence of any press questioning about injuries also supports that no injuries existed.¹²¹³

371. Crucially, the SPO was not aware of the press conference video before the Defence Opening Statement.¹²¹⁴ The SPO brought charges related to treatment of the delegation in Qirez/Ćirez and Baicë/Banjica without even reviewing a video of the condition of members of the delegation within minutes of their release, which was publicly available on YouTube. This glaring investigative failure is even more proof that the SPO failed to properly investigate these events. Worse yet, the SPO tried to ‘spin’ the video by claiming it showed **W03825**’s “bruising”, which cross-examination demonstrated to be shadows from TV lighting.¹²¹⁵

372. The SPO’s remaining reliance on **W04147** is unreliable. [REDACTED] contained major inaccuracies [REDACTED],¹²¹⁶ and he later changed his description without explanation.¹²¹⁷ His testimony is internally inconsistent: he claimed beatings occurred but also said **W03825** appeared in good physical condition after release.¹²¹⁸

¹²⁰⁸ T-231108,p.9602 (W03825). See also 1D00064,para.3.

¹²⁰⁹ P00321,at 16:52-20:53. See also T-231108,pp.9582,9585-9586 (W03825).

¹²¹⁰ P00680,p.034260.

¹²¹¹ P00321_ET,p.8.

¹²¹² 1D00062_ET,pp.116760-116761. See also T-231108,pp.9591-9593 (W03825).

¹²¹³ T-231108,p.9584 (W03825).

¹²¹⁴ F01739,para.11: “the Panel observes that: (i) on 4 April 2023, the *Thaçi* Defence used part of the video in its opening statements notifying the SPO of its existence”.

¹²¹⁵ P00321, at 18:14,18:59-19:07; T-231107,pp.9571-9573 (W03825).

¹²¹⁶ T-240325,pp.13625-13628 (W04147).

¹²¹⁷ T-240325,p.13637 (W04147).

¹²¹⁸ T-240325,p.13617 (W04147).

He could not explain why he did not raise the matter with **THAÇI** in October 1998¹²¹⁹ or report it to superiors, and there are no contemporaneous cables by him alleging mistreatment or implicating **THAÇI**. **HILL** confirmed that neither **W04147**, **RUGOVA** nor anyone else, other than **MILOŠEVIĆ**, ever told him **THAÇI** might have been involved in torture or abuses,¹²²⁰ despite **RUGOVA** having “*plenty of opportunities*”, and **W04147** organising a meeting between **HILL** and **THAÇI** on 6 November 1998.¹²²¹ **W03825** also confirmed he did not tell **W04147** about any beating or **THAÇI**’s alleged involvement.¹²²²

373. Finally, the SPO has not shown **THAÇI** directed any mistreatment in Baicë/Banjica. **W03825** confirmed **THAÇI** was not present during the Baicë/Banjica altercation.¹²²³ Nor do contemporaneous diplomatic cables describe **THAÇI** as being in charge; instead, they attribute the detention decision to **Sabit GECI**.¹²²⁴

374. Given **THAÇI**’s international prominence by February 1999, it is implausible that international actors knew of his alleged involvement yet omitted it from official reporting, or that **W04147** would allow senior officials to negotiate with **THAÇI** at Rambouillet without disclosing such allegations.¹²²⁵

375. The SPO’s torture narrative, alleging forced confessions, coerced denunciations of **RUGOVA/LDK**, or discriminatory abuse, is likewise unsupported by statements from **W03825**, **W03821** and **W04147**.¹²²⁶ The claim that delegates were asked to denounce **RUGOVA/LDK** and resign from parliamentary functions rests essentially on **W03825**’s politically motivated statements: **W04147** was not present and his

¹²¹⁹ T-240328,pp.14057-14058 (W04147).

¹²²⁰ T-251110,pp.27693,27696-27697 (HILL).

¹²²¹ T-251111,p.27731 (HILL).

¹²²² T-231108,pp.9622-9623 (W03825).

¹²²³ T-231107,p.9561 (W03825).

¹²²⁴ P01077,p.075365.

¹²²⁵ T-251110,p.27693 (HILL).

¹²²⁶ SPO PTB,fn.1847.

hearsay does not support the proposition,¹²²⁷ while **W03821**'s cited statement concerns [REDACTED].¹²²⁸

376. Likewise, the allegation that Sabit GECI threatened to kill Agim KRASNIQI in **THAÇI**'s presence¹²²⁹ relies only on **W03825**'s 2014 statement,¹²³⁰ while Agim KRASNIQI's own 2014 statement did not mention it.¹²³¹ Even if it occurred, **W03825** conceded Sabit GECI acted on his own and **THAÇI** could only "plead" with him.¹²³² Finally, the alleged **THAÇI** threat that "even if you are free now, we could kill you in Pristina",¹²³³ rests only on **W03825**'s 2014 statement,¹²³⁴ which **W03825** later admitted was false and part of his "revenge".¹²³⁵

(v) [REDACTED]

377. [REDACTED] claimed that [REDACTED] told him in meetings after their release that "the Snake" was one of the people that arrested them in October-November 1998.¹²³⁶ [REDACTED] also stated that somebody else mentioned to [REDACTED] that "the Snake" was involved.¹²³⁷

378. First, the allegation that **THAÇI** participated in the arrest and/or mistreatment of [REDACTED] does not form part of the SPO case.¹²³⁸ Second, [REDACTED]'s testimony on this point is triple hearsay, and contradicted by other evidence,

¹²²⁷ P01066,para.109.

¹²²⁸ P00678,p.034325.

¹²²⁹ SPO PTB,para.465; Indictment,paras.45,111.

¹²³⁰ SPO PTB,fn.1850, citing P00680,pp.034266-034267.

¹²³¹ T-231108,p.9628 (W03825).

¹²³² T-231106,p.9440 (W03825).

¹²³³ SPO PTB,para.465; Indictment,paras.45,111.

¹²³⁴ SPO PTB,fn.1850, citing P00680,pp.034266-034267.

¹²³⁵ T-231108,pp.9598-9601,9603 (W03825); 1D00063,p.108990.

¹²³⁶ [REDACTED].

¹²³⁷ [REDACTED].

¹²³⁸ [REDACTED].

including the source of said hearsay, [REDACTED],¹²³⁹ and that [REDACTED], specifically [REDACTED].¹²⁴⁰ Similarly, [REDACTED], who had direct knowledge of [REDACTED]'s arrest, testified that he did not see **THAÇI** at all that day.¹²⁴¹

(vi) *Journalists*

379. **THAÇI** is charged with the arrest and detention of alleged Serbian journalists **W03880** and **W04828**, and [REDACTED], in Shalë (Sedllarë)/Sedlare between late October-November 1998, allegedly without due process.¹²⁴² The SPO further alleges **THAÇI**, with Fatmir LIMAJ, questioned **W03880** and **W04828**¹²⁴³ and was confronted by LDK members and international organisations regarding the detentions and lack of due process.¹²⁴⁴

380. **W03880** and **W04828** were arrested near Magurë/Magura on 18 October 1998 for a legitimate military and security purpose, as they were moving toward an active conflict zone and the KLA had reasonable grounds to suspect they were Serbian spies.¹²⁴⁵ This suspicion was justified by the volatile security situation, recent Serbian attacks,¹²⁴⁶ troop build-up in the area,¹²⁴⁷ and the presence of covert Serb paramilitaries.¹²⁴⁸ The two entered KLA-controlled territory without authorisation and press markings,¹²⁴⁹ and behaved suspiciously,¹²⁵⁰ facts supported by a

¹²³⁹ [REDACTED].

¹²⁴⁰ [REDACTED].

¹²⁴¹ [REDACTED].

¹²⁴² SPO PTB, paras.470,477.

¹²⁴³ SPO PTB, para.474.

¹²⁴⁴ SPO PTB, paras.476-477.

¹²⁴⁵ P00586_ET; P00489_ET, p.SPOE00078814; P00270_ET.10; P00300_ET.

¹²⁴⁶ [REDACTED].

¹²⁴⁷ [REDACTED]; 1D00121, p.DHT03787; 1D00123.

¹²⁴⁸ T-240326, pp.13690-13691 (W04147); [REDACTED]; 1D00122.

¹²⁴⁹ T-231009, p.8529, T-231010, p.8548 (W03880); P00586_ET.

¹²⁵⁰ T-231010, p.8555 (W03880).

contemporaneous communiqué.¹²⁵¹ Their link to *Tanjug*, a state-run agency closely tied to the Serbian government, further reinforced these concerns;¹²⁵² **W03880** was thus an employee of the Serbian government,¹²⁵³ and **W04828** was sent by *Tanjug* from Belgrade to assist him.¹²⁵⁴

381. Further, several items put to **W03880** suggest **W04828** was a paramilitary who committed crimes in Croatia and Bosnia while posing as a *Tanjug* photographer,¹²⁵⁵ undermining his credibility and making similar conduct in Kosovo plausible. **W03880** denied knowledge of this but conceded **W04828** appeared suspicious,¹²⁵⁶ admitted he lacked journalistic training¹²⁵⁷ and could not identify any articles written with **W04828**.¹²⁵⁸ Accordingly, there is at least reasonable doubt as to their civilian status. In any event, they were detained for a legitimate military purpose, not because they opposed the KLA's political goals.

382. The SPO's claim that **THAÇI** questioned them rests solely on written evidence of **W04839**, who could not be cross-examined, and is unreliable. This evidence is uncorroborated,¹²⁵⁹ and contradicted: first, neither **W03880** nor **W04828** identified **THAÇI**,¹²⁶⁰ and second, there is evidence **W03880** was questioned in Serbian without an interpreter,¹²⁶¹ while unrebutted evidence establishes that **THAÇI** does not speak

¹²⁵¹ P00300_ET; T-240710,pp.17978-17979 (W04752). **W04752** did not know who issued this communiqué, as it was issued over a month before the military police directorate came into existence.

¹²⁵² T-231009,pp.8482-8483 (W03880).

¹²⁵³ T-231009,p.8496 (W03880).

¹²⁵⁴ T-231009,p.8484, T-231010,p.8556 (W03880).

¹²⁵⁵ T-231009,pp.8518-8521 (W03880), referring to, *inter alia*, 1D00059_ET,p.DHT02031. See also F02013,para.28.

¹²⁵⁶ T-231009,pp.8521,8525 (W03880).

¹²⁵⁷ T-231009,pp.8481-8482 (W03880).

¹²⁵⁸ T-231010,pp.8556-8557 (W03880).

¹²⁵⁹ See para.119(iv).

¹²⁶⁰ F02013,para.31.

¹²⁶¹ T-231010,p.8629 (W03880).

Serbian.¹²⁶² Aside from **W04839** being unable to identify the nature of **THAÇI**'s role,¹²⁶³ his credibility is fundamentally compromised by personal animosity toward **LIMAJ**,¹²⁶⁴ evidence of prior lies,¹²⁶⁵ and psychiatric issues.¹²⁶⁶ Examples of these include **W04839** himself stating his EULEX statements are "*worthless*",¹²⁶⁷ and admitting in court to having made up lies, including about **THAÇI** and **KRASNIQI** wanting to kill him, as a ploy to be admitted to a psychiatric facility.¹²⁶⁸

383. Although **THAÇI** was informed by **W04408** on 10 November 1998 about the detentions and alleged lack of due process,¹²⁶⁹ the KLA took steps to address international concerns within its limited capacity.¹²⁷⁰ The inability to fully implement due process in October–November 1998 does not evidence criminal intent, particularly as detention conditions need only be met "*within the limits of their capabilities*."¹²⁷¹ Moreover, both **W03880**¹²⁷² and **W04828**¹²⁷³ confirmed they were treated correctly, including in reports made to William WALKER upon release.¹²⁷⁴

(vii) *Sherafedin AJETI*

384. [REDACTED] alleged that **THAÇI** and **VESELI** were aware and/or involved in the detention and killing of *Sherafedin AJETI*, a charged victim.¹²⁷⁵

¹²⁶² 1D00283,p.DHT04050; 1D00527_ET,p.DHT05291.

¹²⁶³ P00984,p.SITF00010010.

¹²⁶⁴ F01865,para.36.

¹²⁶⁵ See, e.g., P00984,pp.SITF00010019-SITF00010021; F01865,para.34.

¹²⁶⁶ P00984,p.SITF00010023; F01865,para.35.

¹²⁶⁷ 4D00021_ET,p.DJK00160.

¹²⁶⁸ P00980,p.SITF00009585.

¹²⁶⁹ T-230905,pp.7314-7315, T-230906,pp.7318-7323 (W04408).

¹²⁷⁰ See Section III(B)(2)(f).

¹²⁷¹ ICRC Report,p.10.

¹²⁷² P00489_ET,p.SPOE00078814.

¹²⁷³ P00093_ET,p.4, quoted at T-231009,pp.8472-8473 (W03880).

¹²⁷⁴ T-231010,pp.8621-8622 (W03880).

¹²⁷⁵ [REDACTED]. See also Indictment,para.162, Schedule B, item 15.1; SPO PTB,paras.492,506,515.

385. First, the Defence was not put on notice of this allegation in the charging instruments. In addition, the testimony was admitted pursuant to Rule 155 and cannot form the basis for conviction.¹²⁷⁶

386. Second, this allegation is unreliable, unsubstantiated and motivated by [REDACTED]. Despite stating that he has [REDACTED] that **THAÇI** and **VESELI** were involved in, or at least aware of, the detention and killing of AJETI,¹²⁷⁷ [REDACTED] provided no foundation for this allegation, beyond vague assertions that they must know by virtue of their roles in the GS and because AJETI was allegedly killed by [REDACTED] who [REDACTED] believed was working for the GS.¹²⁷⁸ Even if this incident were to be somehow connected to 'the GS', there is no basis for [REDACTED] to claim **THAÇI** and **VESELI** were involved, apart from [REDACTED] against them.¹²⁷⁹ The Panel itself noted that [REDACTED].¹²⁸⁰ This is a glaring example of that, and a highly prejudicial one.

(viii) VJ soldiers

387. The SPO failed to plead its case as regards **THAÇI**'s alleged involvement in the release of eight VJ soldiers captured by the KLA in the Shala Zone in January 1999.¹²⁸¹ To date, its case remains unclear.

388. The PTB states that **THAÇI** "*participated in General Staff decision-making, including during negotiations for the release of KLA detainees*".¹²⁸² The evidence originally cited was not presented, or does not support this allegation. The SPO introduced

¹²⁷⁶ See para.119(ii).

¹²⁷⁷ [REDACTED].

¹²⁷⁸ [REDACTED].

¹²⁷⁹ See, e.g., [REDACTED].

¹²⁸⁰ [REDACTED].

¹²⁸¹ [REDACTED].

¹²⁸² SPO PTB, para.111(a)(ix), fn.375.

[REDACTED] allegedly recording **THAÇI** expressing displeasure to **KRASNIQI** that an agreement to release the VJ soldiers had been reached without him having been contacted.¹²⁸³ The SPO appears to have interpreted [REDACTED] in this way, having asked [REDACTED] to comment on what appeared as “*some concern or dissatisfaction*”¹²⁸⁴ from **THAÇI**. [REDACTED] clarified this displeasure resulted from the VJ soldiers being released by the KLA while “*they had not released ours*”.¹²⁸⁵ This interpretation of [REDACTED] is logical, and supported by the evidence of [REDACTED] and [REDACTED], who agreed it indicates that the decision to release the soldiers was made without **THAÇI**’s involvement;¹²⁸⁶ it also reflects that **THAÇI** was not in Kosovo at this time.¹²⁸⁷ The unreliable, uncorroborated hearsay¹²⁸⁸ evidence concerning [REDACTED] between [REDACTED] and **THAÇI** does not displace this interpretation; aside from [REDACTED] being generally unreliable,¹²⁸⁹ his evidence is speculative; by his own admission, he has no direct or reliable information about any such conversation.¹²⁹⁰

389. The SPO’s attempt to implicate **THAÇI** rests otherwise on vague and untested evidence: (i) an unpublished manuscript attributed to **KRASNIQI** which refers, in the context of a meeting with internationals to discuss the release, to the KLA being “*in contact with the Head of the Political Directorate and the other members of the KLA General Staff*”;¹²⁹¹ and (ii) a reference to **THAÇI** having given around 10 January 1999 “*the okay for the proposal on how this should proceed*”,¹²⁹² as recorded in an interview of Wolfgang PETRITSCH, [REDACTED].

¹²⁸³ P02094_ET,p.111548; [REDACTED].

¹²⁸⁴ [REDACTED].

¹²⁸⁵ [REDACTED].

¹²⁸⁶ [REDACTED].

¹²⁸⁷ See paras.513-518.

¹²⁸⁸ [REDACTED].

¹²⁸⁹ See para.386.

¹²⁹⁰ [REDACTED].

¹²⁹¹ P01091_ET,p.SPOE00231063.

¹²⁹² 1D00147_ET,p.DHT03926-ET.

390. If any weight can be attributed to KRASNIQI's unpublished manuscript, another portion indicates that the decision to release the soldiers was based on consultations which included "*Albin KURTI who represented the Prishtina office of the KLA*", and that they "*had difficulty in consulting with colleagues who were abroad. That day the telephones were not working*".¹²⁹³ If accepted, this means that many people who were not part of the alleged JCE, including KURTI, were consulted about the release of the soldiers. Consultation is not evidence of participation in a JCE.

391. Finally, this episode relates to the capture and release of combatants, fully uniformed VJ soldiers that had wandered into a KLA encampment. The GS became involved in this matter when the internationals did, consistent with the GS's role as the KLA "*foreign ministry*".¹²⁹⁴

3. ***THAÇI did not make a "significant contribution" to the common purpose through KLA public statements***

392. The SPO accuses THAÇI of having made a significant contribution to the common purpose through having formulated or participated in the development, approval, promotion or dissemination of KLA communiqués, public statements and other media, which were intended to promote the common purpose and engender fear, distrust and hatred of Opponents.¹²⁹⁵

393. The SPO case relies heavily on these public statements. The PTB contains 51 paragraphs which cherry-pick the most purportedly incriminating statements, many of which still contain no language which could reasonably be understood as

¹²⁹³ P01091_ET,p.SPOE00231065.

¹²⁹⁴ T-240325,p.13599, T-240328,pp.14097-14099 (W04147).

¹²⁹⁵ Indictment,paras.50(a),(d).

supporting the alleged common purpose.¹²⁹⁶ Given the importance and centrality of these documents to the SPO case, it is extraordinary that the SPO's evidence contains two gaping holes in terms of: (i) authorship and dissemination; and (ii) the link between KLA public statements and any alleged crimes.

(a) The SPO has not demonstrated authorship or control over KLA public statements

394. The SPO did not call one witness who had authored a KLA communiqué or public statement or was present when one was drafted, reviewed or published. No witnesses were able to give a clear picture of the process for their production and publication. Instead, the evidence indicates that the communiqués were being authored and published outside Kosovo, with little or no involvement of GS members, and were an exercise in propaganda, morale building, and exaggeration.¹²⁹⁷ **SELIMI'S** conjecture to the SPO that communiqués were written by **THAÇI** and **KRASNIQI** can be given no weight.¹²⁹⁸ **SELIMI** admitted he had no personal knowledge of who drafted communiqués; never heard **THAÇI** or **KRASNIQI** claim to have written them; and only "concluded" that they were the authors because there was only one computer in the office and assumed them to be responsible based on their job descriptions. **SELIMI** did not identify *when* he saw a computer in *which* office; *whether* he ever saw **THAÇI** using the computer, and *how* **THAÇI** could have been using the computer when he was out of the country beginning in mid-November 1998. None of these questions can be answered because **THAÇI** was not able to cross-examine **SELIMI** which, combined with **SELIMI'S** evident motive in 2019 to implicate his fierce political opponent **THAÇI**, makes his evidence unreliable.

395. Public statements or media interviews were not discussed in the GS before they

¹²⁹⁶ E.g. P00811_ET.52; P00285_ET; P00286_ET; P00270_ET.12; P00812_ET.21; P00814_ET.8.

¹²⁹⁷ *Contra* Adjudicated Fact No.228.

¹²⁹⁸ P00763.3_ET, pp.2-10; P00761.7_ET.pp.5-6,16-19.

were given, they were the exclusive right of the individuals who gave them.¹²⁹⁹ **W04401** explained that, in 1996 and 1997, communiqués were written and published abroad; Xheladin GASHI and Nait HASANI mostly dealt with them.¹³⁰⁰ This distance meant that things were published that were not accurate. **W04401** was shown Communiqué 28 which he says is untrue in three aspects and is an example of *Zeri i Kosoves* publishing information it received without verifying it.¹³⁰¹ When asked how he knew the communiqués were being written abroad if he did not know who was writing them, **W04401** referred to speculation that they were written in Albania, Switzerland or Germany, although he never knew where;¹³⁰² **W04752** confirmed that “*Pristine*” would be written on a document even where it was prepared in a different location.¹³⁰³ **W04746** addresses in a book the question of who was issuing communiqués:

Q. Where were the first statements in the name of KLA General Staff issued from?

A. I have no idea. It has always been said that the statements were issued from Prishtina, but I can't say much about the details regarding this. I know that Zahir himself compiled continuing statements. He communicated by a phone from a foreign country and that was how the statements were issued.

[...]

A. [...] I know that Zahir from National Theater in Prishtina issued several of these statements. At that time Hakif Zejnullahu's brother, Bajram, was a guardian at the National Theater and one of Theater phones was used for issuing statements. This was a rather technical matter, which was done perfectly by Hakif's brother so that the phone could not be tapped.¹³⁰⁴

396. **W04401** agreed that operational groups could communicate directly with someone outside the country to relay information that ended up in communiqués without going through anyone who was part of the Central Staff.¹³⁰⁵ This corroborates **W04746**'s testimony that the Llap zone worked with the media and had direct contacts

¹²⁹⁹ T-241203,pp.23136-23137,23153 (W04401).

¹³⁰⁰ T-241128,p.23002, T-241202,p.23135, T-241203,p.23253 (W04401).

¹³⁰¹ T-241203,pp.23254-23256,23260 (W04401).

¹³⁰² T-241202,p.23136 (W04401). *See also* T-241203,pp.23428-23430 (W04401).

¹³⁰³ T-240717,pp.18449-18450 (W04752).

¹³⁰⁴ P00188,p.SPOE00053284.

¹³⁰⁵ T-241204,p.23430 (W04401).

with *Kosovapress*.¹³⁰⁶ **W04401** testified that GS members were generally aware that communiqués were being published in *Zeri i Kosovës* purportedly on behalf of the GS, but they never discussed them.¹³⁰⁷ The GS did, of course, react to Communiqué 59's allegations that Gani GECE was a traitor. This does not mean that other communiqués that prompted no such reaction can be understood as reflecting the GS's position. **W04290** said a reaction to Communiqué 59¹³⁰⁸ was required because of an interview broadcast on television, meaning it was necessary and reasonable to act.¹³⁰⁹

397. In addition to the mystery around their production and publication, KLA public statements were often untrue, and therefore an unreliable reflection of the KLA's position. **W04746** testified that the KLA war was more propaganda than operational,¹³¹⁰ and **W04401** described communiqués as "*instruments of propaganda*".¹³¹¹ [REDACTED] testified that communiqués were issued to counter daily Serb propaganda. KLA public statements sought to raise morale and exaggerate successes.¹³¹² Communiqué 57 was published in *Zeri i Kosovës* on 8 October 1998 after the summer offensive, for example, and stated that the enemy "*were still not able to inflict any serious damage to the military formations of the KLA*" when in fact KLA forces were scattered.¹³¹³ Press Release No. 14 on 1 November 1998 was signed by the "*KLA Military Police Directorate*" when there was no such thing in November 1998.¹³¹⁴ **W04401** reviewed a communiqué from November 1997, which talked about a KLA special unit attacking Golesh aerodrome and bringing down a Cessna 310 aircraft. He confirmed that in 1997 the KLA did not have the capacity to bring down a plane, had

¹³⁰⁶ T-230711, pp.5493-5494 (W04746).

¹³⁰⁷ T-241204, p.23420 (W04401).

¹³⁰⁸ P00760_ET.2.

¹³⁰⁹ T-250210, pp.24966-24967 (W04290).

¹³¹⁰ T-230714, p.5695 (W04746).

¹³¹¹ T-241203, pp.23255-23256 (W04401). *See also* [REDACTED].

¹³¹² [REDACTED].

¹³¹³ [REDACTED].

¹³¹⁴ T-241203, pp.23224-23225 (W04401).

no heavy weapons, only Kalashnikovs, and that this was an example of *Zeri i Kosoves* publishing a communiqué which had the KLA taking responsibility for an action it had nothing to do with.¹³¹⁵ Communiqué 28¹³¹⁶ on 12 January 1997 talked about two assassinations in “*operational zone no. 1*”. **W04401** confirmed that there was no such zone at that time, only three or four groups that had organised in self-defence. There was nothing verifiably true in that document, it was “*meant for public opinion.*”¹³¹⁷

398. **W04408** said HRW put a high value on KLA communiqués because they were produced by KLA official structures. He was shown a communiqué about the arrest of the two journalists which appears to have been written by someone who did not know that they were first detained almost three weeks after the communiqué says they were put on trial,¹³¹⁸ and he agreed that KLA communiqués may or may not have been accurate,¹³¹⁹ and that “*propaganda is a part of conflict.*”¹³²⁰ **W04147** said that KDOM did not attach much importance to KLA public statements, tending to see them “*as a public relations exercise that contained very little valuable information*” for their mission.¹³²¹ In this context, the SPO’s unnuanced presentation of the KLA public statements as being an accurate reflection of anything, let alone a significant contribution of **THAÇI** to the alleged common purpose, is unsustainable.

399. Furthermore, the KLA was entitled to try to minimise the adverse impact of collaborators and spies on its military operations and the civilians it was fighting to protect.¹³²² **W04401** was confronted with his prior statement that “*it was the General Staff that on collegial basis decided about the punitive measures against the enemy*

¹³¹⁵ T-241203,pp.23259-23260 (W04401).

¹³¹⁶ P00273_ET.

¹³¹⁷ T-241204,pp.23335-23336 (W04401).

¹³¹⁸ T-230911,pp.7636-7637 (W04408).

¹³¹⁹ T-230911,p.7641 (W04408).

¹³²⁰ T-230911,p.7640 (W04408).

¹³²¹ T-240328,pp.14039-14040 (W04147).

¹³²² See para.648.

collaborators”,¹³²³ but explained that he had in mind the GS communiqués issued to warn people against collaborating, and that he always had in mind “*those who turned their guns against the KLA. Those who were caught in the act, I was referring to these specific cases, no other cases*”.¹³²⁴ In that context he explained that the main purpose of communiqués was to deter others from collaborating with the occupying force, and were a warning,¹³²⁵ of a generalised nature.¹³²⁶ W04401’s understanding of collaborators finds corroboration in a large volume of evidence indicating that while some people would misuse the term collaborator for “*blood feuds or personal revenge*”, it meant those who worked together with the enemy and provided information to them.¹³²⁷

400. Moreover, the SPO case that KLA public statements were intended to promote the common purpose and engender fear, distrust and hatred of Opponents¹³²⁸ ignores

¹³²³ T-241128,p.22986 (W04401).

¹³²⁴ T-241128,p.22986 (W04401).

¹³²⁵ T-241128,p.22987 (W04401).

¹³²⁶ T-241202,p.23096 (W04401).

¹³²⁷ [REDACTED]. P01355.5_ET,pp.2-3 (*see also* T-240703,pp.17534-17535 (W04752)): a collaborator is “*somebody who is an enemy collaborator and is part of a unit, he would disclose information about the unit, what powers -- what -- the strength of the unit, how prepared the unit is, and how capable is the unit to act. And this is information for the enemy how to destroy this unit*” and that a civilian could also be a collaborator, a person who collaborates with the enemy is the same whether he is within the ranks of the KLA or outside those ranks. “*Such person would give the enemy information on our movement and is a collaborator with the enemy. It’s the same classification as a collaborator regardless of whether he is a member of a unit, with uniform, or a civilian*”; T-250128,p.24647 (W04743): “*collaborator*” means cooperation with the Serbs; [REDACTED]: all armies are concerned with ensuring they don’t have collaborators in their ranks. Someone married to a Serb would not be considered a collaborator, although perhaps people without military experience would think that. There was no KLA policy to unlawfully intimidate or commit violence against alleged collaborators; [REDACTED]: the main task of counter-intelligence was to find the collaborators within the KLA, [REDACTED]. The main concern was not those who continued to receive a salary from Serbia, it was those they did not know about, collaborators who were used to gather information about the KLA and civilians. There were many people who worked for Serb state security and that was where the main risk came from. They caused a lot of damage. Having a Serb friend or Serb spouse did not mean someone would be considered as a collaborator. Otherwise, hundreds of thousands of people would have been considered as collaborators; 1D00451,p.DHT03866; T-240325,pp.13645-13646 (W04147): the Serbs were very effective at intercepting KLA communications. *See also* T-240524,pp.19535-19536 (W01511): FARK was also concerned about collaborators.

¹³²⁸ Indictment,paras.50(a),(d).

the rational explanation that they were actually intended to achieve a military purpose: the *Limaj* Trial Chamber found communiqués were issued to discourage collaborators in furtherance of the KLA's *military* objectives, and not in furtherance of a common criminal purpose.¹³²⁹ The SPO's case must also be assessed against the statements which also **condemned** violence against civilians in all forms,¹³³⁰ which are a further obstacle to a finding beyond reasonable doubt that somehow **THAÇI** made a significant contribution to the alleged common purpose to *gain and exercise control over all of Kosovo* by targeting Opponents through KLA communiqués and public statements.

(b) The SPO has not demonstrated the link between KLA public statements and crimes

401. The second gaping hole in the SPO evidence concerning the KLA public statements is its failure to have demonstrated a link between these statements and any alleged crimes. The SPO is required to demonstrate beyond a reasonable doubt that **THAÇI**'s contribution to the execution of the common purpose should "*at least be a significant contribution to the crimes for which he or she is found responsible.*"¹³³¹

402. The link between public statements and resulting crimes has been considered in the context of cases in which instigation was charged as a mode of liability. Although instigation and commission through a JCE have different elements, they both require a causal connection between the alleged public statements and the

¹³²⁹ *Limaj* TJ, paras.216-217.

¹³³⁰ P00306_ET,p.SPOE40000799: "*The KLA General Staff has distanced itself many times until now from any forms of violence against defenceless and unarmed citizens*"; P00286_ET; P00270_ET.12; 4D00159; 1D00508,p.DHT05422; 4D00165,p.020758; 1D00509,para.12; 4D00225_ET; P00529,p.020678; 1D00491,p.SITF00011517; 4D00159,4D00165; 1D00550,para.4. See also T-240326,p.13741 (W04147); 4D00187,p.SPOE00304597.

¹³³¹ *Mustafa* TJ,para.740; Confirmation Decision,para.110.

resultant crimes.¹³³² The reasoning in these cases demonstrates that there is a point at which a finder of fact can reasonably conclude that a speech or public statement made the requisite causal contribution to the crimes, and a point at which this finding will be impossible given the lack of a temporal or geographical nexus between them. In *Nahimana*, for example, the ICTR Appeals Chamber found in the context of a direct and public incitement charge, “the longer the lapse of time between a broadcast and the killing of a person, the greater the possibility that other events might be the real cause of such killing and that the broadcast might not have substantially contributed to it.”¹³³³

403. ŠEŠELJ was found to have made a speech in mid-March 1992 in Mali Zvornik calling on the Serbs to “clear up” Bosnia of the “pogani” (waste or faeces).¹³³⁴ Just under three weeks later, Serbian forces commenced their takeover of Zvornik, allegedly killing civilians. On 1 and 7 April, ŠEŠELJ delivered two speeches in the Serbian parliament which “clearly constituted calls for the expulsion and forcible transfer of Croats”.¹³³⁵ The Trial Chamber found the Mali Zvornik and Serbian parliament speeches did not amount to instigation because their impact was too insignificant and/or the possibility could not be excluded that their aim was to contribute to the war effort or ŠEŠELJ’s political campaign. The Appeals Chamber then concluded:¹³³⁶

The crux of the Prosecution’s argument on appeal is the temporal link between Šešelj’s statements and the contemporaneous or subsequent commission of crimes in various locations. The Appeals Chamber considers that a reasonable trier of fact could find such a link to be tenuous in circumstances where there was a significant lapse of time between the statement and the offences, allowing for the reasonable possibility that Šešelj’s statement did not substantially contribute to the commission of the specific crimes and that other factors may have influenced the conduct of the perpetrators. The Appeals Chamber notes that the Trial Chamber received evidence that Šešelj delivered a speech in Mali Zvornik in mid-March 1992, whereas the attack on Zvornik commenced nearly three weeks later, on 8 April 1992. In relation to, Šešelj’s

¹³³² JCE requires proof of a “significant contribution” to the crimes: *Mustafa TJ*, para.740. Instigation requires proof that the instigation made a “substantial contribution” to the conduct of the principal perpetrator: *Kordić AJ*, para.27.

¹³³³ *Nahimana AJ*, para.513.

¹³³⁴ *Šešelj AJ*, para.127.

¹³³⁵ *Šešelj TJ*, para.335.

¹³³⁶ *Šešelj AJ*, para.132.

speeches on 1 and 7 April 1992, at the Serbian Parliament that the Trial Chamber found to have constituted calls for the expulsion and transfer of Croats, the Prosecution did not demonstrate at trial the breadth of their dissemination and the specific impact that they had on the commission of crimes in Zvornik and other areas [...] the Prosecution does not demonstrate that no reasonable trier of fact could have reached the impugned conclusion.

404. Having charged **THAČI** through a JCE, the SPO is now required to prove that **THAČI** made a significant contribution to the charged crimes for liability to arise. The *Šešelj* reasoning concerns a “substantial” rather than “significant” contribution between a public statement and charged conduct. However, it reinforces that the SPO is required to lead credible evidence on the breadth of the dissemination of KLA public statements and the specific impact they had on the commission of crimes in relevant areas. It has not. The SPO has made **no effort** to demonstrate any link whatsoever between **THAČI**’s alleged formulation and participation in the “development, approval, promotion or dissemination of KLA communiqués, public statements and other media” and the crimes with which he is charged, setting out the temporal or geographical nexus between those statements and the alleged crimes. The causal link between these public statements and charged crimes has never been articulated or proven, and the evidence demonstrates the opposite.¹³³⁷

405. The need to demonstrate these causal links was particularly important where **THAČI** did not write or distribute the statements, and there is little evidence of their actual dissemination, whether they were ever seen by KLA forces on the ground and by whom, or how they were understood. There is no evidence at all that the perpetrators of crimes acted upon them. The KLA public statements do not on their face contain explicit orders to target or harm individuals or indeed civilians generally. Rather than references to “detain” or “murder” or “eliminate” civilians, the documents are framed in terms of calls to “attack”, “blow”, “fight” and a “military solution”, which necessitates additional effort and evidence by the SPO to establish that these

¹³³⁷ See paras.302-303.

statements were understood to mean that the perpetrators should commit the charged crimes.

406. Without having done this exercise, the SPO has been unable to build up an evidential picture demonstrating beyond reasonable doubt who authored and disseminated the impugned KLA public statements and communiqués;¹³³⁸ that they were intended to further the alleged goal to *gain and exercise control over all of Kosovo* by targeting Opponents and not for a lawful military purpose; and that through them **THAÇI** made a significant contribution to the commission of crimes.

C. **THAÇI** DID NOT HAVE THE REQUISITE INTENT

407. If the Panel finds beyond reasonable doubt that (i) the common purpose existed; and (ii) **THAÇI** made a significant contribution to the charged crimes, the SPO must also establish that **THAÇI** shared the intent with the other JCE participants to carry out the crimes forming part of the common purpose, namely the crimes under Counts 1-10 of the Indictment, including any special intent.¹³³⁹

408. In finding a well-grounded suspicion that **THAÇI** shared the intent to commit the crimes under Count 1-10 forming part of the common purpose, the Pre-Trial Judge found that his “*intent is apparent*” from: (i) his personal statements; (ii) public statements of the KLA GS and/or the PGoK leadership, as well as regulations, structures, directions and orders drafted, issued or approved by **THAÇI**; and (iii) his individual conduct, as specified elsewhere in the confirmation decision.¹³⁴⁰ **THAÇI**’s “*individual conduct*” as set out in the Indictment and PTB has been addressed above, none of which demonstrates that **THAÇI** shared the intent to carry out the crimes

¹³³⁸ *Contra* Adjudicated Fact No.228.

¹³³⁹ Confirmation Decision, para.110.

¹³⁴⁰ Confirmation Decision, para.473.

under Counts 1-10 of the Indictment.¹³⁴¹

409. In addition to the weakness of the evidence being offered in support of an intent finding, also relevant is the evidence of **THAÇI** calling for tolerance, condemning crimes and taking steps to stop violence he was allegedly part of a common purpose to commit. The evidence shows **THAÇI** taking these steps at significant personal risk, in the charged environment following the return of the 800,000 Kosovar Albanians pushed out of Kosovo by the Serb regime, who returned to find their lives decimated. As such, any finding that **THAÇI** shared the intent to commit the crimes under Counts 1-10 would also require a finding that none of this evidence of a clear pattern of conduct raises any doubt as to **THAÇI**'s alleged intent to murder and persecute the people he was seeking to protect. The volume and consistency of this evidence, however, is impossible to sidestep.

410. The evidence of **THAÇI**'s genuine efforts to prevent attacks on the alleged targets of the common purpose came from KLA members, internationals on the ground, and contemporaneous reporting. **THAÇI** was not only attempting to condemn and stop violence, but also asking for stabilisation within Kosovo and for the Kosovo Serbs to stay. He did this over a significant period of time.¹³⁴²

411. Already on 17 June 1999, **THAÇI** was publicly asking Serbs to return to Kosovo, saying: "*[w]e did not wage war to cleanse Kosovo; we waged war so that we all live in freedom and are equal*".¹³⁴³ A few days later, **THAÇI** promptly agreed to the SRSG's request to accompany him and use his influence to calm the Kosovar Albanians demonstrating in Mitrovicë/Mitrovica; UNMIK and OSCE reports described **THAÇI** persuading the crowd not to march into the Serb-held side of town, diffusing a

¹³⁴¹ Confirmation Decision, para.473, referring to evidence and allegations in Section III(B)(2).

¹³⁴² T-231207,p.10819 (W02161); 1D00088; T-250120,pp.23914-23916,23928-23943 (W02183); T-250930,pp.27396-27401, T-251002,p.27610 (COVEY); T-240528,pp.16193-16195 (W02144).

¹³⁴³ 1D00086. *See also* 1D00342_ET; 1D00469; 1D00472; 1D00473.

*“potentially violent confrontation”, saying “[w]e want to solve our problems peacefully”.*¹³⁴⁴ The SRSG said that the march would have been a disaster if it proceeded;¹³⁴⁵ COMKFOR also thanked **THAÇI** for his intervention.¹³⁴⁶ **W02183** accepted this as **THAÇI** playing a *“very helpful role”* in resolving this situation, at least in the short-term.¹³⁴⁷

412. Throughout the summer, **THAÇI** offered help to diffuse situations¹³⁴⁸ and promptly agreed with initiatives and requests from the SRSG to promote peacebuilding and reconciliation. Among these was a joint statement calling for a multi-ethnic Kosovo, an end to violence, for a return of people who had left, and for Serbs and other minorities to stay in Kosovo.¹³⁴⁹ The statement was signed together with other representatives of Kosovo communities and presented at a press conference on 2 July 1999.¹³⁵⁰ After an acknowledgment by DE MELLO that this was *“the first time that Albanian and Serb leaders of Kosovo meet and talk to one another, establishing a dialogue on the most pressing issue of the moment, which is the safety, security, the right to life, the right to property of all inhabitants of this province”*, **THAÇI** is recorded as saying in Albanian:¹³⁵¹

We call on the citizens of Kosovo, be them civilians or military, to refrain, and influence the others [to refrain], from undertaking acts of violence against their neighbours, since such acts are unacceptable, and those who are responsible for such acts will be brought to justice.

413. Other cooperation included **THAÇI**'s public condemnations of violence, as requested from the Serb representatives, with immediate, recognised positive repercussions on the Serb-Kosovar Albanian relationship;¹³⁵² and visits to Serb victims

¹³⁴⁴ 1D00471.

¹³⁴⁵ 1D00413.

¹³⁴⁶ 1D00229,p.DHT04927.

¹³⁴⁷ T-250120,pp.23931-23933 (W02183).

¹³⁴⁸ 1D00394,para.5; 1D00242.

¹³⁴⁹ 1D00475; 1D00478,p.SITF00011450. *See also* 1D00568,p.DHT04932.

¹³⁵⁰ 1D00230; 1D00231_ET.

¹³⁵¹ 1D00231_ET.

¹³⁵² 1D00402,pp.DHT05466-DHT05467; T-240528,pp.16190-16191 (W02144).

and Serb flats¹³⁵³ with KOUCHNER and representatives of the Kosovo Serb community.¹³⁵⁴

414. **THAÇI** also acted on his own initiative, voicing public condemnation of violence and crimes against minorities, in both local and international press, on an almost daily basis.¹³⁵⁵ **THAÇI** is recorded on 17 July 1999 in Rahovec/Orahovac saying: *“[t]he time has come today, as we have always respected new realities created, not to think too much of taking revenge, of hatred, of divisions. [...] We should be the ones who, unlike never before, unite for the independence of Kosovo”*.¹³⁵⁶ A video of this event recounts that *“[i]n a town bitterly divided between Albanians and Serbs. [...] Thaçi called for tolerance between the ethnic groups, a call this crowd may not yet be ready to hear.”*¹³⁵⁷

415. **THAÇI** continued to make these calls even when it was unpopular and personally dangerous, such as after the Gracko killings on 23 July 1999; **COVEY** explained the challenges of that situation,¹³⁵⁸ providing additional context for the evidence of **THAÇI**'s strong condemnation of the incident, both in a personal capacity and through a declaration issued on behalf of the PGoK;¹³⁵⁹ **THAÇI** and **ÇEKU** also distanced themselves and the KLA from these events, and offered to help with the investigation.¹³⁶⁰ **THAÇI**'s consistent message in response to such acts was: *“we will not allow anarchy to prevail in Kosovo”*.¹³⁶¹ A PGoK statement of 2 August 1999 echoed this, expressing *“indignation at the killing of civilians in Kosova independent of the nationality of the victims”* and calling *“again on the citizens of Kosova to put aside the*

¹³⁵³ 1D00149,p.2; 1D00150; 1D00390,para.42; 1D00483; 1D00484.

¹³⁵⁴ 1D00344,p.DHT05556; 1D00473; 1D00542,21 July. *See also* 1D00542, July 21.

¹³⁵⁵ 1D00089; T-250120,pp.23914-23916 (W02183); 4D00101,p.SPOE00214815; 1D00403; 1D00094_ET; 1D00476,p.020562; 1D00479.

¹³⁵⁶ 1D00124, at 00:50-01:25.

¹³⁵⁷ P02841_ET.

¹³⁵⁸ T-250930,pp.27370-27371,27394,27398-27401 (COVEY). *See also* 1D00555.

¹³⁵⁹ 1D00414; T-240528,pp.16192-16193 (W02144). *See also* 1D00393; 1D00090_ET; 1D00091_ET; 1D00175; 1D00257,para.4; 1D00486; 1D00487; 1D00488.

¹³⁶⁰ 1D00149,p.2; 1D00480_ET; 1D00414,p.DHT03001-ET; 1D00477_ET; 1D00485; 1D00564,p.7004590.

¹³⁶¹ T-250930,pp.27398-27401 (COVEY); 1D00477; 1D00480.

hostilities and turn to the reconstruction of Kosova and to just and political solutions of political issues."¹³⁶² **W04403** testified this statement was consistent with his understanding of **THAÇI**'s desire for a multi-ethnic Kosovo, and that this "*was the orientation of the political directorate of the KLA always*".¹³⁶³

416. **DUNCAN, CLARK** and **DURKEE** had a privileged viewpoint and the benefit of abundant information from a variety of sources, and testified that **THAÇI** could not have independently stopped the violence committed by Albanians against Serbs, and did appeal for calm.¹³⁶⁴ **CLARK** confirmed the accuracy of his contemporaneous statement that he thought these calls were genuine.¹³⁶⁵ Their testimony is reinforced by the evidence of **THAÇI**'s motivation to keep the peace, to ensure the continuation of crucial U.S. support.¹³⁶⁶ **THAÇI**'s calls for reconciliation and condemnation of violence continued, consistently, after the Indictment period.¹³⁶⁷

417. The SPO has never tried to square this circle. There has never been an explanation as to how this body of evidence of **THAÇI** trying to prevent violence and ensure calm fits together with its allegation that **THAÇI** intended crimes to be committed against those he was publicly seeking to protect, in order to *gain and exercise control over all of Kosovo*. Any suggestion that this was 'double-speak' from **THAÇI**, and that he was somehow calling for calm on one hand, while stoking violence with the other, would require evidence: evidence showing that while publicly and repeatedly calling for the end of violence and multi-ethnic harmony and tolerance, **THAÇI** was clandestinely passing a message of incitement and hatred to an

¹³⁶² 1D00257,para.4.

¹³⁶³ T-250325,pp.25886-25887 (W04403).

¹³⁶⁴ T-250922,p.27120 (DUNCAN); T-251113,pp.28023-28024 (DURKEE); 4D00143_ET. See also 1D00543,p.DHT04163.

¹³⁶⁵ T-251117,pp.28144-28145 (CLARK), regarding 1D00096. See also 1D00470; 1D00481,p.020574.

¹³⁶⁶ See paras.44-46.

¹³⁶⁷ 1D00496; 1D00497,p.7000007; 1D00499,p.020951; 1D00500; 1D00501; 1D00503; 1D00504; 1D00505; 1D00528,para.3; 1D00468; T-250930,pp.27388-27389 (COVEY), discussing 1D00410.

Albanian-only audience. No such evidence exists. To the contrary, **THAÇI**'s calls for peace were being reported in the local media sources.¹³⁶⁸ The SPO could have put any such theory to its witnesses; it did not. **COVEY** did not accept the Panel's suggestion that **THAÇI**'s calls for calm were simply reflective of what he thought UNMIK wanted to hear:¹³⁶⁹

First, that in the early days, to make any such statement carried with it significant risk, political risk certainly but also personal risk, and that I'm very familiar with from post-conflict settings elsewhere. History is replete with people who suffered for making moderating remarks. So, first, to make such a statement at any point in the early days was noteworthy. And, second, to have made remarks like that on a number of occasions, if it were just a credentialing exercise to -so that he could tell us, "I've said the right thing," it would be easy to be sceptical. But he -I think the record shows that he voiced these kinds of sentiments in public, on the record, a number of times in the early days, and that I have to say was surprising at the time and welcome.

418. **W02161** agreed that when **THAÇI** was asking for reconciliation, no violence, and a multi-ethnic society, he was putting himself at physical risk from those Kosovar Albanians who just wanted to throw the Serbs or Roma out, but **THAÇI** did it anyway.¹³⁷⁰

419. Even if the SPO had presented credible evidence that **THAÇI**'s desire that crimes should stop was motivated by wanting to appease or please the international community, this does not equate to the requisite intent for each of the crimes in Counts 1-10. Moreover, any suggestion that these acts and statements were somehow performative is undermined by the fact they continued: **THAÇI** continued on a political journey which not only incorporated these consistent calls for a multi-ethnic democratic and peaceful Kosovo in his words, but also in his actions.¹³⁷¹

420. The SPO case is that **THAÇI** intended each of the crimes charged in Counts 1-

¹³⁶⁸ T-231207,p.10831 (W02161), discussing P00527, 1D00091.

¹³⁶⁹ T-251002,p.27610 (COVEY).

¹³⁷⁰ T-231207,pp.10819-10822 (W02161). See also T-251002,p.27611 (COVEY): **THAÇI** visiting Serb households "might have put a bullseye on his back."

¹³⁷¹ See paras.67-70.

10 of the Indictment; he intended that murder, torture, cruel treatment and persecution be committed against the citizens of Kosovo in order to *gain and exercise control over all of Kosovo*. HILL interacted with THAČI during the relevant events and was asked about MILOŠEVIĆ's assessment that THAČI had "*personally tortured many people and had been involved in many killings*". He testified that "*not only did I assess that he's not that kind of person, but I did not hear that from anybody*".¹³⁷² Nor has the Panel. The evidence precludes any finding beyond reasonable doubt that THAČI intended the commission of the charged crimes, and accordingly, he cannot be held liable for them through the SPO's alleged JCE.

D. JCE III

421. Each count in this case has been charged as being **both** part of the JCE (JCE I), and a reasonably foreseeable consequence of it (JCE III).¹³⁷³ The SPO is hedging its bets. This hedging means the Defence has been deprived of the ability to make meaningful submissions concerning whether in the context of a common purpose involving X crimes, it is reasonably foreseeable that Y crimes would result. This is fundamentally prejudicial.

422. In other cases, like *Popović*, the ICTY prosecution alleged that it was reasonably foreseeable to the accused that individual criminal acts, such as **individual opportunistic killings and persecutory acts** (JCE III) would be carried out by Serb forces **during the JCE to forcibly transfer and deport** the populations of the Srebrenica and Zepa enclaves (JCE I).¹³⁷⁴ This allowed the defendants to then bring evidence and make submissions on why it was not reasonably foreseeable, on the basis

¹³⁷² T-251110,p.27696 (HILL), discussing 1D00423,p.DHT12273.

¹³⁷³ Indictment,para.34.

¹³⁷⁴ *Popović* Indictment,para.83. See also *Đorđević* Indictment,para.21; *Karadžić* Indictment,paras.9-10; *Mladić* Indictment,paras.8-9; *Stanišić* Indictment,paras.13-14; *Milutinović* Indictment,para.21. In a minority of ICTY cases, the charges were framed in the same manner with no distinction being drawn between JCE I and III counts: *Haradinaj* Indictment,para.23; *Stakić* Indictment,paras.26,28.

of their individual knowledge and the context of the case. The same approach was adopted in ICTR cases.¹³⁷⁵

423. This separate designation of the JCE I and JCE III crimes is important, because any assessment of what was reasonably foreseeable to an accused “*must be made on the basis of his **individual knowledge** and that what may be foreseeable to one member of a JCE may not be foreseeable to another*”.¹³⁷⁶ For example, the *Sainović* Appeals Chamber held:¹³⁷⁷

*The question of whether persecution, through sexual assaults, committed in Beleg, Ćirez/Qirez, and Priština/Prishtina were foreseeable to Šainović and Lukić must be assessed in relation to their individual knowledge. Depending on the information available, what may be foreseeable to one member of a JCE, might not be foreseeable to another. Consequently, the Appeals Chamber will consider whether it was foreseeable to them, **individually**, that sexual assaults could be committed and that they willingly took that risk. While the Appeals Chamber is cognisant that situations of widespread violence against the civilian population are conducive to the commission of a wide range of criminal acts, for JCE III liability to arise it must be established that the possibility of sexual violence being committed was sufficiently substantial as to be foreseeable **to each accused**.*

424. Alleging that **all the charged crimes** are part of the common purpose (JCE I), or alternatively a reasonably foreseeable consequence of that common purpose (JCE III) does not give **THAČI** the detailed notice of the case that would allow him to make these kinds of submissions, particularly in his specific situation of prolonged absence from the alleged crime base. This blanket charging deprives him of the ability to defend against JCE III charges by providing reasoned submissions that certain crimes could never be a foreseeable consequence of other crimes, in the context of this case and his individual knowledge.

¹³⁷⁵ *Karemera* Indictment, para.7: “The crimes enumerated in Counts 2,3,4,6, and 7 of this indictment were within the object of the joint criminal enterprise. The crimes enumerated in Counts 3, 4, and 5 were the natural and foreseeable consequences of the execution of the object of the joint criminal enterprise and the accused were aware that such crimes were the possible outcome of the execution of the joint criminal enterprise.” See also *Kabuga* Indictment, paras.31,34.

¹³⁷⁶ *Brđanin* AJ, para.365, citing *Tadić* AJ, para.220, *Kvočka* AJ, para.86, *Blaškić* AJ, para.33, *Stakić* AJ, paras.65,99-103.

¹³⁷⁷ *Šainović* AJ, para.1575 (emphasis added).

E. CONCLUSION

425. Should the Trial Panel find that a broad and undefined group of “KLA members” shared a common purpose to *gain and exercise control over all of Kosovo through* criminal means, the judgment in this case would be rewriting the established history of the events in Kosovo in 1998 and 1999. It would depart from decades of findings of international and domestic courts, rewriting the history books and signaling to Kosovar society that their own understanding of their own lived events has been mistaken. Requiring a seismic shift in the understanding of the conflict in Kosovo would be justified if the evidence demonstrated beyond a reasonable doubt that the crimes were indeed committed pursuant to broad-ranging criminal plan. However, the proceedings of the past three years preclude any such findings.

426. The SPO has never, during its investigations or the presentation of its case, successfully put this common purpose to anyone. No witness has agreed that this common purpose was in operation in Kosovo during the Indictment period. The following exchange in **W04403**’s SPO interview typifies the SPO’s repeated, clumsy, and unsuccessful attempts to force this criminal purpose onto the KLA/PGoK apparatus where it clearly did not exist:

Q. The KLA didn’t want a multi-ethnic Kosovo; right?

A. No, we agreed on the multi-ethnic Kosovo also in the Rambouillet treaty [Overlapping speakers] ... no parties could even under the law be registered in Kosovo if they were not for multi-ethnic Kosovo. It’s not possible to even register a party under the law itself. It’s possible to register parties but not parties that are against a multi-ethnic Kosovo. [...]

Q. And the KLA leadership, they wanted to run Kosovo after defeating Serbia; right?

A. No. The objective of the KLA was to liberate the area, and then that the political parties would take power and run Kosovo. This is in accordance with—that’s why the KLA signed the Rambouillet Agreement and it was—agreed to disarmament and to the position [Indiscernible] UNMIK and NATO.

Q. But what happened after the conflict, in fact, is that some General Staff members became in charge of Kosovo as a country; no?

A. Yes, because according to the Rambouillet Agreement, this is the result of an agreement with the international community, that the KLA would be disarmed and that it would be transformed

*into a political party. This is the result of an international agreement. We were bound under this agreement to disarm the KLA and to establish a political party. So it was an obligation arising from the international agreements that the KLA would be disassembled and that part of it would become part of the –would form the Kosovo army, part of it would form the police, and then part of it would be demilitarised and form part of the political parties. [...]*¹³⁷⁸

W04403 confirmed this evidence while testifying, adding:

*After the war, many political parties were established. For example, myself, Bislim Zyrapi, created the party Liberal Centre of Kosovo. The political directorate, Thaçi and others, formed the Democratic Party of Kosovo. [...] Ramush Haradinaj, who was a zone commander, with Ahmet Isufi, also another zone commander, formed the Alliance for the Future of Kosovo. So it was not only one political party formed by former KLA members. There were many. Even LDK had in itself members who were officers who are even today deputies.*¹³⁷⁹

427. The story relayed by the witnesses of the events of March 1998 until September 1999 is complex, nuanced, and in no way reflective of the existence of the SPO's common purpose by those in the "KLA/PGoK" to *gain and exercise control over all of Kosovo* through crimes against those it was working alongside. **THAÇI** cannot be held liable on the basis of the charged common purpose and should be acquitted of all crimes alleged through a JCE.

IV. AIDING AND ABETTING

428. In relation to the SPO's aiding and abetting case, the same arguments and evidence which demonstrate that **THAÇI** did not make a significant contribution to the alleged common purpose also preclude any finding beyond a reasonable doubt that his acts had a substantial effect on the perpetration of the charged crimes, which is a higher threshold.¹³⁸⁰ The SPO must also have established beyond reasonable doubt that **THAÇI** knew that his acts or omissions assisted in the commission of crimes by the perpetrators, and was aware of the essential elements of the crimes committed, including the perpetrators state of mind and any relevant specific intent.¹³⁸¹ This has

¹³⁷⁸ P02090.6_ET,pp.15,18-19.

¹³⁷⁹ T-250325,pp.25876-25882 (W04403).

¹³⁸⁰ Prlić AJ,para.2768.

¹³⁸¹ Confirmation Decision,para.117.

not even been attempted, and is nowhere in the evidential record.

V. COMMAND RESPONSIBILITY

A. THE NOTICE PROBLEM

429. The SPO command case is pleaded in three paragraphs of the Indictment,¹³⁸² and five paragraphs of its PTB.¹³⁸³ According to the SPO, the accused “*were members of the GS and among the highest-ranking officials in the KLA and/or PGoK. In these capacities and pursuant to their de facto authority as senior leadership in the KLA and PGoK [the Accused] each had effective control over the JCE Members and Tools who committed the crimes charged in the indictment*”.¹³⁸⁴

430. In January 2023, the Defence reiterated¹³⁸⁵ the SPO’s failure to plead the material facts underpinning its command case.¹³⁸⁶ When pressed by the Panel, the SPO said:¹³⁸⁷ “*What we are intending to prove is that **each of the accused had authority over the entire KLA/PGoK’s structures and effective control over those who committed the charged crimes.***” The SPO added that the Accused also had command responsibility **over each other**,¹³⁸⁸ which had not been pleaded.

431. **THAÇI** has not been provided with notice of the material facts which form the basis of his alleged superior-subordinate relationship with perpetrators. Is he alleged to have been a military commander, or civilian leader? Did this change over time, and if so, when? Does the SPO allege **THAÇI** is in a superior-subordinate relationship with the alleged perpetrators in any other capacity other than as “*a member of the GS and*

¹³⁸² Indictment, paras.55-57.

¹³⁸³ SPO PTB, paras.709-713.

¹³⁸⁴ Indictment, para.55.

¹³⁸⁵ F00215, paras.40-48.

¹³⁸⁶ T-230118, pp.1876,1879-1881 (Trial Preparation Conference).

¹³⁸⁷ T-230118, p.1871 (Trial Preparation Conference) (emphasis added).

¹³⁸⁸ T-230118, p.1872 (Trial Preparation Conference).

among the highest ranking officials in the KLA and/or PGoK"?¹³⁸⁹ Is **THAÇI** alleged to have been part of the KLA's chain of military command, and on what basis? What are the indicia giving rise to **THAÇI**'s alleged ability to prevent or punish all perpetrators, in relation to the different roles ascribed to him by the SPO? How and when did an alleged superior-subordinate relationship arise between **THAÇI** and his co-accused (and who is the superior and who is the subordinate, and on what basis)?

432. Without notice of these basic details –the underlying material facts– the SPO's pleading of its command case is defective.¹³⁹⁰ The notice requirements of Article 21(4)(a) of the Law are not met by alleging the defendant is responsible for the acts of every perpetrator who committed crimes in the Indictment period because he had "*capacities*" and therefore "*effective control*".¹³⁹¹ General language that an accused is responsible as a superior is insufficient without notice of "*the specific acts or course of conduct of [the accused] himself that formed the basis for his liability [as a superior]*".¹³⁹²

433. This is not a mere technical complaint. **THAÇI** had different titles, responsibilities, involvement with, and proximity to KLA/PGoK members depending on the role and time. He was also outside Kosovo for much of the Indictment period, which impacts his authority over alleged perpetrators and any ability to prevent and punish. In this context, it is wildly insufficient to sweepingly allege **THAÇI** is responsible as a superior because of his GS membership and high-ranking status, at all times, and over all perpetrators; an accused has a right to know the material facts which form the basis of the alleged superior-subordinate relationship, and his alleged ability to prevent or punish, in order to be able to demonstrate otherwise.

434. In *Prlić*, the ICTY Appeals Chamber noted that "*since a large component of the*

¹³⁸⁹ Indictment, para.55; SPO PTB, para.710.

¹³⁹⁰ *Muvunyi* AJ, para.44.

¹³⁹¹ Indictment, para.55.

¹³⁹² *Naletilić* AJ, para.90. See, e.g. *Bemba* DCC, paras.55-100.

case against *Ćorić* concerned the exercise of powers and functions-both in relation to JCE liability and superior responsibility-facts concerning his acts and conduct after the change of an official position should have been clearly pleaded in the Indictment **as material facts**" and found that the ambiguous nature of the Indictment on *ĆORIC*'s alleged responsibility for crimes committed after the change in position rendered the Indictment defective.¹³⁹³ The prosecution must plead these material facts, in relation to each position, precisely because an accused's control over perpetrators will differ depending on the role. And while a prosecutor is entitled to rely on the "*cumulative effect*" of an accused's various functions, particularly when he is alleged to have been a member of collective bodies with shared authority among members,¹³⁹⁴ in such a case, the prosecutor must establish "*that each of these mandated roles is relevant to the charges. In particular, the prosecution would have to establish that a particular mandate or role gave him some degree of authority over the perpetrators*".¹³⁹⁵

435. The Panel has been presented with evidence from 265 witnesses. Not one has testified that they received a binding order from **THAČI** and acted pursuant to it, or were prevented from acting or punished by him, or considered themselves as falling within his effective control. There is a wall of evidence raising reasonable doubt as to any of these propositions. The vagueness of the SPO case is deliberate. **THAČI** is not liable as a superior, and not even the SPO could articulate otherwise, undermining their command case from the start.

B. THERE WAS NO SUPERIOR-SUBORDINATE RELATIONSHIP BETWEEN **THAČI** AND THE ALLEGED PERPETRATORS

1. ***THAČI was not part of a chain of command***

¹³⁹³ *Prlić* AJ, paras.90-95 (emphasis added).

¹³⁹⁴ *Orić* TJ, para.313; *Brdanin* TJ, para.277; *Musema* TJ, para.135.

¹³⁹⁵ *Mettraux*, p.162.

436. The existence of a superior-subordinate relationship requires proof of a chain of command between the accused and the perpetrators. Effective control *“has to be exercised within a hierarchical structure”*, which *“must possess particular features such as a certain degree of stability and organization that is not limited to the actual and contingent situation”*.¹³⁹⁶ This finding has not been established in relation to **THAÇI**, for the following reasons.

(a) Formation and growth of the KLA lacked central organisation

437. The KLA emerged as a series of independent village-based armed groups, responsive to the horrific crimes being committed against the civilian population it sought to protect. As a result, the KLA did not exhibit the same coordination and joint action as other armed groups but was, and remained, fundamentally localised. **COVEY** called the KLA *“not an organisation”* but *“a diffuse movement made up of a number of regional zone commanders.”*¹³⁹⁷ HRW noted that *“[t]hroughout 1998, the KLA was primarily a disorganised collection of armed villagers, often built around family structures, without a clear chain of command.”*¹³⁹⁸

438. Recruitment was also local, and often involved gathering family, friends or other local people, with no hierarchy.¹³⁹⁹ **W04403** gathered people from the area and said he would help them organise, as the most qualified soldier in his region. It was a people’s rebellion, there were no reporting lines.¹⁴⁰⁰ **W01511** said the KLA was organised for the people and it was born for the people, it did not come from the higher levels.¹⁴⁰¹ **W01453** said that there were no instructions on how to recruit, they

¹³⁹⁶ Meloni,p.105, citing Werle,p.90.

¹³⁹⁷ T-251001,p.27550 (COVEY).

¹³⁹⁸ T-230906,p.7447 (W04408).

¹³⁹⁹ T-250211,pp.25018-25020 (W04290); T-230418,pp.3089-3090 (W02652); T-240423,pp.14736-14737 (W04741).

¹⁴⁰⁰ T-250325,pp.25839-25841 (W04403), discussing P02090.3_ET,p.15.

¹⁴⁰¹ T-240903,pp.19498 (W01511).

just tried to organise themselves into guerilla groups, and go to the areas and work with the people they knew best.¹⁴⁰² When volunteers arrived from outside Kosovo, they went to areas where they had family connections or friends.¹⁴⁰³ **W04255** agreed with the *Haradinaj* finding that “*the gathering of small groups of men in the villages was not centrally organised; it was done at the initiative of the villages*”.¹⁴⁰⁴

439. Not only was the creation of the KLA deeply localised, but attempts to organise were also local.¹⁴⁰⁵ Consequently, as **W04765** explained, the state of KLA organisation depended on how good the people were in a particular area (and it was much more chaotic in some zones) but there was no national authority to organise the KLA consistently across Kosovo.¹⁴⁰⁶ **W04753** said the villages were organising themselves and it was [REDACTED]. He described performing guard duty on a village border and returning home to eat dinner,¹⁴⁰⁷ with **CLARK** also writing that the KLA “*were coming back into their homes at night and then moving back into the forests.*”¹⁴⁰⁸ An [REDACTED] from [REDACTED] 1998 describes an encounter at a UCK checkpoint [REDACTED]; the report concluded that [REDACTED].¹⁴⁰⁹

440. **W04147** stated [REDACTED].¹⁴¹⁰ KLA members were defending their homes and families and were led by individual leaders who eventually became the zone commanders.¹⁴¹¹ Defence groups would form and call themselves KLA.¹⁴¹² A UK

¹⁴⁰² T-241104,pp.21840-21843 (W01453).

¹⁴⁰³ T-250128,p.24700 (W04743).

¹⁴⁰⁴ T-230912,pp.7856-7857 (W04255). *See also* Adjudicated Fact No.767.

¹⁴⁰⁵ T-230903,pp.19499-19502 (W01511); T-250325,pp.25842-25844 (W04403); T-230912,pp.7779-7783 (W04255); T-241118,pp.22306-22307 (W04679); T-240930,pp.20469-20470 (W04278); T-241204,pp.23335-23336 (W04401); T-230704,pp.5715-5717 (W04746); T-240826,pp.18943-18944 (W04651). *Contra* Adjudicated Fact Nos.224,225.

¹⁴⁰⁶ T-231115,pp.10189-10193 (W04765).

¹⁴⁰⁷ T-231030,pp.9160-9162 (W04753).

¹⁴⁰⁸ P04514,p.DHT11419.

¹⁴⁰⁹ 4D00196,p.SPOE00329200.

¹⁴¹⁰ [REDACTED].

¹⁴¹¹ T-240325,pp.13599-13601 (W04147).

¹⁴¹² T-231207,p.10739 (W02161).

KDOM report prepared after 13 October 1998, based on “*significant exposure to the KLA*”, and consistent with **W02144**’s observations,¹⁴¹³ described:

*a series of mainly fragmented and disparate units, differing markedly in appearance and training. Most of the groups are extremely small; the largest encountered by UK KDOM was no more than 40, and some were as small as five or six. They varied from well organised sections, with distinct military and political leaders, and membership drawn largely from the diaspora; to ill clad, poorly equipped, groups of unsophisticated young peasants who were clearly recruited from the immediate vicinity.*¹⁴¹⁴

441. A U.S. cable from 18 December 1998 described the KLA as “*a two-headed organisation that is struggling to become a coherent, disciplined and effective military force while simultaneously experiencing conflict over control and influence among its Kosovo leadership and between the latter and the KLA leadership*”.¹⁴¹⁵ It concluded the KLA structure:

*remained very incoherent until the summer, when Washington decided it was time to meet the KLA [...] At that point the KLA hastened to set up a more formal structure, identify a GS within Kosovo, and move away from the horizontal military structure which gave the zone commanders vast independence of actions. The KLA made great progress [...] but this very much remained a work in progress.*¹⁴¹⁶

442. Things never improved.¹⁴¹⁷ A 4 February 1999 cable from **W04147** discusses attempts by the GS to “*weld disparate KLA elements into some semblance of a coherent military organisation*”, and assert its authority over virtually independent regional military leaders.¹⁴¹⁸ **W04147** agreed that this demonstrates in February 1999 there was “*no semblance of a coherent military structure*”.¹⁴¹⁹ Importantly, this cable acknowledged that **80%** of the KLA forces remained irregular in February, and were understood to be operating outside the chain of command.¹⁴²⁰

¹⁴¹³ T-240930,pp.16132-16135 (W02144). See also T-231207,pp.10737-10738 (W02161).

¹⁴¹⁴ 1D00138.

¹⁴¹⁵ P01069,p.075317; T-240325,pp.13586-13600 (W04147).

¹⁴¹⁶ P01069,p.075322; T-240325,pp.13649-13650 (W04147).

¹⁴¹⁷ *Contra* Adjudicated Fact Nos.224,225.

¹⁴¹⁸ T-240325,pp.13607-13608 (W04147); P01074,p.075341.

¹⁴¹⁹ T-240327,p.13879 (W04147).

¹⁴²⁰ T-240326,pp.13669-13671 (W04147); P01074,p.075344.

(b) No functional chain of command

443. As a result of this disorganisation, the KLA did not form into anything resembling a functioning hierarchical command chain. Witnesses explained **the voluntary nature** of the KLA meant that its members operated based on cooperation and consent rather than binding orders.¹⁴²¹ KLA soldiers could come and go as they pleased,¹⁴²² go home to rest, or quit completely if they were too tired to fight; there were no consequences.¹⁴²³ [REDACTED] never gave orders; he would *ask* his units to do something. If he gave an order, which was not carried out, he had no procedure to follow, because the KLA was an army of volunteers.¹⁴²⁴

444. This was echoed by other KLA witnesses, as well as contemporaneous KLA documents.¹⁴²⁵ A report from the Rahovec/Orahovac local command on 15 August 1998 recorded the command of the 1st and 2nd companies speaking to international observers in Ratkoc/Ratkovac without informing their battalion commanders, which meant these internationals could “*conclude that there are no institutional lines in the KLA [...] and that instead everyone acts according to their own desire*”.¹⁴²⁶

445. KLA witnesses at all levels testified about the shambolic operations of the disparate groups. **W01511** observed the KLA was just a “*disorganised thing*”. At the beginning of the war, there was no proper army, no military formations, no

¹⁴²¹ T-230717,p.5814 (W04746); T-240930,p.20470 (W04278); T-240715,p.18182 (W04752); T-240827,pp.19071-19072,19085 (W04764) P03581.1_ET,p.12; P01825.1_ET,p.14; P01766.2_ET,p.5; P02027.2_ET,pp.2175,2197; P01253,para.12; P01165,para.13; P00708.5_ET,p.24; P01136.1_ET.1,p.24; P01136.2_ET.1,p.4; P00477_ET,p.1080.

¹⁴²² T-230714,p.5717, T-230717,p.5881 (W04746); T-240222,pp.12821-12823 (W04576).

¹⁴²³ T-230522,pp.4400-4402 (W03165); [REDACTED]; T-230912,pp.7825-7827 (W04255); T-250324,p.25703 (W04403); T-231113,p.9950 (W04765); [REDACTED].

¹⁴²⁴ [REDACTED].

¹⁴²⁵ T-240930,p.20483 (W04278); T-231113,p.9950 (W04765); P03580.11_ET,pp.14-15; P03581.1_ET,pp.24-25; T-240507,pp.15428-15431 (W03878); [REDACTED].

¹⁴²⁶ T-231030,pp.9173,9181 (W04753); P00067_ET,p.SITF00437790.

rankings,¹⁴²⁷ just groups collaborating and making decisions on an individual basis, and sometimes “*big shots*” doing whatever they wanted, but no rules, no reporting.¹⁴²⁸ **W04746**’s impression was that there was no overall KLA commander before February 1999.¹⁴²⁹ Despite language in KLA regulations about strict hierarchical lines, they did not manage to implement those regulations, and the KLA never achieved the structure of a regular army.¹⁴³⁰ **W04752** agreed, testifying that singleness of command and subordination was a principle that he and SYLA tried to apply in the KLA restructuring, but were not able to implement.¹⁴³¹

446. This lack of a hierarchical command chain was obvious to internationals interacting with the KLA. **COVEY** said UNMIK understood the KLA to be more of a movement than an army, with each individual zone or field commander having great autonomy, who felt they could do what they chose within their zone.¹⁴³² **RUBIN** reviewed as much material as he could, each day in 1998-1999, coming through from cables, intelligence and from media, and never saw anything which showed the KLA to be a well-organised military force with a vertical command structure, even though its members exaggerated its organisation.¹⁴³³ The U.S. did not believe there was a controlled system, what they would call an orderly system, in the KLA, where someone at the top had the authority or information or capabilities to dictate what was going on.¹⁴³⁴ **CLARK** also agreed it would not have been possible for the KLA to have had a functioning chain of command, top-to-bottom, without NATO and the U.S. knowing.¹⁴³⁵

¹⁴²⁷ T-241103,pp.19499-199502 (W01511). See also T-231115,pp.10198-10206 (W04765).

¹⁴²⁸ T-240930,pp.20469-20470 (W04278); [REDACTED].

¹⁴²⁹ T-230714,pp.5696-5698 (W04746).

¹⁴³⁰ T-230717,pp.5814-5815 (W04746).

¹⁴³¹ T-240704,pp.17626-17627, T-240717,pp.18391-18392 (W04752).

¹⁴³² T-250930,p.27348 (COVEY).

¹⁴³³ T-250917,p.26829 (RUBIN).

¹⁴³⁴ T-250915,pp.26513,26537,26563 (RUBIN).

¹⁴³⁵ T-251117,p.28120 (CLARK).

447. **DUNCAN** similarly testified that he never saw any indication that the KLA was a highly disciplined top-down organisation,¹⁴³⁶ despite their best efforts to show NATO they were a serious military counterpart, and not just a group of guerillas in the bush. The KLA was as good as you would expect a guerilla army to be, *“pretty chaotic, disorganised, getting better gradually”*. They were not a regular army by any stretch of the imagination.¹⁴³⁷ **DURKEE’s** opinion then and now, based on the information available to SACEUR and the member nations, as well as his own knowledge of military staffs and command structures, was that there was not a command structure in the KLA such that someone at a senior level could give orders that would result in direct action on the ground; there was a rough chain of command, more in the sense of coordination than direct command authority as it is understood in Western militaries.¹⁴³⁸

448. **HILL** also noted the absence of a command and control system in the KLA,¹⁴³⁹ he has *“not seen that and did not see that at the time”*,¹⁴⁴⁰ despite the KLA being *“very anxious”* to impress that they had a well-organised army.¹⁴⁴¹ **CLARK** stated, based on 34 years of military experience, that he did not see the KLA as a well-integrated, top-down organisation with any functioning command or control structure.¹⁴⁴² The KLA was a pretty rudimentary organisation, regionally based, with local warlords or zone commanders who led poorly trained soldiers and civilian volunteers, and operated unilaterally in discrete areas.¹⁴⁴³

449. Reports of international organisations paint the same picture. Even when [REDACTED], the KLA in [REDACTED] 1998 was assessed as having a

¹⁴³⁶ T-250922,pp.27123-27124 (DUNCAN).

¹⁴³⁷ T-250922,pp.27079,27082 (DUNCAN).

¹⁴³⁸ T-251113,pp.28022-28023 (DURKEE).

¹⁴³⁹ T-251112,p.27883 (HILL).

¹⁴⁴⁰ T-251111,p.27858 (HILL).

¹⁴⁴¹ T-251112,p.27922 (HILL).

¹⁴⁴² 1D00430,para.24.

¹⁴⁴³ 1D00430,para.24; [REDACTED].

“[REDACTED].¹⁴⁴⁴ Reports from [REDACTED] 1998 recommended caution when travelling to KLA areas as *“UCK command structure is fragmented and commanders vary from area to area and village to village”*,¹⁴⁴⁵ and noted that *“Serb success in defeating UCK and destroying the command structure, resulted in numerous small groups of the Albanian resistance scattered over the province and neighboring Albania without any unified command and control”*.¹⁴⁴⁶ An [REDACTED] 1998 report similarly confirmed the [REDACTED].¹⁴⁴⁷

450. **W04147** said that the KLA *“never achieved the construction of a unified army”*. They remained largely a *“group of disparate militias in different zones”* who were only, to a very limited degree, under the direction and control of the GS. The project to create some central coordination of the zones, a work in progress by March 1999,¹⁴⁴⁸ was ultimately never achieved.¹⁴⁴⁹ In April 1999, a letter from the U.S. State Department informed the Senate that *“there is no political structure in Kosovo of effective command and control of the KLA.”*¹⁴⁵⁰ This would have been based on reporting from the field and intelligence sources.¹⁴⁵¹ **RUBIN** confirmed this was the *“best judgment, using all the resources of the US government”*.¹⁴⁵²

451. By November 1998, NATO assessed the KLA consisted of *“local groups that had emerged more or less spontaneously in response to years of Serb oppression”*,¹⁴⁵³ and could not get a real sense of who was in command.¹⁴⁵⁴ Even by the time of the Undertaking negotiations, the KLA still *“wasn’t an organised military. It wasn’t like the colonels gave*

¹⁴⁴⁴ [REDACTED].

¹⁴⁴⁵ 4D00197,p.SPOE0032951.

¹⁴⁴⁶ 4D00179,p.SPOE00304228.

¹⁴⁴⁷ [REDACTED].

¹⁴⁴⁸ See also 1D00513,p.SPOE00304415; 1D00520; 1D00563,p.DHT05020.

¹⁴⁴⁹ T-240327,pp.13830-13831 (W04147).

¹⁴⁵⁰ 1D00120,p.DHT01465.

¹⁴⁵¹ T-240326,pp.13678-13680 (W04147).

¹⁴⁵² T-250916,p.26702 (RUBIN).

¹⁴⁵³ T-251117,p.28114 (CLARK).

¹⁴⁵⁴ 1D00430,para.25.

orders to the captains, and the captains gave orders to the lieutenants. These were regional localised groups of fighters who sort of banded together to protect their communities.”¹⁴⁵⁵ There simply was no chain of command.¹⁴⁵⁶ CLARK explained that “command is authority, but control is being able to observe it, to respond to it, to correct it, to direct it, to follow up on it. And as far as we could tell, there wasn’t any”.¹⁴⁵⁷ W03881, on the ground with KFOR, wrote on 29 June 1999 “the KLA is certainly not a centrally-led organisation like we were expecting.”¹⁴⁵⁸

452. The evidence that the KLA was a collection of disparate groups staffed by voluntary members is an obstacle to a finding beyond reasonable doubt the requisite chain of command or authority between THAÇI and those who perpetrated the crimes. No witnesses credibly testified they were in a hierarchical chain of command involving THAÇI, or that they were given or followed his orders, or that they reported to him or were subordinated to him. Such a finding would not be possible given the evidence that THAÇI was largely unknown to those on the ground, presumably due to his absence from Kosovo for a significant period during the charged events. Nor is there any evidence that this changed during the period in which THAÇI is alleged to have acted as ‘Prime Minister’ of the PGoK, discussed further below.

2. THAÇI did not have an inter-personal relationship with the alleged perpetrators

453. The SPO does not address the impact of THAÇI’s absence from the territory of Kosovo. This absence is relevant, because a superior-subordinate relationship is **inter-personal** in nature. Such a relationship “is not established merely by showing that an accused led or was in charge of a particular entity”, rather “that through his role or position,

¹⁴⁵⁵ T-251117,p.28133, T-251118,p.28277 (CLARK).

¹⁴⁵⁶ T-251117,p.28110, T-251118,p.28297 (CLARK).

¹⁴⁵⁷ T-251117,pp.28117-28118 (CLARK). See also T-251117,pp.28151,28165, T-251118,pp.28217,28255-28256,28277,28291 (CLARK).

¹⁴⁵⁸ T-240522,pp.15658-15659 (W03881).

*a personal relationship of subordination vis-à-vis the perpetrators of the crimes was established and was acknowledged by both parties”.*¹⁴⁵⁹ As such, before a defendant can be liable as a commander, he must be shown to have been aware of his hierarchically predominant position *vis-à-vis* the subordinates and aware of his duty to prevent or punish their alleged crimes.¹⁴⁶⁰

454. It is unclear how the SPO alleges **THAÇI** knew that he was in an inter-personal relationship with the alleged perpetrators in Kosovo, particularly during the period that he was out of the country, and particularly in the absence of his acting in a manner that demonstrates his knowledge of a position of authority over individuals allegedly subordinated to him. Even in his role as the alleged PGoK ‘Prime Minister’, the SPO led no evidence **THAÇI** understood himself to have been in a superior-subordinate relationship with any of the alleged perpetrators, including the military police.

455. KLA members, including commanders, who met **THAÇI** in Kosovo prior to his departure in November 1998 were consistently unaware of his role or position.¹⁴⁶¹ **W01453**, as at June 1998, did not know if **THAÇI** was a member of the GS.¹⁴⁶² At the time of the GS visit to the Llap zone in October 1998, **W04746** only knew **THAÇI** as someone significant in the fight for freedom, and **THAÇI** was not interested in portraying himself as important. **W04746** “*thought of him as somebody in charge of public communications, communicating with the mass media*”.¹⁴⁶³ The SPO’s command case falls at the first requirement, as the evidence precludes a finding beyond reasonable doubt that **THAÇI** was in a superior-subordinate relationship with the alleged perpetrators.

¹⁴⁵⁹ Mettraux, p.139.

¹⁴⁶⁰ *Ibid.*

¹⁴⁶¹ [REDACTED]; T-240903, pp.19557-19558 (W01511); T-240323, pp.14731-14732 (W04741); T-241024, pp.21138-21140 (W04758); [REDACTED].

¹⁴⁶² T-241106, pp.22116-22117 (W01453).

¹⁴⁶³ T-230713, pp.5626-5629 (W04746).

C. **THAÇI** DID NOT HAVE EFFECTIVE CONTROL

456. Even if the evidence demonstrated beyond a reasonable doubt that the KLA operated pursuant to a hierarchical command chain, and that **THAÇI** formed part of that command chain as a superior of the alleged perpetrators, the SPO must then establish that **THAÇI** had effective control over them, meaning the material ability to prevent or punish.¹⁴⁶⁴ Effective control consists of the power that a defendant has to demand, expect and actually impose obedience to one's orders for the purpose of preventing and punishing crimes. It is a relationship of authority which goes almost unquestioned between its two poles: one side orders, the other obeys.¹⁴⁶⁵ Any relationship of authority will fall short of that standard when one person has to convince, cajole or supplicate the other to act in a certain way.¹⁴⁶⁶ As an indicium of effective control, "*the power of the superior to issue orders is crucial*".¹⁴⁶⁷

457. As set out above, the SPO's pleading of the command case does not provide notice of the basis on which **THAÇI** is alleged to have had effective control over the alleged perpetrators. His command responsibility is alleged to be based on his position as a member of the GS and among the highest-ranking officials in the KLA and/or PGoK. On the basis of "*these capacities*" and pursuant to his *de facto* authority as a senior leadership figure in the KLA and PGoK, **THAÇI** is alleged to have had effective control over all perpetrators.¹⁴⁶⁸ The PTB is similarly enigmatic, stating that the accused "*had both formal and de facto power and authority over those who committed the charged crimes. The powers and authority of the Accused have been set out above*" with no citation, and then "*[i]n summary, as senior members of the KLA/PGoK, the Accused had authority over the entire KLA/PGoK structures.*"¹⁴⁶⁹

¹⁴⁶⁴ Nizeyimana AJ, para.342; Bizimungu TJ, para.1918.

¹⁴⁶⁵ Mettraux, p.157.

¹⁴⁶⁶ Mettraux, p.157.

¹⁴⁶⁷ Brima TJ, para.789.

¹⁴⁶⁸ Indictment, para.55.

¹⁴⁶⁹ SPO PTB, paras.709-710.

458. The SPO has not pleaded that **THAÇI**'s effective control arises from his role in the Political Directorate, for example, or by virtue of his role as PGoK Prime Minister, which would have allowed **THAÇI** to specifically respond to these allegations, as is his right. Instead, the SPO sweepingly alleged that effective control stems from **THAÇI**'s senior role, but then referred to "*the powers and authority*" as set out above. In response to this defective pleading, the Defence outlines the evidence which precludes a finding of **THAÇI**'s effective control in relation to each of the roles he is alleged to have held. The evidentiary burden required to establish effective control is high.¹⁴⁷⁰ This is why it cannot be met in this case:

1. THAÇI did not have effective control as a GS member

459. The SPO presents the GS as a fully functioning body which was created "*by 1995*",¹⁴⁷¹ "*exercised political and operational decision-making and control*",¹⁴⁷² and reflected "*a centralised, formal power structure*".¹⁴⁷³ According to the SPO, the GS "*met and coordinated frequently*",¹⁴⁷⁴ adopted regulations that were disseminated throughout the zones and directly referenced in orders and regulations,¹⁴⁷⁵ issued orders,¹⁴⁷⁶ "*held extensive formal powers, including to commend, promote and discipline or dismiss soldiers*",¹⁴⁷⁷ with KLA members respecting its "*public relations and policy-making authority*".¹⁴⁷⁸

460. The evidence, by contrast, ties the emergence of a formal GS to Washington's decision to meet with the KLA. **W04147** testified that the GS "*basically emerged at the*

¹⁴⁷⁰ *Brima* TJ, para.1660.

¹⁴⁷¹ SPO PTB, para.96.

¹⁴⁷² SPO PTB, para.97.

¹⁴⁷³ SPO PTB, para.103.

¹⁴⁷⁴ SPO PTB, para.105.

¹⁴⁷⁵ SPO PTB, para.72.

¹⁴⁷⁶ SPO PTB, para.74.

¹⁴⁷⁷ SPO PTB, para.109.

¹⁴⁷⁸ SPO PTB, para.20.

end of the summer [1998]”.¹⁴⁷⁹ This timing was confirmed by GS members. **W04401** said that there was no GS before 1998. There had been a Central Staff, but **THAÇI** was not a member,¹⁴⁸⁰ and that Staff had been dissolved in 1997 as far as its activities inside Kosovo were concerned.¹⁴⁸¹ **W04290** explained that until March 1998 there was no higher authority than Adem JASHARI, and he had no knowledge of JASHARI’s contacts with people he knew to be GS members.¹⁴⁸² He did not receive orders from the GS.¹⁴⁸³ The evidence also demonstrates that references to the ‘Central Staff’ and ‘GS’, both prior to summer 1998 and after, must be viewed in the light of evidence that its existence, competence, and measure of effective control were **greatly exaggerated**.

(a) Realtime and Historical Glorification of the ‘GS’

461. Former KLA members overstated the organisation of the GS and the KLA in writing and interviews that have been characterised as “*propaganda or artistic*”,¹⁴⁸⁴ or with underlying political motivations.¹⁴⁸⁵ When **W04401** was shown an interview with SYLA regarding the founding and early KLA operations, he explained that “*[t]his glorifying article seems to have been written after the war rather than having accurate and truthful information in it.*”¹⁴⁸⁶ **W04401** explained that, since the war, people have exaggerated their own and others’ roles for “*egotistical aims*”, “*to glorify the whole process of the wartime*”, and for political purposes.¹⁴⁸⁷ **W04401** reviewed a document allegedly authored by **SELIMI**, stating that in May 1998, the GS “*established all its constituted directorates, becoming fully formed and structured from the command level to every other detail involving the organization of the General Staff*”, with a list of G

¹⁴⁷⁹ T-240325,pp.13609-13610 (W04147).

¹⁴⁸⁰ T-241203,pp.23290-23292 (W04401).

¹⁴⁸¹ T-241204,p.23350 (W04401).

¹⁴⁸² T-250211,pp.25016-25018 (W04290).

¹⁴⁸³ T-250213,pp.25225-25226 (W04290).

¹⁴⁸⁴ T-241105,pp.21968-21974 (W01453), regarding P01813_ET.

¹⁴⁸⁵ T-240221,pp.12633,12706-12709,12756 (W04576); T-241104,pp.21845-21846, T-241105,p.21939 (W01453).

¹⁴⁸⁶ T-241128,pp.22965-22966, T-241202,pp.23048-23049 (W04401).

¹⁴⁸⁷ T-251205,pp.23453-23454 (W04401).

directorates.¹⁴⁸⁸ **W04401** explained that there were no such directorates at that time. None of them were even aware of those codes or names at that time. Again, this was “an exaggeration that has come with the passage of time”.¹⁴⁸⁹ Similarly, both **W04401** and **W04752** stated that **KRASNIQI** was wrong to purportedly write,¹⁴⁹⁰ years after the war, that the directorates existed in May, June, July 1998.¹⁴⁹¹

462. Similar exaggerations were also happening in real time. **W04752** was shown a document dated May 1999 purporting to come from the GS headed “Units of the Kosovo Liberation Army”, with a structure he deemed “impossible”. It listed “10 Brigade of field artillery” when in May 1999 the KLA had none, and “Battalion of defence against atomic, chemical and biological attack”, when the KLA had no such capabilities. The alleged regiment for “cyber war” and a “wind army orchestra” were also absent.¹⁴⁹² **W04255** confirmed that no-one was appointed to be in charge of “artillery” and “anti-armoured unit” and “chemical and biological defence”, despite these appearing in minutes of meetings of the Dukagjin staff, and that it would have been “ludicrous to give these kind of ranks any meaning”.¹⁴⁹³ Moreover, **W04752** explained members of the GS were not trained officers. **THAÇI**, **LIMAJ**, and **Lahi BRAHIMAJ** lacked the experience or qualifications to hold a ‘GS’ post in a regular army.¹⁴⁹⁴ **W04403** said only three officers (including himself) in the GS had any military training or knowledge.¹⁴⁹⁵ In that context, even calling themselves a ‘GS’ was itself an exaggeration. KLA witnesses recall the name of the GS being invoked to make orders/instructions seem more important, even when they were unlikely to have come from the GS.¹⁴⁹⁶

¹⁴⁸⁸ P01881_ET,p.2.

¹⁴⁸⁹ T-241202,pp.23033-23034 (W04401).

¹⁴⁹⁰ P00189_ET.1,p.U015-8835.

¹⁴⁹¹ T-240717,pp.18463-18464 (W04752); T-241202,pp.23029-23033 (W04401).

¹⁴⁹² T-240708,pp.17772-17773 (W04752), referring to P01434_ET.

¹⁴⁹³ T-230912,pp.7851-7853 (W04255).

¹⁴⁹⁴ T-241210,p.18043 (W04752).

¹⁴⁹⁵ T-250326,p.25936 (W04403).

¹⁴⁹⁶ E.g. T-240423,pp.14714-14718 (W04741); T-240829,pp.19151-19153 (W04764).

463. These exaggerations were to appeal to the internationals. **W04746** stated the titles and documents did not strictly accord with the facts: the KLA never reached a point where the army was led by the GS, who were civilians and politicians. But they were trying to project to internationals that they were a serious armed force, rather than a disorganised non-state group. **W04746** agreed that even creating a body called the 'GS' was part of impressing on the internationals that there was a group of people with authority to speak on behalf of the KLA. **W04746** therefore agreed that the GS was a "*fig leaf*"; something designed to cover a very different reality.¹⁴⁹⁷ **W04765** testified the KLA was trying to demonstrate to the U.S. that it could be organised, so it borrowed concepts from other army regulations.¹⁴⁹⁸

464. This level of exaggeration, however, was transparent to the internationals it was designed to impress. **W02144** said while the KLA tended to portray itself as a well-organised army, the general impression was that they would exaggerate to elevate their status within Kosovo, and so the internationals would take them more seriously.¹⁴⁹⁹ **W04147** never saw anything that resembled a real headquarters, nor anything to support the claim that the KLA was "*heavily computerised*", which he assumed was made to appeal to the internationals.¹⁵⁰⁰ **RUBIN** said the KLA "*were trying to impress us with their organisation, and we weren't very impressed*", and he knew that they were trying to make it seem like a "*more formal entity with more formal capabilities, whether that was intelligence or military or political*", and that he knew that this was "*a little overstated.*"¹⁵⁰¹ The KLA might have tried to persuade the public that it could be compared to a regular national army, for example in public statements, but **DUNCAN** saw this as more of a political gesture.¹⁵⁰²

¹⁴⁹⁷ T-230714,pp.5763-5765 (W04746).

¹⁴⁹⁸ T-231116,pp.10295-10296 (W04765).

¹⁴⁹⁹ T-240528,pp.16118-16120 (W02144).

¹⁵⁰⁰ T-240326,pp.13773-13776 (W04147).

¹⁵⁰¹ T-250916,p.26722 (RUBIN).

¹⁵⁰² T-240922,pp.27123-27124 (DUNCAN).

465. To now accept this propaganda, glorification and exaggerations as a basis for finding that the KLA was led by a GS that operated at the level alleged by the SPO is a revision of history. The exaggeration of the capacities and competence of the GS, and the view held by foreign governments and international organisations that the GS was essentially irrelevant, is reflected in the evidence showing lack of knowledge about the GS among the KLA soldiers on the ground, who had no information about the GS, its membership, or its role.

(b) Lack of Knowledge about the GS

466. [REDACTED] did not know who the GS were during the war, or where the GS was located.¹⁵⁰³ He is sure that the “*vast majority of soldiers*” did not know the members of the GS.¹⁵⁰⁴ This is corroborated by evidence from KLA soldiers at all levels denying knowledge of GS members.¹⁵⁰⁵ During the war, **W04278** did not understand that there was a GS purportedly leading the KLA, and was not aware of such a headquarters or staff.¹⁵⁰⁶ **W04765** agreed that 90% of the time, people in the field did not know where the GS was.¹⁵⁰⁷ **W03865** denied being aware of an institution above the brigade and zone level that was called the GS in 1998 or 1999; if there was, it only existed on paper and did not have an impact on the ground.¹⁵⁰⁸ **W04758** testified they did not have any physical connections with the GS,¹⁵⁰⁹ and when members of the GS visited the Llap zone in August 1998, he did not know what their roles were, what they were designated to do, or what positions they held.¹⁵¹⁰

467. **W04752** told the ICTY that even “*very few commanders knew who the GS members*

¹⁵⁰³ [REDACTED].

¹⁵⁰⁴ [REDACTED].

¹⁵⁰⁵ E.g. P00998.2_ET,pp.22-23; P03580.4_ET,pp.5-6; P01827.4_ET,p.4; P03620.1_ET,p.20.

¹⁵⁰⁶ T-240930,p.20474 (W04278); P01694.7_ET,p.3.

¹⁵⁰⁷ T-231116,p.10262 (W04765).

¹⁵⁰⁸ T-240430,pp.15228-15229 (W03865).

¹⁵⁰⁹ T-241024,pp.21132-21133 (W04758).

¹⁵¹⁰ T-241024,pp.21138-21140 (W04758).

were".¹⁵¹¹ The commanders themselves confirmed this. [REDACTED] stated that, to this day, he does not know what people's positions were apart from **W04752**.¹⁵¹² **W01453** said that in the Nerodime zone they had difficulties keeping in touch with the GS because they did not know who the GS members were. They could only make assumptions.¹⁵¹³ The names of the GS members only came out after the end of the war.¹⁵¹⁴ When the Serb offensive started, they wanted instructions, but none came.¹⁵¹⁵ **W04290's** requests to the GS for funds received no response. At the time, he did not know how the GS worked, how it was organised or how it functioned.¹⁵¹⁶ **W04290** said even in the spring of 1998, he did not know all the members of the GS.¹⁵¹⁷ **W04746** did not know that SYLA was the overall commander of the KLA before Rambouillet.¹⁵¹⁸ Multiple other KLA witnesses confirmed this.¹⁵¹⁹

468. **W01511** testified terms like "headquarters" and "commander" were fictitious.¹⁵²⁰ At the time of a meeting on 23 June 1998 where HARADINAJ was elected as zone commander, **W01511** had no knowledge of the GS: "As far as [I was] concerned, at that moment [...] there wasn't a General Staff. [...] We were never told who the members of the General Staff were at that moment." Had there been a higher staff, they would have received orders. Even if it existed, it was fictional.¹⁵²¹ **W01511** said FARK did not recognise the GS, because they did not know who the GS commander was.¹⁵²²

¹⁵¹¹ T-240703,pp.17564-17565 (W04752).

¹⁵¹² [REDACTED]. See also T-241126,pp.22696-22698, T-241127,pp.22815-22816 (W03873).

¹⁵¹³ T-241105,pp.21896-21902,21904-21905 (W01453).

¹⁵¹⁴ T-241105,p.21912 (W01453).

¹⁵¹⁵ T-241106,pp.22111-22112 (W01453).

¹⁵¹⁶ T-250210,pp.24960-24961, T-250212,p.25131 (W04290).

¹⁵¹⁷ T-250211,p.25022 (W04290).

¹⁵¹⁸ T-230717,pp.5807-5808 (W04746).

¹⁵¹⁹ T-250211,pp.25055-25057 (W04290); P00606_ET,p.2; T-240703,pp.17546-17547,17583 (W04752); [REDACTED]; T-241104,p.21842, T-241105,pp.21913,21985, T-241106,pp.22120,22124 (W01453); P01327.6_ET,p.6; P01605.4_ET,p.15; T-240115,p.11089 (W01493); P03580.1_ET,pp.25-26; P03620.1_ET,p.20.

¹⁵²⁰ T-240904,p.19575 (W01511).

¹⁵²¹ T-241103,pp.19509-19510 (W01511).

¹⁵²² T-241103,pp.19545-19550 (W01511).

469. The internationals were operating in the same ignorance. Rather than being the first port of call for internationals wanting to meet those who could speak for the KLA, the GS was an unknown quantity. **W03724** stated: *“For various reasons, [KVM’s Coordination Centre 1] did not seek to engage with KLA GHQ nor was it practicable to do so.”*¹⁵²³ **W02144** told the ICTY that *“the KLA in summer 1998 lacked a clear central hierarchical structure. Although he had heard of the KLA General Staff, he was not at the time convinced that one existed, and if one did exist, he doubted the extent of its control over KLA forces around Kosovo.”*¹⁵²⁴ **W04147** wrote in a cable of 18 December 1998, that *“we still know very little about the KLA whose leaders are very secretive about the KLA’s structure and leadership.”*¹⁵²⁵ **W04147** told [REDACTED] that, [REDACTED], he believed the GS:

[REDACTED].¹⁵²⁶

470. **DUNCAN** said ÇEKU never mentioned the GS to NATO, and **DUNCAN** saw no evidence of the existence of a GS with meaningful military application.¹⁵²⁷ Had there been a body calling itself the GS, a powerful body with control that NATO could have interfaced with, that is where they would have gone. But the information that NATO had, and the reason **DUNCAN** went to Tirana, was that they were told to engage with ÇEKU, who in turn told NATO *“the people I need with me are the zonal commanders”*. The power lay with those people and that is who NATO engaged with.¹⁵²⁸ NATO had no meetings with the GS as a collective during his time there.¹⁵²⁹ When shown [REDACTED], **DUNCAN** said that this contradicts what he knows, and had he seen these terms, he would have made people aware that [REDACTED].¹⁵³⁰

¹⁵²³ P00392,para.122; T-230913,pp.8019-8020 (W03724).

¹⁵²⁴ 1D00137,para.1.

¹⁵²⁵ P01069,p.075317; T-240325,pp.13586-13588 (W04147).

¹⁵²⁶ [REDACTED].

¹⁵²⁷ T-250922,p.27125 (DUNCAN).

¹⁵²⁸ T-250923,pp.27291-27293 (DUNCAN).

¹⁵²⁹ T-250922,p.27125 (DUNCAN).

¹⁵³⁰ [REDACTED] (DUNCAN).

471. **RUBIN** found HARADINAJ's description of a "GS meeting" in a "GS office" in what was actually a hut with a bunch of couches, as "absurd".¹⁵³¹ Having observed the zone commanders at their hideout, **RUBIN** never observed the existence of a GS, so he does not know what GS means in a KLA context.¹⁵³² Based on his experience on the ground with the KLA, he found the phrase 'GS' to be misleading.¹⁵³³

(c) The GS was impotent, and the effective control lay with the zones

472. In addition to being an unknown quantity, the evidence demonstrates the GS did not sit as the operational command centre of the KLA. There is no evidence of operational orders flowing from the fractured, absent, ineffectual GS (its members regularly separated and outside Kosovo) and minimal evidence of reporting back.¹⁵³⁴ The GS members had no ability to prevent or punish the zone commanders, or those reporting to them. Their dominance, and the GS's impotence, precludes any finding beyond reasonable doubt that the GS members had effective control over KLA soldiers in the field.

(i) *The view of the zone commanders and KLA members*

473. That the GS was impotent was understood across all zones, and meant the zone commanders had near total autonomy.¹⁵³⁵ **W04746** said that almost all the zone commanders regarded themselves as being completely independent of the GS. HARADINAJ described the GS as "tourists",¹⁵³⁶ and thought the GS were not really contributing. He was a man with guns and a strong leader with the support of the people, and the GS did not really contribute to the war effort.¹⁵³⁷ Minutes of a 23 June

¹⁵³¹ T-250916,pp.26765-26767 (RUBIN).

¹⁵³² T-250916,pp.26760-26764 (RUBIN).

¹⁵³³ T-250916,p.26772 (RUBIN).

¹⁵³⁴ *Contra* Adjudicated Fact No.222.

¹⁵³⁵ *Contra* Adjudicated Fact Nos.224,225.

¹⁵³⁶ T-230714,pp.5769-5772 (W04746).

¹⁵³⁷ T-230714,p.5771 (W04746).

1998 meeting record HARADINAJ complaining that the “*central staff is not giving us the necessary instructions. It is not present*”.¹⁵³⁸ A document purporting to be from HARADINAJ to the GS on 28 July 1998, states “[i]n view of the current situation, I note a sluggish and unjustified lack of activity on your part that is not focused on the war.”¹⁵³⁹

474. In the Llap zone, **W04746** would sometimes do what the GS wanted, and sometimes not.¹⁵⁴⁰ Even if the GS violently disagreed with a zone commander about the way he was conducting things in his zone, they had no armed force with which they could impose their will. **W04746** tried to obey the GS, but sometimes he ignored them because “*we knew the situation on the ground better than them*.”¹⁵⁴¹ **W04746** testified about a specific occasion in which he would not do what the GS wanted, because he was the highest authority in his zone, and he had an agreement with the head of the political office, DEMAÇI.¹⁵⁴² After **W04758** was appointed chief of staff for the Llap zone, the only contact he had with the GS was during their visits. He does not know if the GS was notified of the changing of the names of the brigades in the zone, it was just a decision made by **W04746**.¹⁵⁴³

475. In his capacity as Drenicë/Drenica zone commander, **W04290** never received any support from the GS for the operational planning for any battle.¹⁵⁴⁴ There were no levels of command between the soldiers on the ground and the GS,¹⁵⁴⁵ and the zone commanders had the “*key and dominant role*”, as the ones that faced “*the war, operations, the brunt of the war, attacks, defences and actions*” carried out in the terrain.¹⁵⁴⁶ **W04290** said the GS was almost non-existent, poorly staffed, and disorganised. Every time they

¹⁵³⁸ 1D00184_ET,p.3.

¹⁵³⁹ T-240903,pp.19541-19542 (W01511); P03096_ET.

¹⁵⁴⁰ [REDACTED].

¹⁵⁴¹ T-230714,pp.5766-5767 (W04746).

¹⁵⁴² [REDACTED].

¹⁵⁴³ T-241031,pp.21651-21652 (W04758).

¹⁵⁴⁴ T-250212,pp.25198-25199 (W04290).

¹⁵⁴⁵ T-250211,pp.25018-25020 (W04290).

¹⁵⁴⁶ T-250211,pp.25027-25028 (W04290); P01745.

needed support or had a request to the GS in a zone, they did not even know where to direct the request.¹⁵⁴⁷ He also observed this from the other side, when he became KLA General Commander for 4-5 weeks. He did not have a staff assigned to him by the GS, and does not think he met anyone other than **W04752** during this time.¹⁵⁴⁸ The zone commanders had to deal with everything: operations, analysis, evaluation of the circumstances, and actions to be taken.¹⁵⁴⁹

476. In the Pashtrik Zone, **W04679** said from March to May 1998 there was no central organisation among the villages; they worked in a fairly isolated fashion, and there was no GS giving instructions or ordering people in any way.¹⁵⁵⁰ **W03873** took up the position of the commander in his village, and took steps on his own initiative to go to Albania to collect weapons and bring them back.¹⁵⁵¹ **W04679** confirmed that, by December 1998, there was still no involvement of the GS in discussions or processes for better organisation and functioning of the regional staff in the Pashtrik zone.¹⁵⁵²

477. Deputy zone commander **W04765** confirmed orders did not come from any higher level. They expected to have a GS that was functional and performed duties at the highest level, but it was almost fictional, with very few people.¹⁵⁵³ **W04744** said that brigade commanders would decide who would be responsible for intelligence, for all resources.¹⁵⁵⁴ The zone commander had the prerogative to organise and restructure the operational units within his area of responsibility. The GS was not informed and was not required to approve a decision taken by a zone commander to include territory or villages.¹⁵⁵⁵

¹⁵⁴⁷ *Contra* Adjudicated Fact No.227.

¹⁵⁴⁸ T-250213,pp.25232-25233 (W04290).

¹⁵⁴⁹ T-250213,pp.25254-25257 (W04290).

¹⁵⁵⁰ T-241118,pp.22306-22307 (W04679).

¹⁵⁵¹ T-241126,pp.22696-22698 (W03873).

¹⁵⁵² T-241118,pp.22306-22307 (W04679).

¹⁵⁵³ T-231116,p.10258 (W04765).

¹⁵⁵⁴ T-240625,p.17096 (W04744).

¹⁵⁵⁵ [REDACTED].

478. In the Nerodime Zone, **W01453** stated that although they wanted to keep in touch with the GS, they could not because they did not know who the members were. Consequently, *“our work, in terms of organising, was mostly focused with guerrilla units which operated independently in their territory”*.¹⁵⁵⁶

479. The zone commanders even believed they had authority to arrest members of the GS, on the basis they had *“full authority and responsibility”* for their zone.¹⁵⁵⁷ Documents record a call from zone commanders for an arrest warrant to be issued against **THAÇI, VESELI** and **SELIMI**, on the basis that weapons and ammunition were not being sent to Drenicë/Drenica. Presented with a copy of the arrest warrant calling *“[t]o stop and arrest for reasons of disobeying and ignoring orders of the Operational Subzone Headquarters”*,¹⁵⁵⁸ **W04290** denied that it was ultimately issued.¹⁵⁵⁹ However, he agreed it was discussed, and that he often expressed his dissent to the GS, despite it being almost non-existent.¹⁵⁶⁰

480. **Appointments and promotions:** The SPO's case is that the GS *“held extensive formal powers, including to commend, promote and discipline or dismiss soldiers.”*¹⁵⁶¹ The evidence demonstrates that appointments were local and the GS, if at all, only formalised existing structures.¹⁵⁶² **W04752** reviewed an order signed by **HARADINAJ** on 30 June 1998, appointing **Faton MEHMETAJ** as the intelligence services officer for the Dukagjin zone.¹⁵⁶³ This appointment was made by **HARADINAJ**, not the GS. **W04752** confirmed that insofar as people were being appointed to these kinds of roles in the various subzones towards the end of July 1998, they were not being appointed

¹⁵⁵⁶ T-241105,pp.21899-21900 (W01453).

¹⁵⁵⁷ T-250212,p.25214 (W04290).

¹⁵⁵⁸ 1D00247_ET.

¹⁵⁵⁹ T-250211,pp.25084-25091 (W04290), discussing DHT04399-DHT04400-ET.

¹⁵⁶⁰ T-250213,pp.25254-25257 (W04290).

¹⁵⁶¹ SPO PTB,para.109.

¹⁵⁶² *Contra* Adjudicated Fact No.223.

¹⁵⁶³ P01386.

by the GS. This was a general pattern: the brigade commander would decide who locally would be their own command, responsible for intelligence, and all resources. A local commander would only ask for confirmation from the higher structures. These roles were not chosen by the GS. The GS was not familiar with the officers in the respective zones, and the commanders had that knowledge and made appointments.¹⁵⁶⁴

481. **W01511** reviewed a document signed by HARADINAJ,¹⁵⁶⁵ stating “[t]his is to inform you that the meeting held in Jabllanica on 23 June 1998 elected the commander of the operational staff of the Dukagjin plain, the Deputy Commander, the Chief of Staff and the Deputy Chief of Staff”. **W01511** confirmed this indicates that the GS did not have anything to do with the formation of the Dukagjin staff.¹⁵⁶⁶ Similarly, all senior command positions in the Llap zone were proposed by **W04746**. These appointments were made before the GS came to the Llap zone. It was **W04746**’s decision as to who would be his chief of staff, his deputy commander, *etc.* A decision in August 1998 formally appointed them, but, for example, **W04758** was already appointed as a commander of Brigade 151 on 18 July 1998.¹⁵⁶⁷

482. [REDACTED] was shown a [REDACTED], referring to an order from the GS about promotions within a battalion, which [REDACTED] thinks was imagined by the author.¹⁵⁶⁸ The GS would not have had the power to issue an order in relation to a promotion in a battalion; this was within the powers of the zone commander pursuant to a request sent by the brigade commander. Only in exceptional circumstances where there was the breakup of command in a zone could the GS take decisions. It did not order any such decisions despite what is said in the document.¹⁵⁶⁹

¹⁵⁶⁴ T-240708,pp.17802-17806 (W04752). See also T-241031,pp.21654-21660 (W04758).

¹⁵⁶⁵ 2D00026.

¹⁵⁶⁶ T-240904,p.19577 (W01511).

¹⁵⁶⁷ T-241024,pp.21133-21138 (W04758).

¹⁵⁶⁸ [REDACTED].

¹⁵⁶⁹ [REDACTED].

483. This was confirmed by members of the GS. **W04403** said that between November 1998 and March 1999, appointments within the operational zones were made by the zones themselves. They tried to create order and rules as in a normal army, but the KLA did not exist in this way.¹⁵⁷⁰ Appointment documents were sometimes prepared at the GS level just to have a formal written document, to “re-certify” appointments that had already been in place.¹⁵⁷¹ This was confirmed by **W03873**, who was appointed to the G2 in the Pashtrik zone by Commander DRINI in November 1998, even though he had never done any intelligence work before, and received a paper appointment on 8 January 1999 from **W04752**.¹⁵⁷²

484. The zone commanders also seemingly did not accept appointments and organisational decisions made by the GS. A document in the name of HARADINAJ addressed to the GS, dated 19 January 1999, says “*I ask that the zone commanders or I, in the capacity of zone commander, be informed of the criteria for appointing commanding cadres to the General Staff. More concretely, I would like to know the criteria used in the appointment of KRASNIQI as Deputy Commander of the General Staff.*”¹⁵⁷³ Notes of a meeting on 21 January 1999 between the zone commanders and the GS then record criticism of the organisation of the GS.¹⁵⁷⁴ **W04401** agrees these show that although he and **KRASNIQI** were appointed by the GS in November 1998, the zone commanders never accepted those appointments.¹⁵⁷⁵ Minutes of a meeting on 6 February 1999 between HARADINAJ, **W04746**, Ekrem REXHA, **W04290**, **SELIMI** and **W04752** (among others), record the zone commanders levelling a litany of criticism and attacks against the GS, with **W04290** stating “[u]ntil we have new appointments, I will not respond to any

¹⁵⁷⁰ T-250325,pp.25871-25873 (W04403).

¹⁵⁷¹ T-240711,pp.18079-18080 (W04752).

¹⁵⁷² T-241126,pp.22701-22703 (W03873).

¹⁵⁷³ 4D00073_ET; T-241203,pp.23232-23234 (W04401).

¹⁵⁷⁴ 4D00068_ET,p.SPOE00226473.

¹⁵⁷⁵ T-241203,pp. 23235-23237 (W04401), regarding 4D00068_ET,p.SPOE00226473, P00182_ET,pp.SPOE00226402-SPOE00226407. See also P03777_ET.

requests from or brief you and I think even my post as Commander of the Operational Zone will be contested. Only then I will carry out all the tasks that the General Staff assigns us and will not contest any orders".¹⁵⁷⁶ **W04401** testified this was a demonstration of **W04290**'s continued opposition to **KRASNIQI** and **SYLA**, and that he would remain insubordinate until his demands were met.¹⁵⁷⁷ **W04290** is also recorded as saying that *"if we cannot find a common language with the General Staff, then there is no point us meeting [in] the future"* and *"they lack the professional skills"*. Sami **LUSHTAKU** is then reported as saying *"Rexhep SELIMI, Hashim THAÇI and Kadri VESELI are responsible for the situation we are in at the moment"*, and **W04746** said *"[t]hese individuals have let down their senior co-fighters"*.¹⁵⁷⁸ **W04746** testified it was fair to say that the zone commanders were dissatisfied with them, and that there was no *"mutual trust"* between the zone commanders and the GS because *"we didn't know them"*.¹⁵⁷⁹

485. Of course, in terms of 'appointments', the emblematic example of the zone commanders' authority and lack of effective control of the GS over them was the *"coup"*, during the Rambouillet Conference, where the zone commanders removed **SYLA** and installed **W04290** as general commander,¹⁵⁸⁰ discussed below.

486. *Rules and regulations* were produced locally. **W04752** said there were many rules and documents that the KLA could not write. They had basic ones, but *"of course we needed many other instructions and regulations to be complied with, but we were unable to do so."*¹⁵⁸¹ **W04758** said that in the absence of general regulations being provided by the GS, he acted on his own judgment and created his own materials within the

¹⁵⁷⁶ P00182_ET,p.SPOE00226407.

¹⁵⁷⁷ T-241203,p.23131 (W04401).

¹⁵⁷⁸ P00182_ET,pp.SPOE00226404-SPOE00226405.

¹⁵⁷⁹ T-230714,pp.5769,5781-5789, T-240717,p.5855 (W04746), regarding P00182_ET,pp.SPOE00226397 *et seq.*

¹⁵⁸⁰ T-240325,p.13614 (W04147).

¹⁵⁸¹ T-240717,pp.18421-18422 (W04752).

zone.¹⁵⁸² **W04746** agreed that they used sources from Albania and other armies in the region; officers who had been in the military academy drafted their own regulations.¹⁵⁸³ **W03873** said in March 1999 they put together some provisional rules on how to coordinate, in twelve A4 pages. They did not have general rules or regulations but did it themselves and then it was stamped by the zone commander and by **W04752**.¹⁵⁸⁴

487. **W04765** was shown purported GS "*Disciplinary Regulations*",¹⁵⁸⁵ but did not think the GS had such a regulation; rather, they in the Pashtrik zone drafted it. It says 'GS' because they sent it to the GS, but he was not aware if there was anyone to receive it. **W03865**, a lawyer who advised the command in the Pashtrik zone, was involved in this. The rules were just a cut and paste from the Albanian army regulations and unrelated to real functions. It referred to "*reserve officers*" and "*non-commissioned officers*" when they did not have them.¹⁵⁸⁶ Shown a copy of the same Regulations, **W04747** stated there were maybe two or three copies in the whole of Kosovo, and he was [REDACTED].¹⁵⁸⁷

488. **W04401** did not remember receiving drafts of regulations or reviewing them in GS meetings.¹⁵⁸⁸ [REDACTED] never saw any regulations issued by the GS.¹⁵⁸⁹ **W04403** denied being familiar with purported GS "*Combat Regulations*" when shown a document issued by the Dukagjin Plain on 12 July 1998 referencing these.¹⁵⁹⁰ He did not see them at the time, or later.¹⁵⁹¹ **W04741** was shown "*Provisional Rules of Organising*

¹⁵⁸² T-241024,pp.21140-21141 (W04758).

¹⁵⁸³ T-230712,pp.5536-5541 (W04746).

¹⁵⁸⁴ T-241127,pp.22882-22883 (W03873).

¹⁵⁸⁵ P00715.

¹⁵⁸⁶ T-231115,pp.10198-10206, T-231204,pp.10472-10476 (W04765).

¹⁵⁸⁷ P03580.3_ET,pp.33-34.

¹⁵⁸⁸ T-241202,p.23153 (W04401).

¹⁵⁸⁹ [REDACTED].

¹⁵⁹⁰ P03073_ET.

¹⁵⁹¹ T-250326,pp.25982-25984 (W04403).

Internal Army Life", which had an oath to LIMAJ (rather than an oath that applied throughout Kosovo),¹⁵⁹² indicating that it had not come from the GS.¹⁵⁹³

489. **Information sharing:** The level of information sharing between the zones and the GS was nowhere near the level required for effective control by GS members. The zone commanders gave **W04752** "*very little information*" because the possibilities were limited, radio communications were intercepted, it was almost impossible to have a physical connection.¹⁵⁹⁴ [REDACTED] confirmed that KLA radios (simple devices, communicating only over a short distance) did not always work, and could not be relied on. To speak to someone in another locality, you needed to send someone.¹⁵⁹⁵ The evidence does not establish beyond reasonable doubt the use of satellite phones by the KLA prior to December 1998.¹⁵⁹⁶

490. **W04746** went to the GS HQ in Divjakë/Divljaka 2-3 times in October and November 1998. It was very difficult, as it was a fair distance and you had to cross the front 3-4 times. Mainly the fighting would be discussed, and ways of furthering the war effort to gain support of the people and the internationals. There would be "*brief and oral*" reports from the respective zones.¹⁵⁹⁷ There was no suggestion that orders were issued. **W04403** discussed **monthly** briefings between members of the GS and the operational zones, but testified that the first meeting took place at the beginning of December 1998, he does not know of any such meetings before this, and he has no knowledge of whether the Dukagjin staff reported to the GS before December.¹⁵⁹⁸

491. **W04765** said that communication between the GS and zone commanders was

¹⁵⁹² T-240423,pp.14747-14749 (W04741), regarding P00008.

¹⁵⁹³ *Contra* Adjudicated Fact No.236.

¹⁵⁹⁴ T-231115,pp.10193-10195 (W04765).

¹⁵⁹⁵ [REDACTED]. *Contra* Adjudicated Fact No.230.

¹⁵⁹⁶ E.g. T-240704,pp.17632-17633 (W04752); T-230718,p.5937 (W04746). *Contra* Adjudicated Fact No.231.

¹⁵⁹⁷ T-230712,pp.5604-5606 (W04746).

¹⁵⁹⁸ T-250325,pp.25867-25868 (W04403).

very difficult.¹⁵⁹⁹ Having been stationed within the GS at the end of December until 15 January 1999, he was alone, felt isolated and separated from the war; the GS paid very little attention to the war; the zones conducted the war.¹⁶⁰⁰

492. **W03873** said in the Pashtrik zone, there were daily meetings with the commander and weekly meetings with the sector. It was up to the zone commander if the minutes of these meetings would be transferred to the GS, and **W03873** does not know if they were sent. The GS never responded to any requests **W03873** made, so he realised that nobody was dealing with these problems.¹⁶⁰¹ Never in five months did he receive an order, request or notification from the GS.¹⁶⁰² A report was sent from the Drenoc HQ to the GS describing the ambush of KLA soldiers by Serbs on 15 May 1998, stating "*[m]ore than 3 months have passed since the day the Kosovo Liberation Army went public in the area of Rahovec. The General Staff of this army is also aware of this. So far, we have not sent any reports to this staff.*"¹⁶⁰³ **W04752** confirmed never having seen or received this report.¹⁶⁰⁴

(ii) *The view from the GS*

493. **W04752** [REDACTED].¹⁶⁰⁵ **W04752** stood by his previous statement that, "*the members of the KLA General Staff were not all stationed in the same place but many of its members were based in Albania. At the time, in order to carry out important combat operations, the forces on the ground in theory had to obtain the approval of the General Staff. However, in practise this was not happening*".¹⁶⁰⁶ For **W04752** it was evident that zone commanders had more power in their hands than the GS.¹⁶⁰⁷ The KLA was not a regular professional

¹⁵⁹⁹ T-231115,p.10193 (W04765).

¹⁶⁰⁰ T-231115,pp.10181-10183, T-231116,pp.10263-10264,10345 (W04765).

¹⁶⁰¹ T-241127,pp.22883-22887 (W03873).

¹⁶⁰² T-241128,p.22900 (W03873).

¹⁶⁰³ P00067_ET,p.1.

¹⁶⁰⁴ T-240709,pp.17877-17879 (W04752).

¹⁶⁰⁵ T-240704,pp.17664-17665 (W04752).

¹⁶⁰⁶ 1D00438,para.14.

¹⁶⁰⁷ T-240704,pp.17564-17565 (W04752).

army, but an army born of people, with commanders who had authority before they organised. They had their own local power bases from which they had obtained their positions as zone commanders, and their authority was based in and supported by the population. They had authority in that zone, within those units, so they could not receive orders and the GS could not impose orders on them; GS members did not have authority from public opinion. Therefore, the zone commanders were more powerful than the GS, which was a problem “*through to the end of the war*”.¹⁶⁰⁸

494. One of the primary factors constraining the GS was the lack of regular communications both between the GS and the zone commanders, and among the GS. **W04752** confirmed that as far as he remembers from July 1998 there was no regular communication or meetings between the GS and the zone commanders, and it was very difficult to communicate at this time.¹⁶⁰⁹ Prior to the November restructure, the GS held rare, *ad hoc* meetings, changing venues frequently and without all members of the GS present.¹⁶¹⁰ **W04752** was outside Kosovo between mid-September and mid-November 1998 and does not have any knowledge about GS meetings during this time.¹⁶¹¹ **W04401** could recall only four meetings from March 1998 to the start of the restructure in November 1998, although he did not attend all of them.¹⁶¹² **W04401** said that the GS was not collectively issuing and discussing communiqués,¹⁶¹³ meetings were “*few and far between*”, and decisions would be taken in the heat of the moment without others necessarily knowing about them.¹⁶¹⁴

495. The evidence demonstrates that the GS was unable to order the zone commanders. **W04752** had no ability to arrest a zone commander. If a zone

¹⁶⁰⁸ T-240717,p.18481 (W04752).

¹⁶⁰⁹ T-240709,pp.17869-17871 (W04752).

¹⁶¹⁰ T-240703,p.17568, T-240710,p.17963 (W04752); P01355.3_ET,p.3.

¹⁶¹¹ T-240710,pp.17932,17952 (W04752).

¹⁶¹² T-241202,pp.23141-23153 (W04401); P00643.

¹⁶¹³ T-241202,p.23141 (W04401).

¹⁶¹⁴ T-241204,p.23379, T-241205,p.23466 (W04401).

commander told him he would not follow his order, he would have had nothing to make him comply.¹⁶¹⁵ **W04752** said that the GS could only give “*advice*” to **W04746**, for example, to withdraw his forces from the Podujevë/Podujevo line, as discussed below. A zone commander had the right to make decisions on his own.¹⁶¹⁶ In terms of being able to prevent or punish, **W04752** was asked whether he or SYLA could have sent military police to arrest and remove **W04746** from his position. **W04752** said “*I could not take those actions because I did not have the authority. He had a bigger authority in his zone.*”¹⁶¹⁷ **W04752** explained that he was only coordinating the work of zone commanders, based on their consent, and agreed this meant he did not have actual control over them.¹⁶¹⁸

496. **W04401** testified that the relationship between the GS and the zone commanders was one of “*mutual consent to work together*” as opposed to a hierarchical chain, as the zone commanders had “*absolute authorities*” in their zones.¹⁶¹⁹ It was not always possible for the GS to get information from the ground, and they often did not know what was going on.¹⁶²⁰ Where communication was not possible, zone commanders would act at their own discretion.¹⁶²¹ **W04401** agreed that the zone commanders felt they were so powerful that it was their choice as to whether they would report to the GS.¹⁶²²

497. There are many examples of zone or local commanders acting on their own, throughout the entire conflict. **W04401** said there was no decision at the GS level to attack Rahovec/Orahovac in July 1998 before it was attacked. It was driven by the local

¹⁶¹⁵ T-240717,pp.18472-18473 (W04752).

¹⁶¹⁶ T-240716,p.18344 (W04752).

¹⁶¹⁷ T-240717,p.18455 (W04752).

¹⁶¹⁸ T-240717,pp.18468-18469 (W04752).

¹⁶¹⁹ T-241202,pp.23130-23131 (W04401).

¹⁶²⁰ T-241204,pp.23376-23380 (W04401).

¹⁶²¹ T-241204,pp.23130,23375 (W04401).

¹⁶²² T-241202,p.23130 (W04401). *Contra* Adjudicated Fact No.237.

units there. The GS was not involved in any way.¹⁶²³ **W04752** confirmed that the GS did not give a green light for Rahovec/Orahovac,¹⁶²⁴ and the attack in Bardh i Madh/Belaćevac in 1998 was conducted without the permission of the GS.¹⁶²⁵

498. In December 1998, the so-called 'Podujevë/Podujevo line incident' illustrates the "impotence" of the GS and the "[r]esistance of zone commanders to following instructions or directions".¹⁶²⁶ KLA forces led by **W04746** moved to fill vacated Serbian positions along a key communications line.¹⁶²⁷ **W04147** and other international officials [REDACTED].¹⁶²⁸ **W04746** confirmed there were "attempts" by the GS but [REDACTED], since the highest authority in the Llap zone was **W04746** and his command.¹⁶²⁹ **W04752** noted the GS had not given "the green light" for this action, and gave "advice" to **W04746** to withdraw. He agreed **W04746**'s refusal to act in accordance with the GS's request was a problem, but the GS could not take any specific measures in response.¹⁶³⁰ International representatives therefore had to negotiate directly with **W04746** to secure the withdrawal of the forces.¹⁶³¹

499. Concerning the detention of three woodcutters near Rahovec/Orahovac, [REDACTED].¹⁶³² In June 1999, ÇEKU found out Commander DRINI and his troops were moving towards Prizren and, [REDACTED], ÇEKU called DRINI and ordered him not to carry out any further movements. DRINI [REDACTED] continued in defiance of ÇEKU's order.¹⁶³³ In a post-war interview, DRINI acknowledged the liberation of Prizren was done "without the consent of the General Headquarters and I think

¹⁶²³ T-241203,pp.23194-23196 (W04401).

¹⁶²⁴ T-240703,p.17585 (W04752).

¹⁶²⁵ T-240716,p.18345 (W04752)

¹⁶²⁶ *Contra* Adjudicated Fact No.222.

¹⁶²⁷ [REDACTED].

¹⁶²⁸ [REDACTED]. *See also* T-230914,p.8144 (W03724).

¹⁶²⁹ T-230714,pp.5752-5753 (W04746).

¹⁶³⁰ T-240704,p.17629, T-240716,pp.18343-18345 (W04752).

¹⁶³¹ [REDACTED].

¹⁶³² T-240328,pp.14030-14033,14096 (W04147).

¹⁶³³ [REDACTED].

it was an effective action."¹⁶³⁴

500. The independence of the zone commanders from the GS also extended to logistics. **W04752** accepted **W04746**'s evidence that he was able to secure weapons for the Llap zone from Bosnia and Serbia during the war, and received voluntary contributions for the Llap zone from people inside and outside Kosovo. **W04752** agreed that there were independent lines of supply and functioning which the GS did not have control over.¹⁶³⁵

501. **W04264** was appointed as the chief of judicial services in late 1998. There were no collective discussions in the GS about what his role or responsibility would be.¹⁶³⁶ **W04401** said in November 1998, it was not the role of the GS to discipline soldiers or oversee their work.¹⁶³⁷ The military police were also local. **W04752** confirmed the zone's military police reported to the zone commander. The zone commander did not report military police matters to the Directorate of the Military Police.¹⁶³⁸

502. **W04752** was asked by the Panel: *"if you put people without military experience in charge of a military organisation, isn't there a risk of this organisation not functioning as it should have?"* **W04752** said that the risk exists, but they had no other choice. They tried to bring in military officers, but were unsuccessful, and did not have enough former officers to put in the GS.¹⁶³⁹ This was, in essence, a collective of untrained, disorganised, disparate groups, fighting for their lives against decades of violence, persecution and oppression, in a structure that operated on the basis of mutual consent and cooperation rather than singleness of command and subordination.

¹⁶³⁴ 1D00053; T-240521,pp.15563-15566 (W02540). **W04765** (T-231116,pp.10253-10254) and [REDACTED] confirmed the accuracy of the descriptions in this interview.

¹⁶³⁵ T-240715,pp.18184-18187 (W04752).

¹⁶³⁶ T-241203,pp.23223-23224 (W04401).

¹⁶³⁷ T-241203,pp.23208-23209 (W04401).

¹⁶³⁸ T-240710,pp.17979-17980 (W04752).

¹⁶³⁹ T-240717,pp.18470-18471 (W04752). *See also* para.156.

(iii) The view of the internationals

503. **W04147** testified that [REDACTED].¹⁶⁴⁰ **W04147** did not see any evidence to support the idea that the GS exercised command responsibility over detentions within zones, meaning the ability to prevent or punish.¹⁶⁴¹ **W04147** said that [REDACTED].¹⁶⁴²

504. **W02144**'s testimony was that there seemed to be mostly regions, and leaders of those regions, rather than a centralised KLA structure. In 1998, his feeling was that there was a centre in the Drenicë/Drenica region, but the KLA in western Kosovo in Dukagjin would not necessarily be under that same centralised structure, and that in western Kosovo there were armed groups who did their own thing and did not necessarily follow any other command.¹⁶⁴³ A report from the Austrian embassy in Belgrade on 27 June 1998 says *"[t]he UCK command structure nevertheless remains something of a mystery, according to the US. Although the UCK operates with terms such as 'General Staff', in the US view it is more a matter of diffuse horizontal command and coordination structures. This could be problematic in terms of involving the UCK in political dialogue."*¹⁶⁴⁴ This was confirmed by **HILL**, who discussed the U.S.' continued frustration at the lack of KLA leadership to engage in late summer/early fall 1998, and that not one person in the KLA could speak for them all.¹⁶⁴⁵ **HILL**'s interactions with KLA members, when trying to assemble an Albanian team for peace negotiations, led him to believe that there was no such a thing as a GS in charge of the KLA.¹⁶⁴⁶

505. Commenting on a U.S. cable of 18 December 1998 stating *"the KLA is taking*

¹⁶⁴⁰ T-240325,p.13598 (W04147), discussing [REDACTED].

¹⁶⁴¹ T-240327,p.13863 (W04147).

¹⁶⁴² T-240327,pp.13891-13892 (W04147).

¹⁶⁴³ T-240528,pp.16114-16118 (W02144).

¹⁶⁴⁴ T-240528,pp.16112-16113 (W02144), discussing P01212_ET.

¹⁶⁴⁵ 1D00423,p.DHT12292; T-251110,pp.27675-27678, T-251112,p.27881 (HILL); 1D00424; 1D00425,p.DHT08914. *See also* 4D00192,p.SPOE00305084; T-240528,pp. 16110-16112 (W02144); P01209_ET,p.721; 1D00522,p. SPOE00304947.

¹⁶⁴⁶ T-251110,pp.27673,27767,27867 (HILL).

advantage of the uneasy truce in Kosovo to try to gain control over its units”, W04147 confirmed that this meant that the KLA GS did not have control over its units. KDOM did not think that the GS had control over its zone commanders, given their resistance to following instructions.¹⁶⁴⁷ A cable of 4 February 1999 written by W04147 discusses failed attempts by the GS to reduce the existing KLA zones from seven to three, and reports a KLA source claimed that the GS “concluded that consolidation would reduce KLA effectiveness over the near term. We suspect that zone consolidation proved to be too difficult.” W04147 then wrote “[a]t a time when the new General Staff was trying to weld disparate KLA elements into some semblance of a coherent military organization, and in particular to assert its authority over virtually independent regional military leaders, it was probably politically impossible to demand that some zone commanders turn over their troops to others. More likely, the [GS] decided to accept the existing zone structure in return for a higher degree of control over zone commanders.”¹⁶⁴⁸ A subsequent cable from W04147 on 10 March 1999 cited further “internal struggle[s]” within the KLA, and listed a major issue as being “what the KLA calls its ‘reorganization’ but what in fact has been the leadership’s efforts to create an effective General Staff with genuine control over the disparate KLA formations scattered around Kosovo”. W04147 noted that this effort appears to have been only partially successful “as the zone commanders clearly retain considerable operational independence.”¹⁶⁴⁹

506. DUNCAN said the power in the KLA was at the regional/zone level. Zones had a fair degree of independence from senior command. In military terms, this was “unusual”. British forces would not insist on regional commanders being present when there was a negotiation, for example.¹⁶⁵⁰ COVEY corroborated, explaining that during a JIC meeting also attended by THAÇI, ÇEKU did not seem to be able to speak for the

¹⁶⁴⁷ P01069,p.075322 (emphasis added); T-240325,pp.13647-13649 (W04147).

¹⁶⁴⁸ P01074,p.075340-075341; T-240325,pp.13607-13610, T-240327,pp.13877-13880 (W04147).

¹⁶⁴⁹ P01080,p.075397; T-240325,pp.13611-13613, T-240326,pp.13774-13775, T-240327,pp.13881-13884 (W04147).

¹⁶⁵⁰ T-250922,pp.27051-27053 (DUNCAN).

KLA without knowing the zone commanders agreed.¹⁶⁵¹ **W04147** knew there were zone commanders who had their own funding and weapons, and who acted independently.¹⁶⁵² **W04147**'s KDOM colleagues were told on several occasions by HARADINAJ and **W04746** that they had their own resources. **W04746** and his chief of staff told KDOM that they were buying weapons from a JNA colonel. The rich zones thus had more independence from the GS.¹⁶⁵³ [REDACTED].¹⁶⁵⁴

507. The SPO's description of the GS is completely divorced from the evidence. A finding that there is no reasonable doubt that the GS "*exercised political and operational decision-making and control*",¹⁶⁵⁵ and reflected "*a centralised, formal power structure*"¹⁶⁵⁶ is incompatible with the evidence of the alleged GS members, and those who interacted (or sought to interact) with it.¹⁶⁵⁷

(d) The impact of the Serb offensives

508. The impotence of the GS and the lack of effective control arose from the difficult circumstances in which the KLA operated. Documentary and testimonial evidence confirmed the chaos and widespread destruction created by Serb offensives, particularly those in summer 1998¹⁶⁵⁸ and March 1999,¹⁶⁵⁹ and the significant impact these offensives had on the KLA.¹⁶⁶⁰ [REDACTED] described the summer offensives

¹⁶⁵¹ T-250930,p.27348 (COVEY).

¹⁶⁵² T-240325,p.13658 (W04147).

¹⁶⁵³ T-240327,pp.13830-13831 (W04147).

¹⁶⁵⁴ T-240325,p.13658 (W04147).

¹⁶⁵⁵ SPO PTB,para.97.

¹⁶⁵⁶ SPO PTB,para.103.

¹⁶⁵⁷ *Contra* Adjudicated Fact No.237.

¹⁶⁵⁸ Adjudicated Fact Nos.75,752-757.

¹⁶⁵⁹ Adjudicated Fact Nos.132-133,759-763.

¹⁶⁶⁰ 1D00516,pp.SPOE00304233-SPOE00304234; T-240703,p.17510, T-240709,pp.17887-17888,17909-17910 (W04752); T-250128,p.24710 (W04743); T-241118,pp.22308-22309 (W04679); T-241106,p.22116, T-241107,p.22185 (W01453); 1D00463_ET,p.2; P01097.1_ET,p.25; T-241126,p.22698 (W03873); T-230913,p.7894 (W04255); T-240930,pp.20491-20498,20510-20511 (W04278); 1D00445; 1D00518,paras.10,17; 1D00457.

as “*decimat[ing]*” the KLA in western and southern Kosovo; [REDACTED].¹⁶⁶¹ **W04401** agreed that after the summer offensive the KLA had “*very much collapsed*”,¹⁶⁶² describing the KLA switching focus to the protection of 250,000 displaced persons, with food being a problem.¹⁶⁶³ [REDACTED] described this time as a “*military vacuum*” with the units being disbanded, and KLA soldiers scattered between different villages and [REDACTED].¹⁶⁶⁴ Witnesses confirmed much of the KLA had withdrawn to Albania to regroup.¹⁶⁶⁵ A [REDACTED] described “*Serb success in defeating the UCK and destroying the command structure*” resulting in scattered resistance all over the provinces and neighbouring Albania “*without any unified command and control*”.¹⁶⁶⁶ An [REDACTED] report of 23 September stated “*the UCK appears to have collapsed*”, and its infrastructure, although never sophisticated “*has been successfully cut and the UCK has been reduced to pockets, disbursed throughout the countryside*”.¹⁶⁶⁷

509. By February 1999, **W04147** explained that the KLA did not control many areas, could not move freely on the roads, had unsecured and vastly insufficient communication equipment, and was under very heavy pressure from Serbian forces. They were also moving around, the headquarters was not in one place, and the members were scattered. It was very difficult to pull together a coherent organisation for those reasons, and impossible without secure communications to discuss sensitive matters.¹⁶⁶⁸ **W04752** then explained that when NATO bombings and the Serb offensives began, attempts to restructure the KLA could not be carried out in the same way because of the intensity of the offensives. It was impossible for them to have a compact system and the ability to exercise this command structure was severely

¹⁶⁶¹ [REDACTED]. See also T-240327, pp.13849-13852 (W04147); [REDACTED].

¹⁶⁶² T-241203, pp.23197-23199 (W04401).

¹⁶⁶³ T-241203, pp.23200-23202 (W04401).

¹⁶⁶⁴ [REDACTED].

¹⁶⁶⁵ [REDACTED]; T-240528, pp.16139-16140 (W02144).

¹⁶⁶⁶ 4D00179, p.SPOE00304228.

¹⁶⁶⁷ 2D00033, p.SPOE00304291.

¹⁶⁶⁸ T-240327, pp.13880-13881 (W04147).

impacted.¹⁶⁶⁹ **W04752** explained that during the NATO campaign, hundreds of thousands of Albanians were being expelled from Kosovo, which impacted the units. Some had to deal with the civilian population, some went to their families.¹⁶⁷⁰

510. This chaos is relevant to an assessment of effective control.¹⁶⁷¹ In *Orić*, it was found the chaotic situation prevailing during the early months of the Srebrenica siege made it impossible to conclude that the Srebrenica Armed Forces had effective control over the Srebrenica military police.¹⁶⁷² The decimation of the already precarious KLA structure and the obliteration of command and control is directly relevant to whether the GS or **THAÇI** was able to prevent or punish the troops who were scattering throughout Kosovo and Albania. A finding beyond reasonable doubt of effective control is incompatible with this evidence.

(e) **THAÇI did not have effective control as a GS member**

511. Membership in a particular organ and attendance at meetings on behalf of that organ does not *per se* suffice to establish effective control.¹⁶⁷³ Even if the evidence demonstrated beyond a reasonable doubt that the GS was a functioning centralised formal power structure which “*exercised political and operational decision-making and control*”,¹⁶⁷⁴ it “*cannot be assumed*” that an accused can exercise individually the same powers as the body to which he belongs.¹⁶⁷⁵ Effective control is **an inter-personal relationship between two individuals**: the commander (the accused) and the subordinates(s) who committed the crimes. As such, “*[i]n a case where the accused was part of a collegiate body, it would have to be established that his role, function and position—whether as part of that body or otherwise—gave him the necessary power and authority to*

¹⁶⁶⁹ T-240708,p.17762 (W04752).

¹⁶⁷⁰ T-240708,p.17764 (W04752).

¹⁶⁷¹ T-230320,pp.2091-2092 (Status Conference).

¹⁶⁷² *Orić* TJ,paras.503-504.

¹⁶⁷³ Mettraux,p.165,fn.135.

¹⁶⁷⁴ SPO PTB,para.97.

¹⁶⁷⁵ Mettraux,p.162.

personally control the perpetrators.”¹⁶⁷⁶ The ICTR Appeals Chamber held “mere membership of a collegiate board of directors does not suffice, per se, to establish the existence of effective control”.¹⁶⁷⁷

512. When assessing whether membership of a collegiate body gives rise to effective control on the part of an accused, jurisprudence emphasises the need for a case-by-case assessment. Namely, “[i]f a superior has functioned as a member of a collegiate body with authority shared among various members, the power or authority actually devolved on an accused may be assessed on a case-by-case basis, taking into account the cumulative effect of the accused’s various functions.”¹⁶⁷⁸ For example, the *Brima* Trial Chamber noted that “very little evidence has been adduced relating to the Accused *Brima*’s de facto position and functions as a senior member of the AFRC so as to enable the Trial Chamber to reach any conclusion regarding his relationship with alleged subordinates based on that position alone.”

The Trial Chamber concluded that:¹⁶⁷⁹

*[m]embership of the Supreme Council and attendance at meetings per se, does not suffice to prove beyond reasonable doubt that *Brima* was in a superior-subordinate relationship with the perpetrators of the offences committed in Bo, Kenema and Kailahun Districts during the relevant Indictment period. As stated above in the Trial Chamber’s discussion of the applicable law, the authority of members of a power-sharing collegiate body like the Supreme Council must be assessed on a case-by-case basis and requires an analysis of the functions of the particular Accused. The Trial Chamber finds that there is no evidence that within the Supreme Council the Accused *Brima* possessed any individual decision-making capability.*

513. Importantly, and directly relevant to an assessment of effective control, evidence of **THAÇI**’s movements demonstrates his repeated absence from Kosovo, including over approximately four months from November 1998 until March 1999. **THAÇI** left Kosovo repeatedly in the spring of 1998; he was in Switzerland on 11 May

¹⁶⁷⁶ Mettraux, p.162.

¹⁶⁷⁷ *Nahimana* AJ, para.788.

¹⁶⁷⁸ *Brima* TJ, para.786. See also *Nahimana* AJ, para.788; *Musema* TJ, para.135.

¹⁶⁷⁹ *Brima* TJ, para.1657.

1998,¹⁶⁸⁰ and in Albania on 21 May 1998.¹⁶⁸¹ He was outside Kosovo for approximately two weeks in July 1998.¹⁶⁸² He left Kosovo again in November 1998¹⁶⁸³ until mid-March 1999, moving throughout Albania, Switzerland, Austria, Belgium, and Slovenia, engaging in political talks to resolve the conflict.¹⁶⁸⁴

514. **THAÇI** was in Albania on 3 December 1998;¹⁶⁸⁵ Switzerland on 17 December,¹⁶⁸⁶ and Belgium on 19 December.¹⁶⁸⁷ On 1 January 1999, **THAÇI** was in Belgium, meeting Nicole FONTAINE, President of the European Parliament.¹⁶⁸⁸ He returned to Belgium on 9 January 1999,¹⁶⁸⁹ and traveled to Slovenia, arriving on 13 January 1999.¹⁶⁹⁰ **THAÇI** then travelled from Albania¹⁶⁹¹ to France¹⁶⁹² for the Rambouillet Conference, which began on 6 February 1999 and adjourned on 23 February 1999.¹⁶⁹³ He left the Conference to meet Adem DEMAÇI in Slovenia on 19 February,¹⁶⁹⁴ and was back in Rambouillet on 20 February.¹⁶⁹⁵ When the Conference adjourned, the delegation returned to Kosovo¹⁶⁹⁶ but **THAÇI** did not, only returning to Kosovo around 10 March.¹⁶⁹⁷

¹⁶⁸⁰ 1D00293,p.DHT02732.

¹⁶⁸¹ 1D00293,p.DHT02731.

¹⁶⁸² P00761.1_ET,pp.22-24; P00739.7_ET,pp.19-21.

¹⁶⁸³ P01069,p.075327.

¹⁶⁸⁴ T-240704,pp.17630,17633 (W04752); T-240327,p.13947 (W04147); T-231205,pp.10509-10510 (W04765).

¹⁶⁸⁵ 1D00293,p.DHT02731.

¹⁶⁸⁶ 1D00293,p.DHT02732.

¹⁶⁸⁷ 1D00293,p.DHT02721.

¹⁶⁸⁸ 1D00294.

¹⁶⁸⁹ 1D00293,p.DHT02721.

¹⁶⁹⁰ 1D00293,p.DHT02721.

¹⁶⁹¹ P01264_ET,p.SPOE00128794.

¹⁶⁹² 1D00278,p.DHT05285; 1D00352,p.DHT05897.

¹⁶⁹³ 1D00310,pp.DHT02871,DHT02873.

¹⁶⁹⁴ 1D00266; 1D00295,p.DHT04046; 1D00310,p.DHT02872; 1D00357,p.DHT05877; 1D00375,para.32; 1D00380; T-250917,pp.26877-26879 (WILLIAMS).

¹⁶⁹⁵ 1D00282,p.DHT05871.

¹⁶⁹⁶ 1D00358,p.DHT05178; P01264_ET,pp.SPOE00128796-SPOE00128797.

¹⁶⁹⁷ P01076,p.075410; 1D00258,p.DHT02008; 1D00271; 1D00300,p.DHT05018.

515. **THAÇI** was in Tirana for meetings with Albanian President MEIDANI on 1¹⁶⁹⁸ and 7 March.¹⁶⁹⁹ His return to Kosovo was then further complicated by the Serb authorities' issuance of an arrest warrant against him.¹⁷⁰⁰ **THAÇI** returned briefly to Kosovo¹⁷⁰¹ to meet the zone commanders and seek their consent to sign the agreement.¹⁷⁰² He was in France on 15 March for the resumption of the Rambouillet Conference and the signature of the agreement on 18 March 1999.¹⁷⁰³ After the signing, **THAÇI** and others travelled to Belgium to visit NATO HQ and meet **CLARK** on 19 March.¹⁷⁰⁴ On 20 March, **THAÇI** travelled to Tirana on a French military plane with Rexhep QOSJA, for talks with MEIDANI and Foreign Minister Paskal MILO; the press reported that **THAÇI** (and QOSJA) "*will remain in Albania following the collapse of peace talks with the Yugoslav government*".¹⁷⁰⁵ **THAÇI** returned to Kosovo around the end of March.¹⁷⁰⁶

516. **THAÇI** was in Albania again on 27 April 1999.¹⁷⁰⁷ He was then away from Kosovo from around 20 May until 19 June, traveling to meet European and international leaders.¹⁷⁰⁸ Between 21-24 May 1999, he was in Albania¹⁷⁰⁹ meeting Albanian Prime Minister Pandeli MAJKO (21 May),¹⁷¹⁰ former Albanian President Sali BERISHA (23 May);¹⁷¹¹ and visiting refugee camps (24 May).¹⁷¹²

¹⁶⁹⁸ 1D00296,p.019611; 1D00297,p.SITF00011628; 1D00312,p.019613; P04059,p.SITF00011669.

¹⁶⁹⁹ 1D00298,p.019618; 1D00299.

¹⁷⁰⁰ 1D00258,p.DHT02008; 1D00262,para.63; 1D00271,p.DHT05154; 1D00304,p.065821.

¹⁷⁰¹ 1D00302,p.066182.

¹⁷⁰² 1D00301,p.019629; 1D00302,p.066182; 1D00262,para.25; P01745_ET,p.6D00-0785; P02028,p.SITF00009432; T-250211,pp.25030-25031, T-250212,pp.25179-25180 (W04290); T-230713,pp.5635-5636,5697-5698 (W04746); P01294_ET,pp.1-2.

¹⁷⁰³ 1D00285; 1D00303; 1D00305; 1D00306,p.065812; 1D00307.

¹⁷⁰⁴ 1D00360,p.019646.

¹⁷⁰⁵ 1D00309,p.019648.

¹⁷⁰⁶ 1D00243_ET,p.DHT04012-ET.

¹⁷⁰⁷ 1D00293,p.DHT02731.

¹⁷⁰⁸ 1D00286,pp.SITF00011866-SITF00011867; 1D00311,p.019711.

¹⁷⁰⁹ 1D00313,p.019752; 1D00314,p.019754; 1D00317,p.065755.

¹⁷¹⁰ 1D00315,p.065750; 1D00316.

¹⁷¹¹ 1D00318_ET.

¹⁷¹² 1D00317,p.065755; 1D00319,p.065739; 1D00320,p.DHT08546; 1D00321.

517. On 25 May, **THAÇI** was in France,¹⁷¹³ meeting French Foreign Minister, Hubert VÉDRINE, on 27 May.¹⁷¹⁴ On 28 May, he was at NATO HQ in Brussels, meeting NATO Secretary-General Javier SOLANA, and **CLARK**.¹⁷¹⁵ **THAÇI** met British Foreign Secretary, Robin COOK, in London on 30 May;¹⁷¹⁶ and Joschka FISCHER, German Foreign Minister, on 1 June in Bonn.¹⁷¹⁷ On 3 June, **THAÇI** was in Cologne, attending a meeting with British Prime Minister, Tony BLAIR.¹⁷¹⁸ **THAÇI** was in Oslo on 6 June meeting Norwegian Foreign Minister and OSCE President Knut VOLLEBÆK.¹⁷¹⁹ **THAÇI** met QOSJA and RUGOVA in Bonn on 7 June,¹⁷²⁰ and they met U.S. Secretary of State, Madeleine ALBRIGHT, in Cologne on 8 June.¹⁷²¹ On 9 June, **THAÇI** was in Berne meeting Swiss Foreign Minister Joseph DEISS.¹⁷²² On 10 June, he was in Italy, meeting Italian Foreign Minister Lamberto DINI.¹⁷²³ **THAÇI** was in Vienna on 12 June, giving an interview for Austrian state radio,¹⁷²⁴ in Slovenia on 14 June for talks at the Slovene Foreign Ministry¹⁷²⁵ and then in Macedonia from 16-18 June, visiting the Stenkovec refugee camp, attending meetings, and addressing the press.¹⁷²⁶ **THAÇI** only returned to Kosovo on 19 June with **RUBIN**, to attend final Undertaking negotiations.¹⁷²⁷

¹⁷¹³ 1D00322_ET,p.1.

¹⁷¹⁴ 1D00206,p.019775.

¹⁷¹⁵ 1D00323_ET.

¹⁷¹⁶ 1D00324; 1D00311,p.019711.

¹⁷¹⁷ 1D00207,p.019789.

¹⁷¹⁸ 1D00208,p.019809; 1D00325,p.065849; 1D00326.

¹⁷¹⁹ 1D00327,p.019819; 1D00328.

¹⁷²⁰ 1D00332,p.SPOE00314021; 1D00363,p.SPOE00304442.

¹⁷²¹ 1D00329,p.065847; 1D00189,p.020383; 1D00331,p.DHT11101; 1D00333,p.020393; 1D00336,p.020418; 1D00270,p.DHT05150; 1D00262,paras.68-69.

¹⁷²² 1D00330,p.020391; 1D00293,p.DHT02722.

¹⁷²³ 1D00334,p.020400.

¹⁷²⁴ 1D00335,p.020414.

¹⁷²⁵ 1D00337; 1D00340,p.020451.

¹⁷²⁶ 1D00338,p.020437; 1D00086; 1D00339_ET,p.1; 1D00341,p.020458; 1D00342_ET,pp.1-2.

¹⁷²⁷ 1D00287_ET,p.2; 1D00262,para.30; T-250916,pp.26702-26703 (RUBIN).

518. **THAÇI** left Kosovo in the second half of August and remained abroad until after 17 September 1999: he was out of the country during the 21 August KTC meeting.¹⁷²⁸ **THAÇI** was issued a U.S. entry visa in Tirana on 26 August 1999.¹⁷²⁹ He was in London on 2 September 1999 for another meeting with **COOK**,¹⁷³⁰ in Italy on 5 September¹⁷³¹ and Germany on 6 September for talks with **FISCHER**.¹⁷³² **THAÇI** then travelled to the U.S., where he attended from 10-13 September a workshop organised by U.S. Institute of Peace at the request of the U.S. State Department,¹⁷³³ and a conference in Washington on 13-16 September, also attended by **ALBRIGHT**.¹⁷³⁴ On 17 September, **THAÇI** met at the UN with Kieran **PRENDERGAST**, Under-Secretary-General for political affairs.¹⁷³⁵ These protracted absences throughout the Indictment period render the SPO's claims of **THAÇI**'s "*effective control*" over individual perpetrators in Kosovo legally and practically unsustainable.

519. More significantly, there is no evidence to establish beyond reasonable doubt that he exercised "*the necessary power and authority to personally control the perpetrators*"¹⁷³⁶ through the auspices of the GS, even if the SPO's characterisation of this organ is accepted. There is no evidence of **THAÇI** "*using the authority or resources of this group*"¹⁷³⁷ to achieve effective control over the alleged perpetrators. His membership in the GS, for the period established by the evidence, does not demonstrate effective control over the perpetrators.

¹⁷²⁸ 1D00344,p.DHT05555.

¹⁷²⁹ 1D00293,p.DHT02722.

¹⁷³⁰ 1D00095_ET; 1D00345.

¹⁷³¹ 1D00346,p.020803.

¹⁷³² 1D00114,p.020799.

¹⁷³³ 1D00347,pp.DHT05365,DHT05368.

¹⁷³⁴ 1D00348,p.020816; P01264_ET,pp.SPOE00128924-SPOE00128926,SPOE00128942.

¹⁷³⁵ 1D00349,p.DHT05614; P01264_ET,pp.SPOE00128926-SPOE00128927.

¹⁷³⁶ Mettraux,p.162.

¹⁷³⁷ *Ibid.*

2. *THAÇI did not have effective control through the KLA Political Directorate*

520. The SPO alleges that “[b]y June 1998, **Hashim THAÇI** was head of the KLA Political and Information Directorates.”¹⁷³⁸ This is not supported by the evidence. On 13 August 1998, Political Declaration No. 7 was issued by the “Political Directorate” of the KLA. It provided that “[n]ew circumstances necessitate the creation of institutions in which the broad political spectrum of Kosovo will be duly represented. With the intention of cutting off the manipulations related to the creation of these institutions, the [GS] makes it known to the public that **Jakup KRASNIQI**, **Xhavit HALITI**, **Bardhyl MAHMUTI**, **Hashim THAÇI**, **Faton MEHMETAJ** and **Sokol BASHOTA** are the political representatives of the KLA.”¹⁷³⁹ It also specifies: “For the purpose of expediting the process of creating the institutions of Kosovo, the [GS] of the Kosovo Liberation Army gives complete trust to **Adem DEMAÇI** to take a leading role in this process.”¹⁷⁴⁰ A notebook purporting to show GS meetings in summer 1998 skips from a meeting on 23 July, until the next meeting on 16 August 1998, after the “announcement” of **DEMAÇI** as the political representative.¹⁷⁴¹ There is no evidence as to who allegedly made the appointments, who issued this Political Declaration, or whether **THAÇI** was consulted before it was issued. **Faton MEHMETAJ**, for example, never participated as a political representative of the KLA or as a GS member, despite the claim in this Political Declaration.¹⁷⁴² Further, considering **HILL**’s attempts to find someone who could negotiate on behalf of the KLA for a peace agreement, he regarded this declaration as “more of a public relations effort”, particularly since it was issued directly after **RUGOVA** announced an LDK negotiating team. He stated, “the KLA knew we were very disappointed with their inability to name negotiators, and this was an effort to show that they are doing so”, but believed these people had appointed themselves as KLA representatives, and the fact “it wasn’t until 1999 that we had

¹⁷³⁸ Indictment, para. 2.

¹⁷³⁹ **W01511** had no reason to doubt **Faton MEHMETAJ**’s account he never had any dealings with the GS apart from being announced in this declaration: T-240904, pp. 19603-19604, 19630-19633.

¹⁷⁴⁰ 1D00050_ET.

¹⁷⁴¹ P00643, pp. 1-2; T-241205, pp. 23446-23448 (W04401).

¹⁷⁴² T-241202, pp. 23137-23138 (W04401).

*representatives suggests that this did not move forward”.*¹⁷⁴³

521. Even at a meeting on 10 November 1998, **THAÇI** was still introduced to **W04408** simply as a representative of the “*Political Directorate of the General Headquarters*”, while **DEMAÇI** was introduced as the “*General Political Representative*”.¹⁷⁴⁴ **W04765** explained **THAÇI** was subsequently appointed head of the Political Directorate in November 1998.¹⁷⁴⁵ **W04572** confirmed this timing, explaining that **THAÇI** was a director for media and communications because of his prior experience with the public and media, until November 1998. Since the KLA was dealing with international representatives in political negotiations, and needed a political body to represent it internationally,¹⁷⁴⁶ the Political Directorate was formed and started its work in December, and **THAÇI** was appointed to this new position and carried it out until Rambouillet.¹⁷⁴⁷

522. This evidence, together with the ample testimonial evidence precluding a finding that the Political Directorate already existed in June 1998,¹⁷⁴⁸ precludes a finding beyond reasonable doubt that **THAÇI** was head of a ‘Political Directorate’ from June 1998.

(a) The Head of the Political Directorate does not exercise effective control over alleged JCE Members and Tools

523. Even if the evidence demonstrates that **THAÇI** was head of the KLA’s Political Directorate from some time in December 1998, the question is how this demonstrates **THAÇI**’s effective control over any of the alleged perpetrators, particularly

¹⁷⁴³ T-251110,pp.27680-27683 (HILL).

¹⁷⁴⁴ T-230906,pp.7325-7327 (W04408).

¹⁷⁴⁵ T-231116,pp.10256-10258 (W04765).

¹⁷⁴⁶ T-240704,p.17628 (W04752).

¹⁷⁴⁷ T-240703,p.17549 (W04752).

¹⁷⁴⁸ See Section V(C)(1)(a).

considering evidence of the limits of the Political Directorate's functioning and operation.¹⁷⁴⁹

524. Firstly, a staff office supports a commander; it is not a command post itself. The SPO has failed to establish that the position of Head of the Political Directorate was a *de jure* command position. Second, even assuming the existence of a *de jure* position of authority, this does not allow for a presumption that the *de jure* superior exercised effective control over his subordinates.¹⁷⁵⁰ Proof of a *de jure* position may not replace the exigency of proof of effective control. For example, "*a commander could be found to have been the de jure superior of the perpetrators, whilst having no effective control over them, and vice versa*".¹⁷⁵¹ Relevantly, the less developed the structure of the warring parties, "*the more important it becomes to focus on the nature of the superior's authority rather than his or her formal designation*".¹⁷⁵² In this case, an assessment of the evidence of **THAÇI**'s role as head of the Political Directorate, particularly in the context of the chaotic and localised KLA functioning, demonstrates overwhelming obstacles to a finding beyond reasonable doubt that he exercised effective control by virtue of this role. These are set out below.

(b) The Political Directorate was not part of any chain of military command

525. **W04752** explained that the GS was divided into two groups. The political part dealt with internationals, OSCE and other observers in Kosovo, and was not involved in military matters.¹⁷⁵³ **W04752** confirmed that the Political Directorate was not lined up below him, as Chief of Staff, but **THAÇI** was communicating with SYLA. The Political Directorate did not oversee the decisions of the General Commander and did

¹⁷⁴⁹ T-241204,p.23357 (W04401); T-231116,pp.10257-10258 (W04765).

¹⁷⁵⁰ Mettraux,p.172, citing *Orić* AJ,paras.91-92; *Hadžihasanović* AJ,paras.20-21,190-191; *Halilović* AJ,para.85; *Nahimana* AJ,paras.625,787.

¹⁷⁵¹ Mettraux,p.173, citing *Blagojević* AJ,paras.300-304.

¹⁷⁵² *Brima* TJ,para.787.

¹⁷⁵³ T-240704,pp.17629-17631 (W04752).

not operate as some sort of civilian body overseeing the KLA's work. There was no such civilian control over the KLA.¹⁷⁵⁴

526. The overwhelming, consistent evidence of KLA witnesses was that **THAÇI** was known as a political, not a military figure.¹⁷⁵⁵ This aligns with **KRASNIQI**'s description that **THAÇI**'s role leading the Political Directorate meant he "*led the overall KLA political affairs*".¹⁷⁵⁶ **W04752** testified that **THAÇI** was assigned to the Political Directorate "*exclusively for discussions with internationals*".¹⁷⁵⁷

527. This evidence is corroborated by international witnesses. **W02144** met **THAÇI** in July 1998, as the Austrians were trying to find political, rather than military leaders.¹⁷⁵⁸ Similarly, in his first interactions with **THAÇI** and other KLA members, **HILL** did not get the impression that **THAÇI** was a military commander, or any kind of military person.¹⁷⁵⁹ He thought **THAÇI** was not a warrior, but "*a political personage*".¹⁷⁶⁰

528. **RUBIN** described **THAÇI** as being the equivalent of a foreign minister who could reflect the views of his government or his military, and make representations that reflected the consensus view, but not a leader.¹⁷⁶¹ **HILL** similarly described him as a foreign minister, noting **THAÇI** was trusted to gather the information and make the arguments made by the KLA, but not to make decisions.¹⁷⁶² **HILL** and **RUBIN** both explained, through examples, how the circumstances around Rambouillet solidified

¹⁷⁵⁴ T-240704,p.17634, T-240708,pp.17766-17767 (W04752); T-251117,p.28120 (CLARK).

¹⁷⁵⁵ T-240430,p.15229 (W03865); T-221127,pp.22824-22825 (W03873); [REDACTED]; T-241106,p.21986 (W01453); T-230714,p.5710 (W04746); 1D00025,p.U017-6049; P01694.5_ET, p.10; [REDACTED]; T-250325,p.25856 (W04403), discussing P02089_ET,p.SPOE00067221; [REDACTED].

¹⁷⁵⁶ P00189_ET.8.

¹⁷⁵⁷ T-240716,p.18339 (W04752).

¹⁷⁵⁸ T-240528,pp.16120-16129 (W02144).

¹⁷⁵⁹ T-251110,p.27691 (HILL).

¹⁷⁶⁰ T-251110,p.27696 (HILL). *See also* T-251001,p.27559 (COVEY).

¹⁷⁶¹ T-250915,pp.26522,26526,26693 (RUBIN).

¹⁷⁶² T-251112,pp.27924-27925,27937-27938 (HILL).

their impressions that **THAÇI** was not someone who was making the decisions, and not any kind of top commander: “[t]he commanders were out in the field.”¹⁷⁶³

529. **W04147** similarly observed that **THAÇI** (among others) had returned to Kosovo to form the “UCK’s foreign ministry”, where they would “serve as the UCK’s leadership’s diplomatic element” and “interface with the international community in Kosovo”.¹⁷⁶⁴ **W04147** had never observed **THAÇI** dealing directly with zone commanders, “who were the military leaders in the field”, and clarified that his contemporaneous record that “KLA military leaders have clearly deferred to Thaqi”¹⁷⁶⁵ was a reference to other members of the Political Directorate.¹⁷⁶⁶ In any event, he confirmed that KDOM’s discussions with **THAÇI** were not normally about military matters, so **W04147** understood **THAÇI** to be part of the political wing of the KLA, with [REDACTED].¹⁷⁶⁷

530. **CLARK** understood **THAÇI** to be “like a liaison officer”, focusing on “international outreach”.¹⁷⁶⁸ He was categorical that **THAÇI** was not a military commander.¹⁷⁶⁹ **CLARK** shared his recollection of meeting **THAÇI** in spring 1999 to seek his assistance with identifying target locations for NATO airstrikes. **THAÇI** was “incapable of providing me with any useful information, even with maps of Kosovo in front of him. He seemed clueless about KLA and Serb positions in Kosovo. I could tell that he had not actually been involved, let alone commanding, the KLA’s fighting. [...] I came away from this meeting with the conclusion that Thaci was a political person with not even a rudimentary understanding of military operations.”¹⁷⁷⁰ **CLARK** explained that NATO was trying to

¹⁷⁶³ T-251110,pp.27715-27716 (HILL); 1D00423,p.DHT12332; T-250917,pp.26825-26826 (RUBIN).

¹⁷⁶⁴ T-240325,pp.13599,13601,13650 (W04147).

¹⁷⁶⁵ P01066,para.21; P01069,p.075317.

¹⁷⁶⁶ T-240325,pp.13586,13588 (W04147).

¹⁷⁶⁷ T-240325,pp.13598-13599,13650,13656-13658 (W04147).

¹⁷⁶⁸ T-251118,pp.28263,28268 (CLARK). See also 1D00428,para.13; T-251112,pp.27996-27997 (DURKEE).

¹⁷⁶⁹ T-251117,p.28116 (CLARK).

¹⁷⁷⁰ 1D00430,para.23; T-251118,p.28239 (CLARK).

attack enemy forces on the ground: “And so I was asking him, ‘Where are they? Where are you? Where are they? What should I strike? What targets are there?’ Nothing.”¹⁷⁷¹ While **CLARK** did not expect **THAÇI** to be informed on KLA and Serb positions, he expected him to get information to them, set up a system for this. Yet, when **CLARK** came back to him a second time, **THAÇI** “still didn’t know anything”.¹⁷⁷²

(i) **THAÇI** could not issue orders

531. As an indicium of effective control, “the power of the superior to issue orders is crucial”,¹⁷⁷³ given that “[i]t is hard to conceive of a case where a defendant could be said to have effective control over the perpetrators if he was not able to issue orders to them”.¹⁷⁷⁴ Indeed, the ability to issue orders is “symptomatic of the possession of a position of authority by the defendant”.¹⁷⁷⁵ There was no evidence from GS members of **THAÇI** issuing orders, or even his ability to do so. **W04401** confirmed that **THAÇI** could not issue orders to soldiers or to people who may have been detaining alleged collaborators.¹⁷⁷⁶ A director of the Political Directorate could not issue military orders. It was the exclusive power of **W04752** to communicate with the zone commanders, as chief of staff. There were not any “political” orders given to zones.¹⁷⁷⁷ **W04752** was clear that he did not issue any orders to **THAÇI**, and **THAÇI** did not issue any orders to him. **W04752** did not have anything to do with **THAÇI**’s work in the Political Directorate.¹⁷⁷⁸ **W04403** was giving a lot of press interviews, and **THAÇI** called him in November 1998 and said “enough with the interviews”. **W04403** did not perceive this as an order, so he continued giving interviews, and was ultimately promoted.¹⁷⁷⁹

¹⁷⁷¹ T-251117, pp.28116-28117 (CLARK).

¹⁷⁷² T-251118, p.28268 (CLARK). See also P04514, p.DHT11419.

¹⁷⁷³ *Brima* TJ, para.789.

¹⁷⁷⁴ *Mettraux*, p.175.

¹⁷⁷⁵ *Meloni*, p.100, citing *Čelebići* AJ, para.672.

¹⁷⁷⁶ T-241205, pp.23451-23452 (W04401).

¹⁷⁷⁷ T-241205, pp.23455-23456 (W04401).

¹⁷⁷⁸ T-240704, pp.17633-17635 (W04752).

¹⁷⁷⁹ T-250325, pp.25862-25866 (W04403).

532. KLA witnesses, including zone commanders, did not recall receiving orders from **THAÇI** or the Political Directorate, nor seeing him giving an order or instruction to any KLA member.¹⁷⁸⁰ **W01453** might have discussed with **THAÇI** over the phone about shipping arms, but this was not an order from **THAÇI**.¹⁷⁸¹

533. Internationals shared this view. **RUBIN** has never been shown an order issued by **THAÇI** to anyone in the military wing of the KLA.¹⁷⁸² **W02183** never saw **THAÇI** give an order to **ÇEKU** or to anyone in the KLA.¹⁷⁸³ **W04147** never saw **THAÇI** dealing directly with zone commanders or military leaders.¹⁷⁸⁴ **HILL**'s impression was **THAÇI** was a "*credible interlocutor but not a decision-maker*".¹⁷⁸⁵ **COVEY** said that **THAÇI** had no real authority over the KLA, with most of the KLA's virtually autonomous strongmen harbouring little or no respect for him.¹⁷⁸⁶

534. In addition, **THAÇI** did not have the ability to prevent or punish the actions of KLA soldiers. **W04752** confirmed that **THAÇI** did not have people at his disposal to investigate what happened in the field, or the ability to impose punishment on a commander.¹⁷⁸⁷

535. A small number of witnesses claimed that **THAÇI** gave operational orders. Their evidence is unreliable. [REDACTED]. [REDACTED]. [REDACTED].¹⁷⁸⁸

536. Similarly unreliable evidence is a purported KLA report, discussing soldiers

¹⁷⁸⁰ T-231116,p.10258 (W04765); T-230717,p.5866 (W04746); T-241106,pp.22116-22117 (W01453); T-240424,pp.14827-14831 (W04741).

¹⁷⁸¹ T-241105,pp.21881-21882 (W01453).

¹⁷⁸² T-250917,pp.26821-26822 (RUBIN).

¹⁷⁸³ T-250121,pp.24033-24034 (W02183).

¹⁷⁸⁴ T-240325,pp.13586-13588 (W04147).

¹⁷⁸⁵ T-251112,p.27937 (HILL).

¹⁷⁸⁶ T-250930,p.27337 (COVEY).

¹⁷⁸⁷ T-240703,pp.17588-17591 (W04752).

¹⁷⁸⁸ [REDACTED].

disobeying a command given by the Battalion command, and mentioning that *“this was asked for by Gjarpri and Luli”*.¹⁷⁸⁹ In any event, this passage, not authenticated by any witness, clearly concerns not an order but a request, which was refused, and is therefore not evidence of **THAÇI** giving operational orders.

537. **W04744** alleged that he received *“operational orders”* (plural) from **THAÇI** in relation to *“the preparation and attacks against the Serbian forces”*.¹⁷⁹⁰ His initial walk-back of this allegation is recorded in his first SPO preparation note that *“W04744 does not know the extent to which Hashim Thaçi exercised operational responsibilities. Hashim Thaçi did not give W04744 specific operational orders, but only orders of a general military character (such as to attack Serbian positions).”*¹⁷⁹¹ While testifying, **W04744** clarified that **THAÇI** gave him this general order *“only once. There were no other orders”*.¹⁷⁹² This general ‘order’ from **THAÇI** was a departure from the norm. **W04744** went to see **THAÇI** in September 1998 for *“advice”* and talked to him and **SELIMI** about the ways they could do the best in the situation of the Serb offensives, and they did not give any *“duties”* or *“orders”*, it was just advice.¹⁷⁹³ At a later meeting, **THAÇI** did not issue any orders.¹⁷⁹⁴

538. Importantly, **W04744** did not understand that he was obliged to simply accept this *“general order”* from **THAÇI** and follow it. His evidence shows him pushing back, telling **THAÇI** that he first wanted to analyse the situation and *“not simply attack and retreat, because this is dangerous”*.¹⁷⁹⁵ When **THAÇI** said **W04744** *“really wanted to show [he knew] better than others”*, **W04744** pushed back again. Then each went *“his own*

¹⁷⁸⁹ P00067_ET,p.SITF00437789.

¹⁷⁹⁰ P01327.8_ET,p.27.

¹⁷⁹¹ P01328,para.42 (emphasis added).

¹⁷⁹² T-240624,p.17062 (W04744) (emphasis added).

¹⁷⁹³ T-240625,p.17109 (W04744).

¹⁷⁹⁴ T-240624,p.17062 (W04744).

¹⁷⁹⁵ P01327.8_ET,pp.28-29.

way".¹⁷⁹⁶ **W04744** would carry out attacks, but on his own terms, "*in a very cautious way*", after analysing and classifying the places they would attack.¹⁷⁹⁷ He never indicated he carried out these attacks because he felt bound to implement this one general operation order from **THAČI**. His evidence in fact indicates the opposite. There is no evidence that this order resulted in the commission of crimes, or that **W04744** was a perpetrator or a JCE Member or "Tool", nor was this put to him by the SPO.

539. To be evidentially relevant to the issue of effective control, the SPO must have demonstrated not only that **THAČI** was able to give orders, but that these were **binding** orders. A recommendation or non-binding instruction "*is not relevant to this matter since it does not demonstrate any exercise of commanding power or authority on the part of the issuer of the order vis-à-vis anyone else.*"¹⁷⁹⁸ Likewise "*where the recipient of the 'order' maintains his ability to disregard it and choose when to cooperate, such an 'order' could not be regarded as evidence of effective control but, at the most, as an attempt to ascertain such control.*"¹⁷⁹⁹ It must be demonstrated that, through his orders, the accused was or should have been able to punish and prevent the commission of crimes by his subordinates.¹⁸⁰⁰ Finally, to be relevant to the issue of effective control, "*the order must be shown to have been obeyed or complied with by those to whom it was directed, i.e. the perpetrators*" given that "*proof is required that the accused was not only able to issue orders but that the orders were actually followed.*"¹⁸⁰¹

540. Accordingly, the evidence of **THAČI**'s interactions with KLA troops in the field

¹⁷⁹⁶ P01327.8_ET,p.29.

¹⁷⁹⁷ P01327.8_ET,pp.29-30.

¹⁷⁹⁸ Mettraux,p.178.

¹⁷⁹⁹ Mettraux,p.178, citing *Hadžihasanović* AJ,paras.200,209,213-214.

¹⁸⁰⁰ Mettraux,p.178, citing *Blaškić* AJ,para.485, noting "*the ICTY Appeals Chamber made it clear, however, that the mere ability to issue orders of a humanitarian nature would not per se be sufficient to infer the accused's effective control the recipient of the orders*".

¹⁸⁰¹ Mettraux,pp.178-179, citing *Blaškić* AJ,para.69; *Hadžihasanović* TJ, paras.847,851,1034,1202,1286,1744,1848,1878,1945; *Orić* TJ,paras.312,700; *Brdjanin* TJ,para.281.

(and that they did not know who he was),¹⁸⁰² reinforces his lack of effective control. **THAÇI** was not issuing binding orders, which fell far outside his scope of authority. **W01453** described a “friendly visit” from **THAÇI** to Blinajë/Blinaja in 1998; he visited **W01453** “as a friend” because they had been in Switzerland and joined the war together.¹⁸⁰³ [REDACTED] said that his meetings with **THAÇI** in the field were only “debates”, with no consequences from these debates or disagreements.¹⁸⁰⁴ **W04290** described **THAÇI** coming to the field once or twice to ascertain their needs and their situation in general, but he does not remember telling **THAÇI** about concerns over lack of weapons or planning, because **THAÇI** was more in charge of the information, a political representative. He does not remember having a specific conversation with **THAÇI**, although his presence was important for morale as “he was very calm in the war, he was not scared at all”.¹⁸⁰⁵ He otherwise recalled “many visits” by **THAÇI** to the Drenicë/Drenica zone,¹⁸⁰⁶ but **THAÇI** was likely present just because he came from that territory, not to inspect troops.¹⁸⁰⁷ Other alleged interactions between **THAÇI** and KLA members were addressed above.¹⁸⁰⁸

(ii) *Rambouillet as the emblematic example of **THAÇI**'s lack of effective control*

541. **THAÇI**'s lack of authority to sign the Rambouillet Agreement during the negotiations in February 1999, or to speak authoritatively for the KLA, or to even request consensus within the KLA (let alone require it), exemplifies his lack of effective control.

542. According to the SPO, “[i]n early February 1999, an international peace conference

¹⁸⁰² See Section V(B)(2).

¹⁸⁰³ T-241105,p.21920 (W01453).

¹⁸⁰⁴ [REDACTED].

¹⁸⁰⁵ T-250213,pp.25258-25260 (W04290).

¹⁸⁰⁶ P01745_ET,p.U0039097.

¹⁸⁰⁷ T-241106,p.22086 (W01453). See also T-250211,p.25026 (W04290).

¹⁸⁰⁸ See Section III(B)(2)(c).

was organised in Rambouillet, France”,¹⁸⁰⁹ after “*provocations and hostilities continued*”.¹⁸¹⁰ In reality, the “*provocations and hostilities*” were Serb offensives which included brutal massacres of civilians, including in Reçak/Račak.¹⁸¹¹ On 29 January 1999, the Contact Group condemned the Reçak/Račak massacre and summoned the parties to Rambouillet to “*stop the spiral of violence that is building toward renewed humanitarian catastrophe and all-out war*”.¹⁸¹² There were divides within the KLA as to whether it should participate:¹⁸¹³ **W04746** expressed his dissatisfaction,¹⁸¹⁴ **DEMAÇI** was against.¹⁸¹⁵

543. The Kosovar Albanian delegation at Rambouillet was not a KLA delegation; it included RUGOVA (LDK), QOSJA (LBD) and others.¹⁸¹⁶ **WILLIAMS** understood **THAÇI** was included because of his time in Switzerland, and degree of familiarity with internationals.¹⁸¹⁷ He testified it was not a surprise that **THAÇI** was selected as delegation chairman: RUGOVA was a pacifist who “*wouldn’t open his mouth without saying independence*”; the internationals would have been deeply frustrated to negotiate with him. Had BUKOSHI been put up, the internationals would have asked “*where are the non-state actors*”? In addition, according to **WILLIAMS**, you wanted someone who looked like and engaged like a diplomat, a negotiator who could be a trusted partner. **THAÇI**’s election as chairman was not a reflection of his effective control or authority. In 2/3 of the negotiations **WILLIAMS** has been part of, the command and control authority has not been in the room.¹⁸¹⁸

¹⁸⁰⁹ Indictment, para.24; Agreed Fact No.3.17.

¹⁸¹⁰ Indictment, para.23.

¹⁸¹¹ See, e.g., 1D00310, p.DHT02868; 1D00430, paras.17-18; Adjudicated Fact No.114.

¹⁸¹² 1D00350; 1D00441, p.1D00-0635. Adjudicated Fact Nos.116-118.

¹⁸¹³ T-240826, pp.18949-18951 (W04651); 1D00302.

¹⁸¹⁴ T-240826, pp.18951-18953 (W04651).

¹⁸¹⁵ T-241203, pp.23162-23163 (W04401); 1D00425, p.DHT08927; 1D00351, p.DHT05916; 1D00024_TR, p.2; 1D00049_ET.

¹⁸¹⁶ T-240328, p.14095 (W04147); 1D00205; Adjudicated Fact No.118.

¹⁸¹⁷ T-250918, pp.26955-26956 (WILLIAMS).

¹⁸¹⁸ T-250019, p.26948 (WILLIAMS).

544. The Rambouillet Agreement, as presented in February 1999, would have postponed the question of Kosovo's independent status for three years.¹⁸¹⁹ This was unacceptable to those in the KLA who wanted *"to continue the fight all the way to independence"*, being *"the zone commanders"* and *"the military wing"*.¹⁸²⁰ Most zone commanders were opposed to the agreement.¹⁸²¹ According to **W04147**, these opponents were not prepared to accept that there should be anything short of violence resulting in complete independence.¹⁸²² **W04290** said the zone commanders wanted two things at Rambouillet. First, the negotiating process should lead to a process for independence. Second, they did not want to sign a document that would demilitarise everything they had built.¹⁸²³ However, **RUBIN** said that the U.S. was not prepared to commit to independence immediately, which is what **DEMAÇI** and the other extremists wanted. This was *"precisely why Thaci was in such a difficult position"*: during the negotiations, *"[p]eople were saying Thaci was not for 'true' independence, that he was not a true Albanian - he was a traitor, almost."*¹⁸²⁴

545. The evidence shows that, rather than being free to decide the KLA's best interests and convey this to the Contact Group, **THAÇI** was constrained by his lack of effective control over KLA members, his lack of authority, and his inability to do anything without the zone commanders' agreement. This evidence came firstly from **THAÇI**, who told **RUBIN** at Rambouillet *"that he wasn't in charge of anything."*¹⁸²⁵ He said he was the person dealing with the U.S. because he had a political role in the KLA, but not a leadership role.¹⁸²⁶ **RUBIN** formed the impression that **THAÇI** was:

¹⁸¹⁹ T-230906,pp.7452-7453 (W04408).

¹⁸²⁰ T-240325,pp.13611-13613 (W04147).

¹⁸²¹ T-240325,p.13613, T-240327,pp.13847-13848 (W04147); T-241203,pp.23162-23163 (W04401); 1D00538,p.066177.

¹⁸²² T-240327,pp.13847-13849 (W04147).

¹⁸²³ T-250211,pp.25029-25031 (W04290).

¹⁸²⁴ T-250916,p.26734 (RUBIN). *See also* 1D00525_ET; 1D00147,p.DHT03933.

¹⁸²⁵ T-250915,p.26509 (RUBIN).

¹⁸²⁶ T-250915,p.26509 (RUBIN).

*assigned the job of interacting with us by the Kosovo leadership such as it was. We didn't understand their leadership structure very well, but it was clear that he did not have authority or the capability to dictate anything but rather could reflect decisions made by that amorphous thing called the Kosovo Albanian leadership, which was making decisions as a group who were not always present, and so he had to go get authority. He had no capability, no ability to dictate. And so when we wanted to do something important, he needed others to tell him it was okay.*¹⁸²⁷

546. **W04752**¹⁸²⁸ and **W04746** agreed that **THAÇI** could not sign the Rambouillet Agreement without the support of the zone commanders. **THAÇI**'s authority "comes only to the extent that the zone commanders had given him their consent to negotiate on their behalf".¹⁸²⁹ **W04746** said that he exerted "enormous pressure" on the delegation in Rambouillet. He gave a BBC interview saying "[w]e called all the members of the delegation who were there, and we threatened them that they should not sign. It's not an agreement. You're there to speak. You don't have the right to sign and you cannot come to Kosovo" and that "you know that we have anti-aircraft rockets which we will save, we will not use them on the Serbs, but we will take your plane down if you signed it. And they did what –in fact, they did what we told them. They came to consult with us in Kosovo."¹⁸³⁰ **HILL** recounted an exchange with **THAÇI** reflecting his awareness of these threats:

'Why can't you agree to this?' I asked Thaci, truly not understanding whether he comprehended the near-fatal consequences for the Kosovars of a 'no' answer.

*'It is you who doesn't understand,' he replied. 'If I agree to this, I will go home and they will kill me.'*¹⁸³¹

HILL also confirmed this exchange also reflected that **THAÇI** was only an interlocutor for the internationals, since "usually the decision-maker doesn't make that kind of comment".¹⁸³²

547. Others had the same impression of the pressure **THAÇI** was under. On 13

¹⁸²⁷ T-250915,pp.26513-26514 (RUBIN).

¹⁸²⁸ T-240704,pp.17666-17667 (W04752).

¹⁸²⁹ T-230714,p.5708 (W04746).

¹⁸³⁰ T-230714,pp.5703-5705 (W04746); 1D00024_TR,p.2.

¹⁸³¹ 1D00371,p.DHT01482; 1D00425,p.DHT08927; T-251110,pp.27703-27704 (HILL).

¹⁸³² T-251112,pp.27937-27938 (HILL).

February 1999, David WILSON reported that **WILLIAMS** and Marc WELLER had explained that **THAÇI** was *“being closely controlled from the outside”*.¹⁸³³ **WILLIAMS** confirmed *“Thaci had no authority to consent to an agreement without obtaining the approval of the local commanders of the KLA, especially in light of the objection of Adem Demaci”*.¹⁸³⁴ **THAÇI** was not in full control, but rather he was representing outside interests which exercised power, authority and control over his actions. **THAÇI** was *“responsive if not subservient to the local commanders”* as well as the KLA members and diaspora outside the hotel.¹⁸³⁵ **W02144** similarly testified that **THAÇI** *“did not dare sign”* without consulting. **THAÇI** was unable to *“cope with or withstand the responsibility placed upon him and the pressure exerted upon him by the international community and the KLA commanders in the field.”* He was under *“extreme pressure”* not to sign from the KLA and **DEMAÇI**.¹⁸³⁶

548. Regarding **DEMAÇI**'s influence over this process, **THAÇI** flew to Slovenia mid-conference to meet with him.¹⁸³⁷ At a 23 February press conference, **DEMAÇI**'s spokesman said *“No political decision can be taken without the consent and approval of the KLA Political Representative, Adem Demaci”*.¹⁸³⁸ **DEMAÇI**'s opposition was confirmed by those within the KLA, including **KRASNIQI** and Ramë **BUJA** advising international representatives on their return to Kosovo in 25 February 1999 that *“they would ‘take care of him’ and that his opposition both to the Rambouillet package and to the provisional government [...] would be overcome.”*¹⁸³⁹ **ALBRIGHT** was recorded in 2006 as saying:¹⁸⁴⁰

There was this young Kosovar guy, Thaci, who was a KLA fighter. We said to him, ‘You’re going to be the Gerry Adams of this operation. You’ll show that there’s a peaceful arm to the

¹⁸³³ 1D00356,p.SPOE00117188.

¹⁸³⁴ T-260917,pp.26877-26879 (WILLIAMS).

¹⁸³⁵ T-250917,pp.26867-26875 (WILLIAMS), 1D00356. See also 1D00379.

¹⁸³⁶ T-240529,pp.16163-16166 (W02144); 1D00049_ET.

¹⁸³⁷ T- 250918,p.27001 (WILLIAMS); 1D00381; 1D00266; 1D00379.

¹⁸³⁸ T-250211,pp.25068-25070 (W04290); 1D00049_ET; 1D00563,pp.DHT05020-DHT05021.

¹⁸³⁹ 1D00358,p.DHT05179; T-251111,p.27746 (HILL).

¹⁸⁴⁰ 1D00369,p.DHT12048 (emphasis added). See also 1D00277,p.DHT05278; 1D00280,p.SPOE00397415.

KLA and you will be the hero.' He said, 'I'll do [whatever] you want. I really understand this. When we meet with the other members of the contact group, I'll say that we want the killing to end and we want autonomy but we don't want independence.' We went through all of this. In the meantime, there was [...] Demaci, who was really controlling things in Kosovo. When I talked to him on the phone and told him to support Thaci, he said, 'I don't care how many people die.' It was the most bloodthirsty conversation I've ever had.

549. **RUBIN** was with **ALBRIGHT** during this call with **DEMAÇI**. **THAÇI** thought he needed someone like **DEMAÇI** “to let him postpone the question of independence”. This signaled to the U.S. that **DEMAÇI** was **THAÇI**'s superior in terms of decision-making for the group, and that **THAÇI** “wasn't in charge. He needed ideological support from the founder or ideological leader.”¹⁸⁴¹

550. Nothing indicates that **THAÇI** could assert authority over these dissenting voices and sign on behalf of the KLA. The evidence shows dissenters feeling entitled to pressure and threaten **THAÇI**, knowing he would bend to their will. [REDACTED] between **DEMAÇI** and **W04746** during Rambouillet [REDACTED].¹⁸⁴²

551. Pressure was also being applied from the other side. **CLARK** met the Albanian delegation “in order to break down their resistance to signing”.¹⁸⁴³ When **THAÇI** told **RUBIN** and **ALBRIGHT** he was worried he did not have authority to sign on behalf of the KLA, **ALBRIGHT** said to **THAÇI**, “you personally will be responsible for the death of your own people, if you do not change your mind. Leadership means making difficult decisions” and said if that he did not accept “you will not have the support of the West”. **THAÇI** was “on the brink of tears”. He said he had witnessed the death of his closest friends, and crimes committed against women, children and old people. He was aware of the consequences. For a few moments he could not speak.¹⁸⁴⁴ **ALBRIGHT** later

¹⁸⁴¹ T-250916,pp.26697-26699 (RUBIN).

¹⁸⁴² P03551_ET,p.111751; T-230911,pp.7628-7631 (W04408).

¹⁸⁴³ P04514,p.DHT11305.

¹⁸⁴⁴ T-250915,pp.26506-26508 (RUBIN).

described **THAÇI**'s demeanour as one of a *"high school student I had dressed down"*.¹⁸⁴⁵ Then, adjusting his posture, **THAÇI** said that he was sorry, but the answer was no.¹⁸⁴⁶

552. Wolfgang PETRITSCH, Special Envoy of the European Union for Kosovo, recalled **THAÇI**'s *"age and inexperience were two factors that we had to take into account"*. **THAÇI** was being put in a position where he was responsible for the fate of not only the KLA, but the future of Kosovo, which was a *"heavy burden for an inexperienced negotiator"*. Towards the end of the negotiations, **THAÇI** was *"visibly drawn"* and gave the impression of being *"extremely overwhelmed"*. PETRITSCH also described **THAÇI**'s panic at being placed in a position to either agree and *"possibly face the deadly revenge"* of the KLA or refuse and cause the conference to collapse. PETRITSCH and **THAÇI** discussed his concern that if he agreed to the disarmament of the KLA, he ran the risk of being seen as a traitor and *"then he is no longer sure of his life when he returns"*.¹⁸⁴⁷ **W02144** confirmed he had similar impressions of **THAÇI**'s state of mind, observing that he was *"under extreme pressure visibly and not in a position to make any decision"*.¹⁸⁴⁸

553. **THAÇI**'s actions immediately post-Rambouillet demonstrate he was in favour of the KLA signing the Agreement. In that context, and in the face of admonitions from the U.S. Secretary of State that he would be *"responsible for the death of his own people"*, he still declined to sign. This demonstrates the weight of the zone commanders' opposition, and that **THAÇI** had no ability to require that they comply with his orders in any way. This evidence is entirely incompatible with the SPO's case that **THAÇI** *"had authority over the entire KLA/PGoK structures"*.¹⁸⁴⁹

¹⁸⁴⁵ T-250915,pp.26509-26510 (RUBIN); 1D00284.

¹⁸⁴⁶ T-250915,pp.26506-26508 (RUBIN).

¹⁸⁴⁷ 1D00147_ET,pp.DHT03932-DHT03933-ET.

¹⁸⁴⁸ T-240528,p.16170 (W02144). See also T-240528,pp.16168-16169,16171 (W02144).

¹⁸⁴⁹ SPO PTB,para.710.

554. Around this time, the military leadership of the KLA changed.¹⁸⁵⁰ While **W04290** testified they did not “*stage a coup*”,¹⁸⁵¹ it was described by others as a coup that toppled SYLA and installed **W04290** as KLA general commander.¹⁸⁵² **W04746**, for example, testified that the attempt of the zone commanders to appoint someone to have overall command of the GS was being called a “*coup*”.¹⁸⁵³ It was also described as a “*rebellion*”¹⁸⁵⁴ or a “*revolt*”.¹⁸⁵⁵ **W04147** agreed that the motivation for the “*coup*” was the zone commanders’ opposition to the draft text which would leave Kosovo inside Serbia.¹⁸⁵⁶

555. The meeting at which SYLA was removed from his position was attended by **W04752**, DRINI, HARADINAJ, **W04746**, **W04290** and **W04401**.¹⁸⁵⁷ **W04290** testified that one of the reasons the zone commanders wanted to appoint him as general commander was to send a message to the delegation in Rambouillet that they, the zone commanders, were the ones with the authority to decide whether the KLA would disarm and agree to a deal.¹⁸⁵⁸ **W04290** stated he did not need the GS approval for his appointment,¹⁸⁵⁹ as demonstrated by media reporting that **W04290** had been holding himself out as the new commander while GS members were still in Rambouillet.¹⁸⁶⁰ After this display of unambiguous authority of the zone commanders over the GS, **W04401** resigned as KLA Deputy Commander, alongside SYLA. There was no disciplinary action against the zone commanders. The GS did not want to enter into conflict with the zone commanders who enjoyed “*great authority among the soldiers and*

¹⁸⁵⁰ 1D00250.

¹⁸⁵¹ T-250212,p.25186 (W04290).

¹⁸⁵² T-240325,p.13614 (W04147); T-230717,pp.5872-5877 (W04746); P00645_ET quoting **W04401**: “*I hope and wish this coup has not been planned by the UBD... the information we have is bleak!*”

¹⁸⁵³ T-230717,pp.5872-5878 (W04746).

¹⁸⁵⁴ T-240327,pp.13834-13838 (W04147).

¹⁸⁵⁵ T-241202,p.23126 (W04401).

¹⁸⁵⁶ T-240327,pp.13886-13887 (W04147).

¹⁸⁵⁷ T-231116,pp.10260-10261 (W04765).

¹⁸⁵⁸ T-250211,pp.25066-25067 (W04290).

¹⁸⁵⁹ T-250212,pp.25188-25190 (W04290).

¹⁸⁶⁰ 1D00250; T-250213,pp.25271-25277 (W04290).

subordinates". The GS accepted this revolt.¹⁸⁶¹ There was no suggestion, either from witnesses or the SPO, that **THAÇI** had the authority to reinstate SYLA, or to challenge or even reprimand the zone commanders in any way over this revolt.¹⁸⁶²

556. After the Rambouillet Conference collapsed, **THAÇI** was then required to (physically) go and try to convince the zone commanders that the Agreement was in the KLA's interests.¹⁸⁶³ Effective control "*consists of the power that one has to demand, expect and actually impose obedience with one's orders for the purpose of preventing and punishing criminal offences. It is a relationship of authority which goes almost unquestioned between its two poles: one side orders, the other obeys.*"¹⁸⁶⁴ Any relationship of authority "*which falls short of that standard, as when one person has to **convince, cajole or to supplicate the other to act in a certain way**, would fall short of "effective control" as understood under the doctrine of command responsibility.*"¹⁸⁶⁵ **THAÇI** went on a convincing, cajoling and supplicating tour of those the SPO alleges he controlled.

557. **WILLIAMS** was told by the American-Albanian diaspora that **THAÇI** needed to go to the local commanders, that he would need to go through the forest, one zone at a time, getting their consent.¹⁸⁶⁶ **WILLIAMS** observed "*[a]t this point the Americans became acutely aware of the highly decentralized nature of the operation of the KLA, and that Thaçi's stated need to receive the support of the local commanders, no matter how frustrating, was genuine*".¹⁸⁶⁷ This was corroborated by **HILL**'s experience:¹⁸⁶⁸

[...] senator Dole [...] was having a lot of fun on this question "where was Thaçi". They were telling me that Thaçi was coming back in the country, and at that point I had suspected, it was pretty clear to me that Thaçi was not any kind of top commander.

¹⁸⁶¹ T-241202,p.23126 (W04401).

¹⁸⁶² T-231116,pp.10260-10261 (W04765); 1D00033_ET,pp.SPOE00226356-SPOE00226363.

¹⁸⁶³ Adjudicated Fact Nos.120-121.

¹⁸⁶⁴ Mettraux,p.157.

¹⁸⁶⁵ Mettraux,p.157 (emphasis added).

¹⁸⁶⁶ T-251808,p.26986 (WILLIAMS).

¹⁸⁶⁷ 1D00375,para.42.

¹⁸⁶⁸ 1D00423,p.DHT12332; T-251110,p.27716 (HILL).

558. **W02144** said the idea to have “*consultation time*” after Rambouillet was because it was clear the deal would not get done, because **THAÇI** could not do it on his own and did not have authority to sign on behalf of the KLA.¹⁸⁶⁹ **RUBIN**¹⁸⁷⁰ and **W04147** confirmed this; according to **W04147**, this highlights the “*tenuous control the KLA General Staff had over the zone commanders.*”¹⁸⁷¹ **W04752** said that **THAÇI** had to convince the zone commanders to agree to the Agreement, and part of the way he did that was to say they would participate in the provisional government and in a national guard.¹⁸⁷² A handwritten document signed by **W04401** among others, says that the GS will pronounce on its final opinion about the Rambouillet Agreement “*after consulting with the zone commanders.*”¹⁸⁷³ While the document notes that the GS itself “*is in favour of saying yes*”, it recognises it cannot do so without the KLA’s powerbase. **W04401** confirmed this consultation was “*necessary*”. The zone commanders were in control of their zones. This is why there was an interval between Rambouillet and Paris. If the zone commanders had not approved, the “*situation would have been serious.*”¹⁸⁷⁴

559. In 2000, **W04290** said that the Rambouillet delegation “*consulted with the zone commanders, who were really very important, both in the overall structure of the UCK and concrete actions in the field.*”¹⁸⁷⁵ **W04290** confirmed this described the reality at the time: the zone commanders were the ones on the front line, and would make the ultimate decision on what the KLA would and would not agree to, so **THAÇI** needed their consent to sign.¹⁸⁷⁶ A video of a 13 March 1999 event, corroborated by **W04290**, shows

¹⁸⁶⁹ T-240528,pp.16171-16172 (W02144).

¹⁸⁷⁰ 1D00262,paras.25,76; T-250915,pp.26566-26567, T-250916,pp.26745-26746,26752 (RUBIN); T-251111,pp.27866-27867 (HILL).

¹⁸⁷¹ T-240326,p.13678 (W04147).

¹⁸⁷² T-240708,pp.17754-17755 (W04752). See also T-230717,pp.5808-5809 (W04746).

¹⁸⁷³ P00227_ET.

¹⁸⁷⁴ T-241203,pp.23165-23166 (W04401).

¹⁸⁷⁵ P01745_ET,p.U0039108.

¹⁸⁷⁶ T-250211,pp.25027-25031 (W04290).

THAÇI coming to **W04290** to consult and obtain this consent.¹⁸⁷⁷

560. Importantly, the delegation's decision to come back and seek the zone commanders' consent was also divisive.¹⁸⁷⁸ Despite his best efforts, **THAÇI**'s decisions were not unifying and still had to be sold. As explained by **RUBIN**, however, **THAÇI** had something that **DEMAÇI** and the other hardliners did not have: the promise from the U.S. and NATO that if he signed and the Serbs did not, they would initiate a military campaign against the Serb forces. This promise, which was only in **THAÇI**'s "personal hands", made his views very powerful "regardless of his status in any organisation".¹⁸⁷⁹ Indeed, **DEMAÇI** and other hardliners became isolated by the agreement between **RUGOVA**, **THAÇI** and **QOSJA** to form the PGoK. The formation of a broad-based provisional government of national unity at Rambouillet proved to be too popular for **DEMAÇI** and others to maintain political relevance given their staunch opposition to it.¹⁸⁸⁰

561. Importantly, even if **THAÇI** did acquire some measure of authority by virtue of the promises from the U.S. and allies, he "could not be said to be in 'effective control' if his ability to exercise control is dependent on the discretion of others to assist him."¹⁸⁸¹ Indeed, the "need for an alleged superior to negotiate or to have recourse to 'external pressure' to ensure compliance with decisions and orders" is a factor which militates against a finding of effective control.¹⁸⁸² Here, **THAÇI** did not even have recourse to external pressure to ensure compliance with an order, but was merely trying to convince others who held the decision-making power to consent to his request.

562. The events of Rambouillet, and the transparency of **THAÇI**'s lack of effective

¹⁸⁷⁷ T-250211, pp.25029-25031, 25279-25280 (W04290); P01294.

¹⁸⁷⁸ T-250325, pp.25885-25886 (W04403).

¹⁸⁷⁹ T-250916, pp.26758-26759 (RUBIN).

¹⁸⁸⁰ 1D00426, p.3.

¹⁸⁸¹ Mettraux, p.159.

¹⁸⁸² Mettraux, p.170, citing *Hadžihasanović* AJ, para.227.

control observed by all relevant witnesses, contemporaneous documents, and historical fact, is incompatible with the SPO case. This may explain why there are only a handful of references to Rambouillet in the charging documents, and why so few witnesses were asked by the SPO about it. But at Rambouillet, and in the weeks that followed, **THAÇI**'s alleged role as one of the "highest-ranking" and "senior" members of the KLA was exposed as having no practical impact on his ability to assert authority over those alleged to be his "subordinates". The powerbase was elsewhere, and the SPO's framing of **THAÇI**'s alleged liability is again wildly out of step with the evidence.

563. The SPO has not come close to eliminating reasonable doubt about **THAÇI**'s effective control on the basis of his role in the Political Directorate. This was not a role that put **THAÇI** in any operational chain of command. **THAÇI** was not commanding military operations, he was not issuing orders –particularly not binding orders to alleged perpetrators of crime– and he could not prevent or punish. There is no evidence of him receiving any reports from those committing crimes. There is some authority that evidence that an accused represented the organisation or armed force during meetings could be relevant to effective control.¹⁸⁸³ However, "*whilst such evidence might be indicative of some power or authority, in the abstract, on the part of the accused, it might not in fact contain any evidence of effective control, unless that role or function is shown to have endowed him with some actual authority or power over the perpetrators.*"¹⁸⁸⁴ In this case, it did not.

3. ***THAÇI did not have effective control as Prime Minister of the PGoK***

564. In other cases, accused have been found to exercise effective control based on their leadership roles within states, armed forces, or established, organised rebellions.

¹⁸⁸³ Mettraux, p.165, citing *Orić* TJ, para.703.

¹⁸⁸⁴ Mettraux, p.165, citing *Čelebići* TJ, paras.652-653,682-683; *Nahimana* AJ, paras.606,794.

By contrast, **THAÇI** was the purported “*Prime Minister*” in an entity which was not functional and was said to operate in “*name only*”.¹⁸⁸⁵ The PGoK’s very operation would have put it in conflict with UNMIK. High-level international witnesses who interacted with the alleged PGoK apparatus testified that it was not functional. Their evidence, when weighed against documents issued in the PGoK’s name, or limited evidence of localised administrative functions, precludes any finding that **THAÇI**’s role in the PGoK gave him effective control over alleged perpetrators.

565. **DUNCAN** explained, in political terms, there was no government of Kosovo. This is why NATO entered into an undertaking, and not an agreement with the PGoK: there could be no bilateral agreement between NATO and a state or government that did not exist.¹⁸⁸⁶ The status of the PGoK was a major problem in negotiating the Undertaking, because the PGoK had no architecture backing up any of its declared bodies, no public service, no power to instruct anyone and no-one to carry out its instructions. **THAÇI** had no democratic legitimacy, so any instruction was really him urging people. A self-declared government by a group of individuals is not a state, either legally or in practice.¹⁸⁸⁷

566. **W04752** was not aware that the PGoK ever held a meeting. At the time of the NATO bombings, its members were not located in the same place in Kosovo, and some were overseas.¹⁸⁸⁸ **RUBIN** regarded a video of ÇEKU suggesting that any decision of the PGoK would be considered an order of the KLA as propaganda. **RUBIN** often heard KLA representatives acting as if there was a PGoK. However, the U.S. government did not think there was, given that “*there couldn’t be a provisional government because there wasn’t a country.*”¹⁸⁸⁹ There was no control over territory. The

¹⁸⁸⁵ T-250922,pp.27053-27054 (DUNCAN).

¹⁸⁸⁶ T-250922,p.27053 (DUNCAN).

¹⁸⁸⁷ T-250923,pp.27256-27257 (DUNCAN). *See also* 1D00402,p.DHT05466.

¹⁸⁸⁸ T-240708,pp.17761-17762 (W04752).

¹⁸⁸⁹ T-250916,p.26781 (RUBIN).

KLA had been fighting for their freedom and never saw their opportunity to govern, so they exaggerated. A provisional government was an aspiration, not reality.¹⁸⁹⁰

(a) Conceived in Rambouillet, the PGoK was ended by Resolution 1244

567. The idea of a PGoK arose during Rambouillet. An agreement was reached on 23 February 1999, signed by **THAÇI**, **RUGOVA** and **QOSJA**, in which the Kosovar delegation decided to “*form a provisional government of Kosovo*” which will have “*a mandate to govern until the first free elections are held in Kosovo*” and that “*three political groups will have an equal representation in Government, adding to this number the mandate holder and other potential independent members.*”¹⁸⁹¹

568. A U.S. cable of 12 April 1999 records a discussion in which **KRASNIQI** informed **RUBIN** and **ALBRIGHT** that the new government “*is built on the foundations and in the spirit of the Rambouillet Accords. It has places reserved for Rugova as Democratic League of Kosova (LKD) which however due possibly to MILOŠEVIĆ and his police pressure had not yet been able to nominate its members yet. The new government is comprised of young people with fresh ideas, striving for unity, oriented towards the West and the US*”. It records **ALBRIGHT** stressing “*the need for a broad-based Kosovo ‘Provisional Government’*”; it was good that places had been reserved for the LDK and it was important to continue to reach out to **RUGOVA**. This cable records the U.S. Government’s position that “*while we could not recognize the Provisional Government, we would certainly want to work with it in practice.*”¹⁸⁹² These discussions continued into June 1999, with **RUBIN** confirming **ALBRIGHT** advised the Kosovar Albanian leaders that the U.S. “*needed them to have some kind of unified structure on the ground to work toward a civil administration*”, and that “*it is implicit there that it was the Provisional Government.*”¹⁸⁹³

¹⁸⁹⁰ T-250916,pp.26780-26783 (RUBIN).

¹⁸⁹¹ 1D00069_ET. See also T-250917,pp.26866-26867 (WILLIAMS).

¹⁸⁹² 1D00148,pp.DHT01537-DHT01540.

¹⁸⁹³ 1D00262,para.69.

569. **W02144** agreed that it was **always the thinking** that there had to be a provisional government, an amalgam of all the Kosovar representatives from the Kosovo political spectrum, that would be the new government of Kosovo.¹⁸⁹⁴ This was not **THAÇI's** idea and was not created by the alleged JCE members as a vehicle to *gain and exercise control over all of Kosovo* through the commission of crimes against Opponents. Importantly, it never came into legal existence.

570. The SPO command case requires a complete circumvention of the reality that Resolution 1244 heralded the legal and practical end of the PGoK. The SPO case theory has the PGoK, UNMIK and KFOR operating concurrently, and in parallel. This could never have happened. **COVEY** explained that Resolution 1244 *"overtook anything that was agreed at Rambouillet [and] the United Nations legally assigned UNMIK to be the administrator of that entity"*,¹⁸⁹⁵ so after the war, the PGoK was then *"in competition"* with the UN administration.¹⁸⁹⁶ **W02183** explained that there was a decision **not** to have the PGoK in charge and supported by the UN, but rather to have the UN provide an executive administration¹⁸⁹⁷ Namely, contrary to what had been agreed at Rambouillet (and was fundamental to get the zone commanders on board), the international community insisted that **THAÇI** should ensure dissolution of the KLA **without** the contemplated transition and the political institutions.¹⁸⁹⁸ Resolution 1244 ascribed responsibility for security, law and order, *"in the entirety"* to KFOR and UNMIK.¹⁸⁹⁹ UNMIK was clear that no quasi-state functions were to be performed by anyone (the PGoK, KLA, LDK, BUKOSHI government, or any other group) meaning the PGoK could not perform any functions or provide any services that would support

¹⁸⁹⁴ T-240528,pp.16178-16182 (W02144). See paras.26,263-265.

¹⁸⁹⁵ T-250930,p.27367 (COVEY).

¹⁸⁹⁶ T-240528,pp.16181-16182 (W02144).

¹⁸⁹⁷ T-250121,pp.24136-24138 (W02183). See also Adjudicated Fact No.138.

¹⁸⁹⁸ T-240529,pp.16356-16358 (W02144).

¹⁸⁹⁹ [REDACTED]. See also Adjudicated Fact No.137.

a state in normal circumstances.¹⁹⁰⁰ This was clear to KFOR; **W02135** observed [REDACTED].¹⁹⁰¹

571. The SRSG was “religious” about the letter of Resolution 1244, and any sharing of responsibility for security between the PGoK and UNMIK was not in line with the text of the resolution.¹⁹⁰² As such, the PGoK “from the point of view of the UN, did not have a lawful existence.”¹⁹⁰³ None of the decrees, or decisions adopted by the PGoK, or appointments made were lawful, or were law in Kosovo. UNMIK was careful not to engage with PGoK members in any potential government function and never dealt with **THAÇI** as any kind of minister in any kind of would-be government.¹⁹⁰⁴ Reporting at the time described **THAÇI** as “prime minister of Kosovo’s Interim Government - not recognised by UNMIK”.¹⁹⁰⁵

572. At a July 1999 meeting between UNMIK and **THAÇI**, the SRSG raised that some KLA actions like ‘Government Ministers’ issuing ‘decrees’ with ‘official’ seals were inappropriate. **THAÇI** agreed, and referred to wanting to normalise life, integrate people into civilian life, etc.¹⁹⁰⁶ That is not to say that **THAÇI** did not put up some resistance to the complete circumvention of the PGoK structure.¹⁹⁰⁷ This was not surprising to **COVEY**: this was very early in UNMIK’s process, it was sparring, and UNMIK was “buying time in order to whittle down, wear down, and set aside this fantasy of a provisional government.”¹⁹⁰⁸ This was a snapshot of an evolving process.¹⁹⁰⁹ Similarly, in relation to **THAÇI**’s temporary withdrawal from the KTC,¹⁹¹⁰ **COVEY** explained

¹⁹⁰⁰ T-250122,pp.24178-24179 (W02183).

¹⁹⁰¹ P02517,para.62.

¹⁹⁰² [REDACTED].

¹⁹⁰³ T-250122,p.24162 (W02183).

¹⁹⁰⁴ T-250122,pp.24162-24163 (W02183).

¹⁹⁰⁵ 1D00404,p.DHT04829. See 1D00402,p.DHT05466.

¹⁹⁰⁶ T-250930,p.27361 (COVEY); P01980,p.SPOE00246108.

¹⁹⁰⁷ See, e.g., P01977.

¹⁹⁰⁸ T-251001,p.27529 (COVEY).

¹⁹⁰⁹ T-251001,pp.27527-27530 (COVEY).

¹⁹¹⁰ P04198; P04497_ET,pp.SPOE40016012,SPOE40016034,SPOE40016040.

that **THAÇI**'s actions were a tactic; he was not the only KTC participant to withdraw when frustrated; these events were not surprising and did not last long.¹⁹¹¹

573. UNMIK was "*not ignorant*" of incidents that continued, like a PGoK mayor issuing illegal decisions in September 1999 for the demolition of buildings;¹⁹¹² UNMIK could not address these incidents singly, preferring to address the situation as a whole and move the general public's attitude towards them, inch by inch. According to **COVEY**, these incidents occurred because the public had not yet grasped that "*peace would pay*".¹⁹¹³ UNMIK needed to deliver resources and convince people that they were better off, in the long and short term, by cooperating with UNMIK.¹⁹¹⁴ The evidence shows that this is what happened. **THAÇI**, "*with relative grace, turned his attention away from the PGoK and cooperated with UNMIK*", over time.¹⁹¹⁵

574. On 5 October 1999, **KOUCHNER** issued a protocol for "*Handling Written Communications from So-Called 'Government of Kosovo' Entities*", stating "*UNMIK officers at all levels receive written communications from the so-called 'Government of Kosovo' or the 'Interim Government of Kosovo' entities. It has been the policy of the Mission to return such letters to the sender without response since the Mission does not want to be in a position of recognizing these entities.*"¹⁹¹⁶ **DUNCAN** said NATO would not have accepted correspondence from people in the PGoK and specifically from **THAÇI** as Prime Minister. Accepting such correspondence would have breached the allied position of not recognising the PGoK, and would also have breached the Undertaking which did not give **THAÇI** a role.¹⁹¹⁷

¹⁹¹¹ T-251001,pp.27531-27533 (COVEY).

¹⁹¹² P04127,p.SITF00173980.

¹⁹¹³ T-251002,p.27581 (COVEY).

¹⁹¹⁴ T-211001,pp.27527-27530 (COVEY).

¹⁹¹⁵ T-251001,p.27527 (COVEY).

¹⁹¹⁶ 1D00361; T-250930,pp.27351-27352 (COVEY).

¹⁹¹⁷ T-250923,pp.27242-27245 (DUNCAN).

575. The evidence shows a political landscape that was far more complex than the one painted by the SPO. There are various examples of local administrations that, rather than being THAÇI-controlled apparatuses to kill and persecute Opponents, were cooperative, and united various political forces across the political spectrum, including the LDK.¹⁹¹⁸ These efforts to form collaborative government structures – during the time the SPO alleges the KLA/PGoK was carrying out a widespread or systematic attack against these Opponents– were not just local. W02161 agreed THAÇI was involved in attempts to unite these various groups, such as an effort in June 1999 to collaborate through the Interim Executive Council, to “*regulate and conduct public administration*” until an Interim Provisional Authority could be set up by the UN. This Council was composed of “*Serbs, Albanians, Turks, [and] Romas*”.¹⁹¹⁹

(b) The role of PGoK Prime Minister did not give rise to effective control

576. The SPO has not indicated whether it considers THAÇI to have been a military or civilian superior, or whether this changed over time.¹⁹²⁰ The doctrine of command responsibility extends to civilian leaders “*only to the extent that they exercise a degree of control over their subordinates which is similar to that of a military commander.*”¹⁹²¹ Moreover, “*establishing the superior-subordinate relationship outside the military context can be very difficult.*”¹⁹²² This is because “[t]he sociological make up of a civilian structure is generally very different. Relationships of authority are not founded on orders and submissions thereto, but to a much greater extent upon pre-determined duties and responsibilities.”¹⁹²³ Thus, “*whilst a court could, in some cases, be permitted to draw inferences concerning a military commander’s authority over his subordinates from the existence and proper*

¹⁹¹⁸ T-231207,pp.10804-10808 (W02161), discussing P00743.2,pp.SITF00001597,SITF00001646; 1D00035,p.SITF00385177.

¹⁹¹⁹ T-231207,pp.10810-10811 (W02161), discussing SITF00265435-00265443,p.SITF00265436.

¹⁹²⁰ See Section V(A).

¹⁹²¹ Čelebići TJ,para.378. See Bagilishema AJ,para.51; Musema TJ,paras.135-136; Akayesu TJ,para.491.

¹⁹²² Meloni,p.128.

¹⁹²³ Mettraux,p.189.

functioning of a military chain of command between them, such inference will be drawn with the greatest of caution in the context of a civilian relationship of authority”.¹⁹²⁴

577. This caution must be even greater where the civilian structure in question is a “*fantasy of a provisional government*” which operates “*in name only*” and is unrecognised by other states and the administrative authority which governs the territory in which it operates. The SPO is required to prove beyond reasonable doubt that the unelected ‘Prime Minister’ of such a structure was imbued with authority and control over subordinates that rises to the same degree of control over subordinates as that of a military commander. This is not reflected in the evidence.

578. The SPO case apparently is that persons acting on the basis of alleged authority of the PGoK/KLA detained various persons in Kosovo in the summer of 1999 and abused them, and that **THAÇI** as Prime Minister had effective control over these perpetrators. But the SPO failed to establish that a superior-subordinate relationship existed between **THAÇI** and any such perpetrators. First, there is no proof beyond reasonable doubt that these perpetrators were acting on behalf of the PGoK as opposed to (i) factions of the KLA (over which **THAÇI** did not have effective control), or (ii) FARK (which also was operating in Kosovo, in KLA uniforms, in summer 1999),¹⁹²⁵ or (iii) some other armed group. Second, even if the SPO could establish that the perpetrators were part of the PGoK, it has failed to present any evidence that **THAÇI** issued any orders to such individuals, or that he received any reports from them. There is no evidence of how the PGoK functioned; whether any ‘Ministers’ of the PGoK ever took orders from, or reported to, ‘Prime Minister’ **THAÇI**; and no evidence that **THAÇI** as ‘Prime Minister’ was ever involved in the arrest or detention of anyone. Accordingly, the SPO has failed to prove beyond reasonable doubt that **THAÇI** had effective control over perpetrators making arrests and/or operating

¹⁹²⁴ *Ibid.*

¹⁹²⁵ *See, e.g.*, 1D00235, paras.5-6; 1D00235; 1D00236; 1D00519, p.SPOE00304501.

detention sites in Kosovo in the summer of 1999.

579. **THAÇI** was not elected as Prime Minister of the PGoK. A document purporting to record a discussion on 26 February 1999 about who would head the PGoK lists that out of nine people, five were for **THAÇI**, two for **KRASNIQI** and two were undecided.¹⁹²⁶ This title of 'Prime Minister' was not considered real, or legitimate: UNMIK would not refer to **THAÇI** as 'Prime Minister' given the UN's position that the PGoK did not have a lawful existence.¹⁹²⁷ NATO similarly could not recognise **THAÇI** as Prime Minister;¹⁹²⁸ doing anything that would cause **THAÇI** to be recognised as a political leader of the Kosovars did not reflect reality and was politically untenable.¹⁹²⁹

580. **THAÇI**'s designation as 'Prime Minister' of the PGoK did not change that he had no authority within the KLA, and enjoyed little respect among the zone commanders.¹⁹³⁰ According to **COVEY**, UNMIK drew on reliable sources, and concluded that this was a widely-held view.¹⁹³¹ During the final JIC meeting, for example, **THAÇI** did not participate and **ÇEKU** spoke on behalf of the KLA; it stood out vividly to **COVEY** that the zone commanders did not speak to **THAÇI**. This confirmed what UNMIK had believed from the beginning of their acquaintance with **THAÇI**: he had a very slender relationship with the field commanders of the KLA. It was highly unlikely that they would seek his guidance, let alone take orders or report activities to him.¹⁹³²

581. **DUNCAN** explained that a big problem drafting the Undertaking was that

¹⁹²⁶ P00645_ET,p.SPOE00227673; T-240702,p.17487 (W04752); 1D00118,p.SPOE00133738.

¹⁹²⁷ T-250122,pp.24162-24163 (W02183).

¹⁹²⁸ T-250923,pp.27256-27257 (DUNCAN); 1D00402,p.DHT05466.

¹⁹²⁹ T-250922,p.27048 (DUNCAN).

¹⁹³⁰ T-250930,p.27337, T-251002,pp.27598-27599 (COVEY). *See paras.187,591-592.*

¹⁹³¹ T-251002,p.27599 (COVEY). *See also para.82.*

¹⁹³² T-250930,pp.27346-27347 (COVEY).

NATO considered that **THAÇI**, despite being ‘Prime Minister’, might not be able to deliver KLA fighters, because the real power was with the zone commanders. Otherwise, NATO would have gone straight to him and said, “[w]e need a demilitarisation agreement. Let’s start negotiating it”. This was confirmed the first time they met with ÇEKU to discuss the Undertaking in Tirana on 14 June 1999. ÇEKU said “I cannot do this without the zonal commanders being present. You will have to come to Kosovo.”¹⁹³³ This perception that the zone commanders were the serious players and had to be involved in any negotiations was reinforced in a meeting on 17 June 1999 with **DUNCAN**, ÇEKU, John **REITH** and the zone commanders.¹⁹³⁴

582. UNMIK had the same view. A report from 21 July 1999 records that in his first meeting with **SRSK KOUCHNER**, **THAÇI** tried to present himself as a multi-party democrat: “He might mean it. But it is still unclear if he could rally the rest of the KLA behind him”.¹⁹³⁵ **COVEY** confirmed this was UNMIK’s concern at that initial stage, and that increasingly, he came to realise that **THAÇI**’s influence was very limited.¹⁹³⁶

583. **COVEY** testified he had been shown no orders from **THAÇI** to anyone else in the KLA, or any reports from anyone in the KLA to **THAÇI**, that would lead him to question his assessment that **THAÇI** was not in a position to prevent or punish crimes committed by KLA members or ex-members.¹⁹³⁷ **THAÇI**’s own view that he did not have the ability to “influence external forces”¹⁹³⁸ was consistent with **COVEY**’s experience of **THAÇI** trying to lower tensions, and the admission that he had limited influence.¹⁹³⁹ **CLARK** reached the same conclusion.¹⁹⁴⁰ **COVEY** explained that “Thaci’s

¹⁹³³ T-250922,pp.27047-27050 (DUNCAN).

¹⁹³⁴ T-250922,pp.27057-27068 (DUNCAN).

¹⁹³⁵ P01980,para.III; T-250930,pp.27364-27365 (COVEY).

¹⁹³⁶ T-250930,pp.27364-27365 (COVEY); 1D00390,para.31.

¹⁹³⁷ T-251002,pp.27592-27594 (COVEY).

¹⁹³⁸ P04497_ET,p.SPOE40016107; T-251002,p.27588 (COVEY).

¹⁹³⁹ T-251002,p.27588 (COVEY).

¹⁹⁴⁰ 1D00430,paras.31,52.

*instincts and pretense to power may have been politically useful before Kosovar audiences” but were misunderstood by some who inaccurately concluded “that he actually had the power to control violence perpetrated by elements of what had always been a highly decentralized (and now former) KLA.”*¹⁹⁴¹ For those on the ground, it was clear **THAÇI**'s ambition far outstripped his actual influence.¹⁹⁴²

584. **W04752** agreed that “[a]ccording to the rules”, **W04290** as General Commander would have reported to **THAÇI** as Prime Minister, but said “I don’t know whether he was able to.”¹⁹⁴³ **W04290** never reported to the PGoK during his time as General Commander and never received an order from **THAÇI** between March 1998 and September 1999.¹⁹⁴⁴ After confirming that **THAÇI** could not issue orders to any soldiers in the zones, **W04401** noted that even after he became Prime Minister, **THAÇI** had challenges setting up the cabinet or government, so **W04401** does not know if he could issue orders in this role.¹⁹⁴⁵

585. In this context, witnesses explained the mistake of focusing on self-designated titles,¹⁹⁴⁶ rather than evidence demonstrating control. **COVEY** said a cable referring to **THAÇI** as “the leader of the UCK”¹⁹⁴⁷ was unfortunate: “it was a title he asserted which UNMIK found to be a hollow claim” and he did not even pick up on the title at the time. UNMIK attempted to resolve whether, as a practical matter, **THAÇI** was the commander, and concluded that it was an empty claim.¹⁹⁴⁸ Similarly, **THAÇI**'s temporising and vague answers in response to COMKFOR relaying concerns about PU elements in black uniforms and asking who they were¹⁹⁴⁹ reflected UNMIK’s sense

¹⁹⁴¹ 1D00390,para.72.

¹⁹⁴² T-251002,p.27578 (COVEY).

¹⁹⁴³ T-240708,p.17766 (W04752).

¹⁹⁴⁴ T-250211,p.25076-25079 (W04290).

¹⁹⁴⁵ T-241205,pp.23451-23452 (W04401).

¹⁹⁴⁶ Čelebići AJ,para.197: Gacumbitsi AJ,para.144.

¹⁹⁴⁷ P01980,para.II.

¹⁹⁴⁸ T-251002,pp.27629-27631 (COVEY); P01989.

¹⁹⁴⁹ P00755,paras.I(1)(d),(III).

that he had very little influence and was reluctant to say so.¹⁹⁵⁰

586. **COVEY, DURKEE, and CLARK** all conveyed that NATO/KFOR and UNMIK held the same view, which was also corroborated by reports of international organisations in summer 1999. Crimes occurred, but no evidence indicated that these were directed or coordinated by the KLA, [REDACTED].¹⁹⁵¹ **COVEY** said that UNMIK also received [REDACTED]. [REDACTED], and UNMIK had long come to the position that **THAÇI** was in no position to order or orchestrate such attacks.¹⁹⁵²

587. The U.S. had the same view. Senator **BIDEN**, the ranking Democrat on the Foreign Relations Committee, was “*extremely involved*” in Kosovo, and would receive briefings from all relevant agencies and departments. He told **THAÇI** that he knew that “*you do not control the KLA*”.¹⁹⁵³ This was reflected in official documents, reporting that there was no effective command and control of the KLA.¹⁹⁵⁴ Both statements reflected that **THAÇI** was not in control, and the KLA was not an organised unit that had someone at the top with authority or capabilities to dictate or know what was going on, and specifically **THAÇI** was not even at the top of the organisation.¹⁹⁵⁵

588. Any allegation that **THAÇI** exercised effective control as Prime Minister is further undermined by evidence of **THAÇI**'s efforts to garner support for his party-in-the-making by meeting the KLA's Drenicë/Drenica commander, and former zone commanders being engaged with a different political party.¹⁹⁵⁶ At the same time the

¹⁹⁵⁰ T-251002,p.27627 (COVEY).

¹⁹⁵¹ [REDACTED]; T-250923,p.27232 (DUNCAN); T-251113,p.28071 (DURKEE); T-251002,pp.27575-27576 (COVEY).>

¹⁹⁵² T-251002,pp.27575-27576 (COVEY).

¹⁹⁵³ 1D00290,p.DHT01461; T-250915,p.26534 (RUBIN). *See also* T-250915,pp.26533,26535-26536 (RUBIN).

¹⁹⁵⁴ 1D00120; 1D00262,paras.65-66.

¹⁹⁵⁵ *See* T-250915,pp.26536-26537 (RUBIN): The U.S. State Department statement would have been cleared extensively by multiple offices in every building, including the White House, the CIA, Department of Defence, State Department, probably 250 people who were considered experts on the Balkans.

¹⁹⁵⁶ 1D00421_ET; 1D00404,pp.DHT04828-DHT04830; T-250930,pp.27372-27373, T-251001,p.27562 (COVEY). *See also* 1D00539,para.4.

SPO claims that **THAÇI** exercised both *de jure* and *de facto* effective control over all perpetrators in this period, the evidence shows that he did not even enjoy consistent support among those who retained the most power within the transforming KLA structure. The deep divisions within the KLA were never remedied and continued until the end. The SPO's case is refuted by history, and the facts of this case.

4. ***THAÇI did not have effective control as the alleged 'Commander in Chief' of the KLA/PGoK***

589. Command responsibility does not attach to an official merely on the basis of his "*over-all command*", if not accompanied by a duty and ability to prevent or punish crimes.¹⁹⁵⁷ As such, in determining command responsibility for the crimes of subordinates, "*it is necessary to look at the effective exercise of power or control and not at formal titles.*"¹⁹⁵⁸ **THAÇI**'s effective control must be demonstrated by evidence of his alleged position as 'Commander-in-Chief' of the alleged perpetrators, in addition to the fact that **THAÇI** and the perpetrators were legally in a relationship as superior to subordinates, that **THAÇI** was "*effectively able to enforce his legal authority through the exercise of his legal powers over the perpetrators.*"¹⁹⁵⁹

590. Following Resolution 1244, no such "*legal authority*" existed. The KLA had entered an Undertaking which put the military under NATO control "*immediately*" when the "*process of demilitarisation started*",¹⁹⁶⁰ and legal authority over the territory was then being exercised exclusively by UNMIK. The idea that **THAÇI**'s signature as 'Commander-in-Chief' proves a formal role giving him the ability to prevent and punish perpetrators is unsupported by evidence, and cannot be established beyond

¹⁹⁵⁷ Halilović AJ,para.214.

¹⁹⁵⁸ Meloni,p.94, citing Čelebići AJ,para.197. See also Gacumbitsi AJ,para.144, where the ICTR Appeals Chamber rejected the Prosecution's argument that the accused's authority as *bourgmestre* to impose law and order in the commune where the crimes were committed would have given him effective control over anyone present in that area at the relevant time.

¹⁹⁵⁹ Mettraux,p.174.

¹⁹⁶⁰ T-250922,pp.27043-27044 (DUNCAN). See also P01444,paras.4,8.

reasonable doubt. Rather, the evidence demonstrates that in this period, ‘Commander-in-Chief’ was a title devoid of meaning.

591. The documents relied on by the SPO in which **THAÇI** is named or signed under the Commander-in-Chief title are discussed above, and do not demonstrate effective control.¹⁹⁶¹ Titles and documents aside, it was clear to **RUBIN** that **THAÇI** was not in charge, as he *“didn’t have the capability or the authority to make decisions for the KLA in terms of practical questions: Giving up weapons, directing forces, wearing uniforms. All the things that militaries do were decided by other people.”*¹⁹⁶² **RUBIN** spent 72 hours observing **THAÇI** with the sector commanders in the mountains, which allowed him to see where **THAÇI** *“stood in the system”*.¹⁹⁶³ **THAÇI** was deferential to the KLA commanders, substantively and socially.¹⁹⁶⁴ They told him what to do; he did not tell them what to do.¹⁹⁶⁵ He is confident that **THAÇI** was not the military leader of the KLA.¹⁹⁶⁶

592. **DUNCAN** agreed that a Commander-in-Chief has command and control; the way the zone commanders behaved during the Undertaking negotiations showed **DUNCAN** that **THAÇI** had neither. They treated him as the political wing with a certain influence and authority, but not as someone to whom they gave military respect. This difference and distance between the two groups was very noticeable.¹⁹⁶⁷ **COVEY** was also categorical that **THAÇI**’s role was political and not military.¹⁹⁶⁸ **COVEY** absolutely did not perceive **THAÇI** to be **ÇEKU**’s boss. On the rare occasions they were seen together, their exchanges were not in the form of one giving directions,

¹⁹⁶¹ See Section III(B)(2)(d)(i).

¹⁹⁶² T-250915,p.26522 (RUBIN).

¹⁹⁶³ T-250916,p.26704 (RUBIN).

¹⁹⁶⁴ T-250915,pp.26527-26529 (RUBIN); 1D00288.

¹⁹⁶⁵ T-250915,pp.26519-26523 (RUBIN).

¹⁹⁶⁶ T-250916,pp.26703-26704 (RUBIN).

¹⁹⁶⁷ T-250922,pp.27076-27079 (DUNCAN).

¹⁹⁶⁸ T-251001,p.27542; T-251002,pp.27577-27578 (COVEY).

and COVEY did not see ÇEKU consulting THAÇI.¹⁹⁶⁹ ÇEKU was by far the most influential individual within the KLA, and even he did not seem to be able to simply speak for it without the zone commanders' agreement.¹⁹⁷⁰

593. Importantly, RUBIN explained that orders, reports, records of meetings would not be helpful in determining whether the military part of the KLA was subject to any civilian control, as *"we're dealing with a group that has never governed, that is not a country, that is not an army, that is not a military structure, and they are trying to appeal to the West, to the Western values. So they say a lot of things that Western leaders want to hear"*.¹⁹⁷¹ For that reason, RUBIN did not think that the procedures of the KLA GS (which he did not think existed) nor the KLA structure, which he never really saw other than the moment where he understood how amorphous it was, would assist in this evaluation.¹⁹⁷²

5. *Conclusion on Effective Control*

594. The factors considered by other courts and tribunals to militate **against** a finding of effective control have been compiled. They read as a description of the situation of THAÇI in 1998 and 1999 in Kosovo and his relationship with the alleged perpetrators:¹⁹⁷³

- *"disregard or non-compliance by the perpetrators with orders or instructions of the accused;*
- *general unruliness of the troops involved in the crimes;*
- *orders to the perpetrators coming from sources other than the accused which might have interfered with his authority;*
- *absence of legal authority of the accused over the perpetrators;*

¹⁹⁶⁹ T-251030,p.27354 (COVEY).

¹⁹⁷⁰ T-251030,p.27348 (COVEY). *See also* T-250916,p.26724 (RUBIN).

¹⁹⁷¹ T-250916,p.26778 (RUBIN).

¹⁹⁷² T-250916,pp.26777-26778 (RUBIN).

¹⁹⁷³ Mettraux,pp.168-170 (internal citations omitted).

- *lack of a mechanism or structure in place to enforce compliance with standards of humanitarian law;*
- *under-developed or malfunctioning nature of the relevant military, civilian or paramilitary chain of command;*
- *chaotic circumstances surrounding the events;*
- *existence of a parallel chain of command as, for instance, between the military and military security organs or between military and civilian organs;*
- *interference with the normal functioning of the chain of command;*
- *independent power to decide and to act on the part of the perpetrators who are said to have been subordinated to the accused;*
- *absence of reporting to the accused on the part of the alleged subordinates;*
- *power-struggles or tensions within the relevant chain of command which interfered with the normal functioning of the chain of command;*
- *communication breakdown which makes it impracticable or impossible for the accused to exercise his authority over the perpetrators or the full scale thereof;*
- *limitation in resources at the disposal of the accused to ensure compliance with his orders and authority;*
- *need for the alleged superior to negotiate or to have recourse to 'external pressure' to ensure compliance with decisions and orders;*
- *evidence that the alleged superiors did not regard themselves as being in charge of the alleged subordinates;*
- *evidence that the alleged subordinates reserved their right to participate or not to participate in combat;*
- *evidence of displeasure and disapproval of the action of the alleged subordinates;*
- *absence of evidence of reporting by the alleged subordinates to the alleged superior;*
- *absence of record of involvement of the alleged subordinates in operations carried out by the alleged superior, or within the structure commanded by the latter."*

595. In establishing effective control, "great care must be taken lest an injustice be committed in holding individuals responsible for the acts of others in situations where the link of control is absent or too remote."¹⁹⁷⁴ The evidence in this case raises significant doubt as to whether **THAÇI** could give binding orders, was part of a command chain, or had

¹⁹⁷⁴ Čelebići TJ, para.377.

any ability to prevent or punish the alleged perpetrators. **THAÇI**'s physical absence from Kosovo for a significant part of the Indictment period is circumstantial evidence that he did not exercise effective control over KLA forces on the ground, particularly in the absence of evidence that he was communicating remotely with KLA forces on the ground in a manner and with a regularity that gave rise to an ability to prevent or punish their actions. This element of command responsibility cannot be established beyond a reasonable doubt.

D. **THAÇI** DID NOT HAVE THE REQUISITE KNOWLEDGE

596. Article 16(1)(c) of the Law limits liability as a superior to those who "*knew or had reason to know*" that their subordinates had committed or were about to commit the charged crimes.

597. Absent actual knowledge, a superior will only "*ha[ve] reason to know*" of alleged crimes where it can be demonstrated that he had information that put him on notice of the strong likelihood that they were about to be committed.¹⁹⁷⁵ As noted in one case, "*[t]he standard of proof of imputed knowledge is strict*".¹⁹⁷⁶ The information given to the accused need not compel the conclusion that crimes had or would occur, but must be "*sufficiently clear and alarming to indicate the strong likelihood of the offences charged having been or about to be committed in order to trigger the commander's duty to act.*"¹⁹⁷⁷

598. Importantly, what is needed is information that "*acts such as those charged*" have been or were about to be committed by subordinates.¹⁹⁷⁸ This means the commander must have knowledge of both the elements of the specific charged offence, and

¹⁹⁷⁵ Mettraux p.209, citing Čelebići AJ,para.238; Kordić TJ,para.437; Bagilishema AJ,para.28.

¹⁹⁷⁶ Mettraux,p.209, citing Brima TJ,para.1734.

¹⁹⁷⁷ Mettraux,p.209, citing Kordić TJ,para.437; Čelebići AJ,paras.238,241; Hadžihasanović AJ,para.28,Strugar TJ,paras.369-370,415-419; Halilović TJ,para.68; Čelebići TJ,para.393; Fofana TJ,para.244; Brima TJ,para.794.

¹⁹⁷⁸ Mettraux,p.200, citing Strugar TJ,paras.416-417; Krnojelac AJ,paras.155,178-179; Hadžihasanović TJ,para.106.

relevant *chapeau* elements; it is not sufficient that the commander knows, in general terms, that crimes have been or may be about to be committed by subordinates. Where an accused has been charged with murder, for example, it must be shown that he knew or had reason to know that murder – and not any other criminal offence – had been committed or was about to be committed by his subordinates. If the murder is being charged as a crime against humanity, it must be shown that the accused knew of the fundamental elements of crimes against humanity; the same would apply if war crimes were charged.¹⁹⁷⁹ Importantly, he must also be shown to have knowledge of **his subordinates' criminal involvement** in the commission of the charged crimes.¹⁹⁸⁰

599. Timing of the purported knowledge is also relevant.¹⁹⁸¹ A superior will not be criminally responsible for a failure to prevent or punish a crime of which he had **no or insufficient knowledge at the time** of his alleged failure.¹⁹⁸² Only information which was effectively in the possession of the accused prior to the time he allegedly failed in his duty is relevant to establishing state of mind.¹⁹⁸³ No *post facto* inference as to knowledge at the relevant time may be drawn from the fact that crimes were indeed committed by subordinates. Any event or incident which took place after the commander is alleged to have failed in his duty is “*irrelevant in principle to establishing his awareness of the existence of a such a risk.*”¹⁹⁸⁴

600. With these requirements in mind, the SPO has framed its case without any acknowledgement that **THAČI** was absent from Kosovo for much of the Indictment period, which impacts his knowledge of what was happening in Kosovo. The specific allegations that **THAČI** was present when and where crimes charged were being carried out, or was in the vicinity during their commission, have been addressed

¹⁹⁷⁹ Mettraux, pp.200-201, citing *Naletilić* AJ, paras.118,121.

¹⁹⁸⁰ Mettraux, p.201, citing *Orić* AJ, paras.52,55-60,169-174.

¹⁹⁸¹ See *Hadžihasanović* AJ, para.260.

¹⁹⁸² *Milutinović* TJ, para.120. See also *Limaj* TJ, para.525; *Fofana* TJ, para.245.

¹⁹⁸³ *Čelebići* AJ, paras.238-239; *Hadžihasanović* AJ, para.30; *Strugar* AJ, paras.303-304.

¹⁹⁸⁴ Mettraux, p.198.

above.¹⁹⁸⁵ The evidence does not demonstrate beyond reasonable doubt that **THAÇI** possessed the requisite knowledge of the charged crimes of subordinates, at the time at which he allegedly failed to act, merely through his proximity. General presence in the vicinity of Rahovec/Orahovac in the aftermath of a military operation or in Llapushnik/Lapušnik during a military operation,¹⁹⁸⁶ for example, does not demonstrate beyond a reasonable doubt that **THAÇI** had knowledge of the elements of the charged crimes which were then committed, as well as his subordinates' criminal involvement in their commission, at the relevant time.¹⁹⁸⁷ The evidence does not meet the standard for imputation of the specific knowledge required.

601. The SPO also questioned **W04403** about his allegation that the two Serb journalists were detained at the GS premises in Divjakë/Divljaka. **W04403** testified that he was informed about their presence in the building on the "16th or 17th" of November 1998, and that they were released on 28 November, meaning they spent "12, 13, or 14 days" there.¹⁹⁸⁸ Any allegation that **THAÇI** had knowledge of their detention at this time would require evidence that **THAÇI** was in the GS building on 16 or 17 November, which has not been established and is rendered more unlikely in light of the evidence that he departed Kosovo in "mid November".¹⁹⁸⁹ The SPO's attempts to put him in the vicinity of alleged crimes repeatedly fail.

602. The SPO then relies on the idea that everyone knew about KLA crimes. The PTB cites to "ongoing public notice of crimes, including through large-scale demonstrations, in the media, and reports and communications of civil leaders, government, international, and

¹⁹⁸⁵ See Section III(B)(2).

¹⁹⁸⁶ See P00189_ET.1,p.U015-8831.

¹⁹⁸⁷ See, e.g., SPO PTB,para.17.

¹⁹⁸⁸ T-250324,p.25722 (W04403).

¹⁹⁸⁹ P01069,p.075327; T-240325,pp.13595,13602 (W04147); T-240704,pp.17629-17630 (W04752). The last record of **THAÇI** in Kosovo is at the reorganisation meetings on 12-13 November 1998, see P00895_ET,p.U002-0164,4D00011_ET; T-240701,p.17395 (W04752).

non-government organisations"¹⁹⁹⁰ and that "[t]he crimes were also common knowledge both in Kosovo and abroad".¹⁹⁹¹ The SPO asked international witnesses about a slew of semi-contemporaneous reports referencing alleged crimes, asking if they had heard about them at the time,¹⁹⁹² presumably in an attempt to demonstrate that reporting of crimes was widespread, and their commission was common knowledge. The international witnesses knew about some incidents, and not about others.¹⁹⁹³ Even if they had known about each of the incidents put to them by the SPO, this is not evidence beyond reasonable doubt that **THAÇI** had the requisite knowledge to trigger his liability as a superior. Knowledge of a general matrix of events and conduct does not suffice. The SPO was required to establish that **THAÇI** had knowledge that the specific charged crimes, and their contextual elements, had been or would be committed by his subordinates, and must have had this knowledge at the relevant time. Even if the press or NGOs were reporting KLA crimes in 1998 and 1999, there is evidence that those within Kosovo were not always able to access print or electronic media sources.¹⁹⁹⁴ In these circumstances, the evidence does not come close to establishing these required factors beyond a reasonable doubt. General public knowledge of crimes is not enough.

603. Concerning an incident at [REDACTED] raised by the SPO for the first time in the middle of trial, the Defence reiterates that nowhere in the Indictment or PTB is there an allegation concerning this incident, nor any mention of abduction of anyone in this location around this date. Nor is there any allegation that **THAÇI** had any role or involvement in any such incident. The Panel has confirmed "*that the abductions of the individuals concerned are not facts pleaded in the Indictment,*" and as a result, "*any*

¹⁹⁹⁰ SPO PTB, para.13.

¹⁹⁹¹ SPO PTB, para.15.

¹⁹⁹² T-251113, pp.28047-28057 (DURKEE); T-250917, pp.26924-26931 (WILLIAMS).

¹⁹⁹³ See, e.g., T-251113, p.28054 (DURKEE); T-250917, pp.26928-26929 (WILLIAMS).

¹⁹⁹⁴ T-241204, p.23338 (W04401); T-240604, p.16663, T-240605, pp.16745-16746 (W04410); P01264_ET, p.SPOE00128661, noting Serbia had intentionally closed down Albanian language programs and newspapers "*so that Kosovo Albanians would remain in total darkness*"; P00911.4_ET, pp.4-5,7; [REDACTED].

evidence led in relation to them cannot be relied upon directly as a basis to establish the Accused's guilt in relation to these incidents."¹⁹⁹⁵ Moreover, the SPO has failed to establish beyond reasonable doubt who abducted the individuals, and therefore the incident cannot be used to establish a pattern of conduct or the overall context in which charged crimes were allegedly committed.

604. The SPO otherwise relies on **THAÇI**'s:

- (i) Knowledge that KLA members were operating without a clear definition of, or process to identify, collaborators;
- (ii) Notice that troops were being deployed with minimal training, in some cases no prior military experience, and either non-existent or minimal information on IHL; and
- (iii) Access to, *inter alia*, communication and reporting structures which enabled regular communication with the zones and subordinate units, including those committing the crimes.¹⁹⁹⁶

605. Again, these factors are necessarily impacted by **THAÇI**'s lack of physical proximity to the alleged subordinates and their alleged activities, with which the SPO has never engaged. The evidence on the lack of a hierarchical command chain has been discussed above:¹⁹⁹⁷ the weight of the SPO's own evidence demonstrates that any suggestion of regular and functioning reporting lines between the zones and the GS was a fiction. The level of information sharing by the zones was minimal, inconsistent, and largely absent for much of the conflict. Records of the small number of GS meetings do not indicate reporting of alleged crimes, or discussion thereof.

606. Regarding training of recruits and knowledge of IHL within the KLA, the SPO

¹⁹⁹⁵ F02652/COR,para.25.

¹⁹⁹⁶ SPO PTB,para.12.

¹⁹⁹⁷ See Section V(B)(1).

has never explained how **THAÇI** –often out of the country performing a role unrelated to KLA military operations– was being made aware of the level of training afforded to recruits prior to deployment, or the way in which KLA members were defining and identifying collaborators. In addition, the SPO has never grappled with the evidence that the KLA was not the armed force of a developed nation, but a non-state armed group in an embryonic stage, engaged in village-by-village warfare against those imposing a brutal and violent system of apartheid who were seeking to ethnically cleanse Kosovar Albanian civilians from the territory. This context –to which the SPO remains entirely blinkered– is undoubtedly relevant to the reasonableness of imputing knowledge of crimes from factors such as “*minimal training*” and “*minimal knowledge of IHL*”. The ICRC’s guidelines on *Detention by Non-State Armed Groups* recognise that rules to ensure detention is not arbitrary might not exist when the first detainees are taken by non-state actors, and that it may take time and resources to define and implement effective review procedures.¹⁹⁹⁸ The lack of developed due process systems or comprehensive training on IHL within the KLA, in this context, is nowhere near sufficient to impute knowledge to **THAÇI** of the specific crimes being committed by his subordinates. The evidence may demonstrate **THAÇI** knew that untrained local villagers had taken up weapons to fight the Serbs, and may have had reason to know that they had not studied IHL. This is not sufficient to meet the standard of knowledge for individual criminal liability as a commander.

607. Lastly, the SPO relies on meetings with internationals in which **THAÇI** is alleged to have been “*informed of crimes against Opponents*”.¹⁹⁹⁹ These meetings have been discussed above,²⁰⁰⁰ and none demonstrate that **THAÇI** was informed, in any more than general terms, about concerns of internationals about alleged KLA elements committing crimes. The evidence does not demonstrate **THAÇI** being told by

¹⁹⁹⁸ ICRC Report, pp.55-56.

¹⁹⁹⁹ SPO PTB, para.13.

²⁰⁰⁰ See Section III(B)(2)(g).

internationals that *“in this location, on this date, your subordinates will commit or did commit these particular crimes”*. The evidence demonstrates the opposite. When questioned by the Panel about his conversations with **THAÇI** about crimes, **RUBIN** explained that *“I would not have said ‘Okay, we’ve heard about case X. Please tell me everything you know about that case. Please describe all the details you know and all the details you’re going to find out and report back to me in a month.’ We’re talking about a war.”*²⁰⁰¹ The meeting with HRW in November 1998 involved HRW seeking information about the case of two detained Serb journalists, with no indication that **THAÇI** knew or was informed that crimes were being committed against them, and HRW concluding that **THAÇI** himself was not a perpetrator.²⁰⁰² The information received by **THAÇI** from HRW in August 1999 was in the form of a report which addressed crimes after 12 June 1999,²⁰⁰³ in response to which **THAÇI** condemned violations and restated the KLA’s commitment to respect IHL and the Geneva Conventions in particular.²⁰⁰⁴ **THAÇI** also conveyed his understanding that these were the actions of private individuals and not a coordinated policy to commit or condone or support criminal conduct, a position with which the HRW representative disagreed,²⁰⁰⁵ but other international witnesses (with the relevant intelligence services at their disposal) fully endorsed.²⁰⁰⁶ Relevant to this assessment is the wall of evidence of perpetrators pretending to be KLA in order to settle scores and commit crimes;²⁰⁰⁷ and the evidence that KLA assertions that allegations of crimes were Serb propaganda *“often proved to be so.”*²⁰⁰⁸ Certainly, there is no evidence that HRW representatives informed **THAÇI** that his subordinates had committed any of the specific charged crimes on specific dates, or that HRW considered him to be a perpetrator of those crimes, as a superior of those perpetrators.

²⁰⁰¹ T-250917,p.26800 (RUBIN).

²⁰⁰² T-230906,p.7377 (W04408).

²⁰⁰³ T-230906,p.7335 (W04408).

²⁰⁰⁴ T-230906,pp.7324, 7337-7338, T-230907,p.7572 (W04408).

²⁰⁰⁵ See T-230906,pp.7339-7340 (W04408).

²⁰⁰⁶ See paras.33-40,636,654.

²⁰⁰⁷ See paras.90-92,105-108.

²⁰⁰⁸ T-250916,pp.26729-26730 (RUBIN).

The SPO has also failed to establish this element of superior responsibility beyond reasonable doubt.

E. **THAČI** DID NOT FAIL TO TAKE NECESSARY AND REASONABLE MEASURES

608. A commander's duty to prevent and punish crimes entails an obligation to take such measures that are feasible, and appropriate in the circumstances.²⁰⁰⁹ The duty is restricted to measures reasonably falling within the commander's power, meaning measures which are "*within his material possibility*".²⁰¹⁰ A commander is not obliged to perform the impossible.²⁰¹¹ In other words, what is necessary and reasonable will depend on the extent of the commander's actual material ability to take such measures.²⁰¹²

609. The SPO has framed the alleged failure to prevent or punish in identical terms for the four Accused. Despite their different mandates, roles, and physical locations, the SPO states in global terms that "*as senior members of the KLA/PGoK, the Accused had authority over the entire KLA/PGoK structures*" and asserts that they had the power and authority to take "*a wide-range of measures*" to prevent the charged crimes or punish the perpetrators, through their authority to "*issue orders that were complied with*"; incorporate "*safeguards*" such as "*adequate training and necessary regulations*"; "*dismiss, demote or otherwise discipline*" perpetrators, "*report information*" about the commission

²⁰⁰⁹ Krnojelac TJ,para.95; Čelebići AJ,para.226; Kordić TJ,paras.441-442; Orić AJ,para.177; Halilović AJ,para.63. See Hadžihasanović TJ,paras.1884-1886.

²⁰¹⁰ Čelebići TJ,para.395; API,arts. 86(2),87; ICRC Commentary,paras.3543,3548: "*Using relatively broad language, the clause requires both preventive and repressive action. However, it reasonably restricts the obligation upon superiors to 'feasible' measures, since it is not always possible to prevent a breach or punish the perpetrators. In addition, it is a matter of common sense that the measures concerned are described as those 'within their power' and only those [...].*" See also Halilović AJ,para.63; Popović AJ,para.1932; Blaškić AJ,paras.72,417; Hadžihasanović AJ,paras.33,142; Kayishema AJ,para.302; Bagosora AJ,para.672; Naletilić TJ,paras.76-77; Bošković AJ,para.230; Delić TJ,para.76; Limaj TJ,para.526; Strugar TJ,paras.372,374; Kordić TJ,para.442; Krnojelac TJ,para.95; Mrkšić TJ,para.565; Blagojević TJ,para.793; Brđanin TJ,para.279; Đorđević TJ,para.1887; Brima TJ,para.798; Čea TJ,para.716.

²⁰¹¹ Blaškić AJ,para.417, citing Čelebići TJ,para.395; Blagojević TJ,para.793.

²⁰¹² Meloni,p.120.

or possible commission of crimes to the appropriate authorities; and “*order and initiate genuine and adequate investigations into allegations of crimes and to order arrests*”.²⁰¹³ As such –according to the SPO– there was no limitation on **THAÇI**’s ability to prevent or punish any subordinate at any time.

610. The SPO case is incompatible with the evidence heard. It is also incompatible with the law of superior responsibility which requires that, for liability to arise, **THAÇI** must have failed to adopt measures that “*fell within the scope of his responsibilities and mandate*”.²⁰¹⁴ By charging the case in sweeping terms, the SPO has failed to engage with the obvious limits to **THAÇI**’s mandate, what measures were actually within the scope of his responsibility at different times, and whether these measures were feasible and appropriate in the circumstances. The SPO has not demonstrated any dereliction of duty which would give rise to **THAÇI**’s liability as a superior.

611. In terms of an alleged superior’s ability to prevent or punish, the circumstances of this case are unprecedented. The measures that reasonably fell within **THAÇI**’s material ability were dramatically reduced by: (i) the KLA’s status not as a regular and hierarchical army, but a deeply localised and developing non-state armed group, fighting against a regime of apartheid and a campaign of ethnic cleansing; (ii) the reality that a non-state actor at this early stage would not immediately be in a position to define and implement effective procedures for the prevention and punishment of crimes;²⁰¹⁵ and (iii) **THAÇI**’s own physical absence from Kosovo during much of the Indictment period, particularly when “*geographical remoteness*” is a factor to be considered in an assessment of command, which “*serves its greatest value in the assessment of what is reasonable as a measure to prevent or repress violations to submit them*

²⁰¹³ SPO PTB, paras.710-712.

²⁰¹⁴ Mettraux, p.238 (emphasis added).

²⁰¹⁵ ICRC Report, pp.55-56.

to competent authorities for investigation and prosecution."²⁰¹⁶ While the SPO ignores these factors, they are directly relevant to an assessment of which measures were feasible and appropriate in the circumstances, and which fell within **THAÇI**'s material ability to carry out.

612. For example, what can be considered necessary and reasonable measures for a superior who is commanding military operations, engaged in combat, with direct proximity to troops and an immediate ability to prevent and punish their actions, is wholly different from what is necessary and reasonable for the Head of the Political Directorate who was not present in theatre of operations, fell outside the military chain of command, and was regularly located outside the country. In this role, **THAÇI**'s mandate was unrelated to operations, discipline, or regular interaction –in any way– with the KLA troops on the ground. The SPO cannot establish beyond reasonable doubt that **THAÇI** had the ability to *"issue orders that were complied with"*; and *"dismiss, demote or otherwise discipline"* perpetrators given the wealth of evidence that he in fact was unable to issue binding orders,²⁰¹⁷ and had no ability to appoint or dismiss anyone.²⁰¹⁸ He was not in charge of training, any more than it was his responsibility to ensure the drafting and promulgation of *"necessary regulations"*. It *"may not be assumed from the fact that a superior had some responsibilities and the ensuing powers that he had all-encompassing responsibility."*²⁰¹⁹ **THAÇI**'s role was engaging with internationals, seeking support for the KLA's fight for an independent Kosovo free from the oppressive violent Serb rule.²⁰²⁰

613. By failing to acknowledge this, and simply pleading its case in sweeping global terms, the SPO has also failed to engage with what **THAÇI** was able, and required, to

²⁰¹⁶ *Bemba* AJ, Concurring Opinion, Judge Eboe-Osuji, para.258.

²⁰¹⁷ See Section V(C)(2).

²⁰¹⁸ See paras.480-485.

²⁰¹⁹ Mettraux, p.238.

²⁰²⁰ See Section V(C)(2)(b).

do. Importantly, as discussed,²⁰²¹ when presented with information about alleged crimes committed by KLA members during a meeting with HRW in November 1998,²⁰²² **THAÇI** reiterated the KLA's commitment to compliance with IHL, explained that the KLA was in the process of restructuring, and then met the following day with various KLA members, including **W04264**.²⁰²³ As **THAÇI** then left Kosovo, these other KLA members appointed **W04264**, an experienced lawyer, as "*Chief of the Judicial Sector in the Cabinet of the Commander of the KLA GS*".²⁰²⁴ This Chief of the Judicial Sector then created a military court,²⁰²⁵ the objective of which was to impose discipline on KLA members and address the concerns raised by internationals.²⁰²⁶ As such, it is a reasonable inference that the KLA's judicial sector was established in response to **THAÇI** conveying the substance of his meeting with HRW and the need to ensure due process.

614. Post-10 June 1999 there is an extensive record of public statements of **THAÇI** calling for calm, denouncing crimes, imploring perpetrators to lay down their weapons and live together in peace in a multi-ethnic Kosovo, to both the international and local media.²⁰²⁷ This evidence is accompanied by recognition from internationals that, in this extremely charged environment, **THAÇI** took these measures at significant personal risk.²⁰²⁸

615. **THAÇI** was not just making statements; the evidence from KLA members, internationals, and contemporaneous reporting demonstrates consistent measures and efforts that **THAÇI** took to prevent attacks on the alleged targets of the common

²⁰²¹ See Section III(B)(2)(f).

²⁰²² T-230906, pp.7324,7337-7338 (W04408).

²⁰²³ P00895_ET, p.U002-0163.

²⁰²⁴ P01175_ET.

²⁰²⁵ P01175_ET; T-240716, p.18354 (W04752).

²⁰²⁶ T-240704, p.17643 (W04752).

²⁰²⁷ T-231207, pp.10822-10823, 10832-108341 (W02161). See Section III(C).

²⁰²⁸ See paras.409,417-418.

purpose, which were understood by others to be genuine and effective. These were concrete steps; **THAÇI** intervening to diffuse potentially violent confrontations,²⁰²⁹ visiting Serb homes, and establishing confidence building measures.²⁰³⁰ Importantly, **THAÇI** was also offering to help in UNMIK's investigations of crimes, as recorded in contemporaneous documents.²⁰³¹

616. Regarding **THAÇI**'s ability to take any other measures after 10 June 1999, the SPO case completely ignores that all responsibility for the investigation and prosecution of criminal conduct was assumed by UNMIK following Resolution 1244 on 10 June 1999. Resolution 1244 recalls "*the jurisdiction and mandate of the ICTY*", before stating that the Security Council "*[d]emands full cooperation by all concerned, including the international security presence, with the [ICTY]*".²⁰³² According to **WILLIAMS**, there was no suggestion by the international community either through Resolution 1244 or otherwise that the PGoK should be investigating or punishing serious violations of IHL.²⁰³³ **WILLIAMS** understood that the ICTY was tasked to investigate and prosecute serious violations of IHL committed by the KLA. No one else had subsidiary jurisdiction.²⁰³⁴ Neither **WILLIAMS** nor Marc WELLER ever advised the KLA that they had an obligation to investigate and punish their own members for serious violations of IHL. No one advised **THAÇI** of this.²⁰³⁵

617. **W04403** was an advisor to **THAÇI** during this transition period and said that the PGoK had no prerogative to deal with matters such as public security and safety, apart from making public appeals or statements. Kosovo did not even have a police force or anything of that sort; they had no official resources or prerogatives or capacity

²⁰²⁹ 1D00229; T-250120,pp.23914-23936 (W02183).

²⁰³⁰ T-240528,pp.16195-16197 (W02144).

²⁰³¹ See para.415.

²⁰³² 1D00078,para.14.

²⁰³³ T-250917,p.26862 (WILLIAMS).

²⁰³⁴ T-250917,pp.26857-26858,26863 (WILLIAMS). See also P04259,p.1D00-0468.

²⁰³⁵ T-250917,pp.26859-26860, 26863-26864 (WILLIAMS).

to deal with that. There were things in the press about disappeared persons, but they had to go to the international police authorities. **W04403** explained that **THAÇI**, **RUGOVA** and all the political representatives asked these rule of law organs to elucidate cases and undertake the necessary steps, as “[w]e had many disappeared, missing persons whom we did not know if whether they had been taken away by Serbia or they were imprisoned in Serbian jails, so this was a very difficult and complicated situation immediately after the war.”²⁰³⁶

618. The internationals shared this view as to the PGoK’s limitations. **W02183** testified it was clear to UNMIK that the PGoK and KLA were not to perform any quasi-state functions. They could not perform executive powers like arrest, detention, adjudication, or judicial processes and could not perform any functions or services that would support a state in normal circumstances, like intelligence. The KLA having intelligence services was not in line with Resolution 1244.²⁰³⁷ **W02161** agreed that once Resolution 1244 was issued, “neither the Provisional Government of Kosovo nor Hashim Thaci have any legal authority to investigate or punish crimes”.²⁰³⁸ **W02161** confirmed she was aware that the PGoK was attempting to investigate war crimes but were told by UNMIK that they could not, because only UNMIK was authorised to do so under Resolution 1244.²⁰³⁹ For example, on 5 July 1999, an OSCE document reported a decision to form the “commission for investigating war crimes and missing persons”, at the designation of **THAÇI**, which was not directed at the investigation of Serbian war crimes alone, but war crimes generally.²⁰⁴⁰ A document from UNMIK to the President of this commission then provides that:

Further to your request dated 18.11.1999 concerning the exhumation of the mass grave in Dragodan, I would like to inform you that your commission is not responsible for conducting any exhumations in the above mentioned area as ICTY and UNMIK Police are the only

²⁰³⁶ T-250326,pp.26019-26020 (W04403).

²⁰³⁷ T-250122,pp.24178-24179 (W02183).

²⁰³⁸ T-231207,p.10812 (W02161).

²⁰³⁹ T-231207,p.10814 (W02161).

²⁰⁴⁰ 1D00083.

*competent authorities conducting investigations of war crimes according to UN Security Counsel [sic] Resolution 1244.*²⁰⁴¹

619. This restriction in Resolution 1244 on the KLA's ability to investigate incidents translated to **THAÇI. DUNCAN** said that **THAÇI** could not have independently stopped the violence committed in the summer of 1999. NATO wanted **THAÇI** to appeal to his fellow Kosovars that they should not commit crimes. But they were dealing with revenge attacks, so like any politician he could –and did– appeal for calm, but could not enforce it. And because it was not organised by the KLA as far as NATO could determine, this was the best they could ask of **THAÇI**.²⁰⁴² **COVEY** said that **THAÇI** did not have the *de facto* ability to punish someone like Sami LUSHTAKU, for example. This would have required much more support from the rest of the KLA movement and the other zone commanders, and he did not have that kind of relationship with them.²⁰⁴³

620. In this context, determining whether a superior has complied with his obligations to prevent and punish crimes is not an objective test assessed in the abstract. Instead, what is needed is *“a very concrete assessment of the situation of the commander and the means at its disposal at the time relevant to the charges, taking into account all relevant circumstances.”*²⁰⁴⁴ What measure or measures a superior should adopt in a particular context *“will be dictated primarily by the material powers which the superior had and in the circumstances that prevailed at the time.”*²⁰⁴⁵ This means that before a superior may be found to have failed to adopt a particular measure, it must be established that

²⁰⁴¹ 1D00084; T-231207,p.10814 (W02161).

²⁰⁴² T-250922,p.27120 (DUNCAN); T-251113,pp.28023-28024 (DURKEE). *See also* 1D00430,paras.35-36; 1D00431,para.5.

²⁰⁴³ T-251001,p.27561 (COVEY).

²⁰⁴⁴ Mettraux,p.244, stating *“As noted by the Toyoda Tribunal when discussing this matter, ‘[t]his is not a trial of a man for events that took place under calm and academic conditions—conditions were essentially, intensely and grimly practical’”*.

²⁰⁴⁵ Mettraux,p.244, citing *Strugar* TJ,para.378; *Delić* TJ, Dissenting Opinion of Judge Moloto,para.27, *“concerning the nature of the inference that can be drawn from the fact that a superior did not take any measures”*. Mettraux,fn.61.

he was in fact **materially able to adopt it**.

621. Of course, even where a superior has no material ability to investigate or punish perpetrators, “a commander may discharge his obligation to prevent or punish an offence by reporting the matter to the competent authorities.”²⁰⁴⁶ The question then becomes, what does “reporting crimes” to the relevant authorities –namely UNMIK– look like in these circumstances? The SPO would need to have established that **THAÇI** was in possession of specific information that crimes were being (or had been) committed by one of **THAÇI**'s subordinates that was otherwise unknown to UNMIK and their personnel, despite their having the civil administrative authority and responsibility to keep and maintain the peace. The evidence shows the opposite: members of KFOR and UNMIK occasionally coming to **THAÇI**, providing **him** with information, and seeking his assistance in helping to prevent crimes, which he then provided.²⁰⁴⁷ Measures are only “necessary and reasonable” where they have been shown to be capable of preventing and punishing the crimes in the circumstances which prevailed. There is no evidence that **THAÇI** had information unknown to UNMIK, or information which, if reported, would have been capable of preventing and punishing crimes. Importantly:

*An accused should indeed not be blamed for failing to take a step which was evidently of no value or would have been incapable in the circumstances of preventing or punishing those crimes. In other words, such a course did not form part of the ‘reasonable’ sort of measures which a superior is expected to adopt to prevent or punish crimes of subordinates.*²⁰⁴⁸

622. Timing is also important here, given that a commander cannot be held liable for crimes committed by a subordinate prior to the assumption of command over that subordinate, meaning that liability does not extend retroactively to crimes committed

²⁰⁴⁶ *Hadžihasanović* AJ, para.154; *Blaškić* TJ, para. 335. See also *Meloni*, p.123.

²⁰⁴⁷ See, e.g., para.286.

²⁰⁴⁸ *Mettraux*, p.251.

before an accused assumed command.²⁰⁴⁹ The duty to prevent the commission of crimes may arise only in cases where a superior was already in command at the time his subordinates were about to commit a crime. The duty to punish exists only after a crime has been committed.²⁰⁵⁰ Again, **THAÇI** has no notice of when and on what basis he is alleged to be the superior of alleged perpetrators, since the SPO failed to plead the material facts in support of its command case. However, there can be no suggestion that, if he is found to have assumed effective control as Prime Minister, which has not been established beyond a reasonable doubt, he would assume liability for failure to punish crimes that occurred before the assumption of this exercise of effective control.

623. **THAÇI**'s material powers in the circumstances that prevailed at the time were legally circumscribed by Resolution 1244, and UNMIK's assumption of all responsibility and authority to investigate/prosecute allegations of crimes after 10 June 1999. Attempts to investigate were met with reminders that the PGoK was not entitled to do so. The KLA came under NATO –not PGoK– control, as soon as demilitarisation started.²⁰⁵¹ **THAÇI** did not have the legal ability to take measures to prevent and punish crimes, or the authority to do so. The SPO has not demonstrated that **THAÇI** failed to take necessary and reasonable measures, and accordingly has not demonstrated he is liable as a commander.

VI. CONTEXTUAL ELEMENTS

A. CRIMES AGAINST HUMANITY

²⁰⁴⁹ Meloni,p.123; *Hadžihasanović* Jurisdiction Decision,para.45 *et seq*; *Hadžihasanović* TJ,paras.194-197 acknowledging the risk of a gap in the line of responsibility with the change of commanders, but upholding the Appeals Chamber decision. *See also* *Perišić* AJ,paras.87,117; *Popović* TJ,paras.1039-1041; *Blagojević* AJ,para.303; *Bizimungu* AJ,paras.369-370; *Bemba* Confirmation Decision,para.418. *Contra* *Sesay* TJ,paras.299,304-306.

²⁰⁵⁰ *Hadžihasanović* TJ,para.196.

²⁰⁵¹ T-250922,pp.27043-27044 (DUNCAN).

624. Six of the ten counts against **THAÇI** are crimes against humanity. The SPO has alleged that the relevant crimes were committed as part of a widespread or systematic attack carried out from at least March 1998 until September 1999,²⁰⁵² which the SPO must establish beyond a reasonable doubt. Although the SPO has alleged that the attack ran throughout the Indictment period, the charged events cannot meaningfully be assessed as a singular block of time, and are divided below.

1. *March 1998–June 1999*

(a) The improper framing of the alleged attack

625. In *Limaj* and *Haradinaj*, the ICTY found that the prosecution had not established a widespread or systematic attack against a civilian population. In *Limaj*, the Trial Chamber found –at most– a systematic attempt by the KLA to target individuals believed to be, or suspected of, collaborating with the Serbian authorities and that these individuals were targeted as individuals rather than as members of a larger targeted population. This evidence did not prove the existence of an attack directed against a civilian population.²⁰⁵³ In *Haradinaj*, a broader case involving 37 alleged counts across the Dukagjin zone, the Trial Chamber held that “*victims may have been targeted primarily for reasons pertaining to them individually rather than them being members of the targeted civilian population*”²⁰⁵⁴ and that:

*the ill-treatment, forcible transfer and killings of Serbian and Roma civilians, as well as Kosovar Albanian citizens perceived to be collaborators or perceived as not supporting the KLA (whether taking these groups separately or as a whole), was not on a scale or frequency that would allow for a conclusion that there was an attack against a civilian population.*²⁰⁵⁵

626. The SPO has attempted to circumvent these findings by trying to shift the playing field. Instead of alleging that there was a widespread or systematic attack

²⁰⁵² Indictment, para.16; SPO PTB, para.702.

²⁰⁵³ Mettraux CAH, p.236; *Limaj* TJ, paras.210-217.

²⁰⁵⁴ *Haradinaj* TJ, para.113.

²⁰⁵⁵ *Haradinaj* TJ, para.122.

against a civilian population, the SPO has narrowed down the target of the KLA's alleged attack, framing it as being against "*the civilian population of Opponents*".²⁰⁵⁶ Namely, the SPO has attempted to build a case around an **increased** total number of victims, with a **decreased** definition of civilian population; increasing the fraction's numerator while decreasing the denominator to make it appear that a larger portion of a smaller civilian population was targeted.

627. The SPO's attempt to shrink the target population is understandable. What constitutes a widespread or systematic attack "*is essentially a relative exercise*", as it depends upon the civilian population allegedly being attacked. A Chamber must therefore "*first identify the population which is the object of the attack and, in light of the means, methods, resources and result of the attack upon the population, ascertain whether the attack was indeed widespread or systematic.*"²⁰⁵⁷ The smaller the population, the more likely the attack appears widespread.

628. The problem is that, by decreasing the target population, the SPO is requiring the Panel to evaluate a different object than the one foreseen by the settled law. To constitute a population for the purpose of crimes against humanity, a group "*must form a sufficiently stable and identifiable group of individuals, either geographically or as a result of certain common features*";²⁰⁵⁸ namely, "*[a] group of individuals who share common ethnic, religious, or racial features could constitute such a population*".²⁰⁵⁹ In this case, the SPO has defined the attack as being against "*a civilian population of Opponents*", being a group which:

***included** persons who were or were perceived to have been: (a) collaborating or associating with FRY forces or officials or state institutions or (b) otherwise not supporting the aims*

²⁰⁵⁶ Indictment, para.16 (emphasis added); SPO PTB, para.702; Confirmation Decision, para.124.

²⁰⁵⁷ Kunarac AJ, para.95 (emphasis added); Kujundžić Verdict, para.208.

²⁰⁵⁸ Mettraux CAH, p.247.

²⁰⁵⁹ Mettraux CAH, p.247, citing Mugesera TJ, para.162: "*A prototypical example of a civilian population would be a particular national, ethnic or religious group.*"

*or means of the KLA and later the PGoK, **including** persons associated with the LDK and persons of Serb, Roma, and **other ethnicities** [...]*²⁰⁶⁰

629. By its definition, this is not a stable and identifiable group distinguishable by nationality, ethnicity, or religion. This is a variable, inconstant group that a person may fall within or outside of depending on whether they were subjectively viewed in that moment as being supportive of the aims or means of the KLA, and includes members of entire ethnicities and “*other*” undefined ethnicities. The contextual elements of crimes against humanity elevate criminal acts to international crimes through the safeguard of these pre-requisite elements. Watering down the population requirement from a sufficiently stable and identifiable group to something vague and moveable removes this safeguard.

630. The SPO has never identified a legal basis for its novel attempt to reduce the relevant denominator. It may be relying on the “*unique approach*” of Pre-Trial Chamber II in the *Kenyatta et al.* confirmation phase at the ICC (a case which did not progress to trial).²⁰⁶¹ After recalling that “*any civilian population*” has been interpreted to mean groups distinguishable by nationality, ethnicity or other distinguishing features, the Pre-Trial Chamber found that, in its view, “*the civilian population targeted can include a group defined by its (perceived) political affiliation.*”²⁰⁶² No authority was provided. This novel approach has been called “*problematic for a number of reasons:*”²⁰⁶³

First [...] the only feature relevant to identifying the population concerned by this crime is its ‘civilian’ character and no other feature. The proposed approach therefore distorts the notion of ‘civilian population’ and suggests that a court evaluate a different object than the one foreseen by the law of crimes against humanity. Second, this position results in a modification of the protected interest—from civilian populations to ethnic, political, or national groups. Third, as exemplified by the Kenya case, it could result in the application of the notion of crimes against humanity where the targeted individuals do not constitute a civilian population but a sub-

²⁰⁶⁰ Indictment, para.32 (emphasis added).

²⁰⁶¹ Mettraux CAH, p.248.

²⁰⁶² *Kenyatta* Confirmation Decision, para.110.

²⁰⁶³ Mettraux CAH, p.248.

*group thereof characterized by one particular feature—in this case, their political allegiance. Based on all the aforementioned reasons, such an approach does not appear to be good law.*²⁰⁶⁴

631. Indeed, taking the SPO approach to its logical conclusion, an attack against any civilian population could be narrowed down to “*a civilian population of those who were attacked*”, undermining the safeguards of the contextual elements and the overall status of the crime. In framing its crimes against humanity case in this way, the SPO is requiring the Panel to adopt an erroneous approach to a fundamental contextual element which would distort the scope of this international crime.

(i) *The existence of an “attack” has not been established*

632. Even with the adjustments to the defined population, the evidence does not demonstrate beyond a reasonable doubt that “*the civilian population of Opponents*” was the subject of an attack. In *Limaj*, the number of victims allegedly targeted by the KLA was 140, at its highest.²⁰⁶⁵ Even with the enlarged temporal and geographic scope, the SPO puts the number of victims at no higher than 440. This number does not materially impact the ICTY conclusions that there was no attack against the civilian population, even in its reduced definition.

633. This is because these incidents –even if involving “*hundreds*” of victims across more than 40 alleged detention sites²⁰⁶⁶– do not incorporate the requisite **cohesiveness** to demonstrate beyond reasonable doubt that they are part of a collective criminal endeavour directed against a civilian population. The notion of ‘attack’ “*requires an element of cohesiveness between the various criminal acts directed against a civilian population*”.²⁰⁶⁷ A crime against humanity “*is not merely an accumulation of unrelated,*

²⁰⁶⁴ Mettraux CAH,p.248.

²⁰⁶⁵ *Limaj* TJ,para.209.

²⁰⁶⁶ Indictment,Schedule A. See also T-251119,p.28334 (Status Conference).

²⁰⁶⁷ Mettraux CAH,pp.196-197.

random or isolated criminal acts”, but “part of a collective criminal endeavour ultimately directed at a common target: the civilian population”.²⁰⁶⁸ As stated in Tadić, the emphasis for a ‘population’ “is not on the individual victim but rather on the collective, the individual being victimised not because of his individual attributes but rather because of his membership of a targeted civilian population.”²⁰⁶⁹

634. The evidence that attacks were individualised and personal in nature is relevant.²⁰⁷⁰ Crimes which were personal, spontaneous, or occurred in an isolated fashion are “*evidentially irrelevant to establishing whether or not an attack was indeed directed against the civilian population.*”²⁰⁷¹ Again and again in this case, victims revealed that “*it was not a KLA matter*”,²⁰⁷² the crime was “*performed out of jealousy*”,²⁰⁷³ or “*for private reasons, and the people who did it were just using the situation as a cover*”,²⁰⁷⁴ or that the KLA commander involved in the abduction was in a dispute with the victim,²⁰⁷⁵ or arrests were made on the basis of a commander having a problem with someone “*before the war*”,²⁰⁷⁶ or that the abduction was to do with revenge and nothing to do with the war or the KLA,²⁰⁷⁷ or “*based on private disputes or malicious motives*”,²⁰⁷⁸ or by rogue individuals who “*misused their authority for personal grudges that dated back before the war.*”²⁰⁷⁹ The use of the word ‘population’ does not mean that the entire population of the geographical entity in which the attack is taking place must have been subjected to that attack. Rather, it is:

²⁰⁶⁸ Mettraux CAH,p.197 (emphasis added).

²⁰⁶⁹ Tadić TJ,para.644.

²⁰⁷⁰ See paras.90-92.

²⁰⁷¹ Mettraux CAH,p.236.

²⁰⁷² T-230905,pp.7174-7178,7181-7192,7214 (W04018).

²⁰⁷³ 1D00045,p.SPOE00301580.

²⁰⁷⁴ 1D00045,p.SPOE00301580. See also T-230904,pp.7079,7113-7114,7123-7125 (W04368).

²⁰⁷⁵ [REDACTED].

²⁰⁷⁶ [REDACTED].

²⁰⁷⁷ [REDACTED].

²⁰⁷⁸ T-230712,pp.5556-5557 (W04746).

²⁰⁷⁹ T-240709,pp.17849 (W04752).

*sufficient to show that enough individuals were targeted in the course of the attack, or that they were targeted **in such a way** as to satisfy the Chamber that the attack was in fact directed against a civilian ‘population’, rather than against a limited and randomly selected number of individuals.*²⁰⁸⁰

635. The evidence in this case, unsurprisingly, mirrors that in *Limaj* and *Haradinaj*, where “victims may have been targeted primarily for reasons pertaining to them individually rather than them being members of the targeted civilian population” and the criminality “was not on a scale or frequency that would allow for a conclusion that there was an attack against a civilian population”.²⁰⁸¹

636. The existence of an attack must also be considered against the evidence that the KLA did not have a policy to attack civilians. On the contrary, the GS issued orders expressly protecting the civilian population from arbitrary arrest, detention and imprisonment, and from “improper behavior”.²⁰⁸² **Not one** of the KLA witnesses called by the SPO testified that the KLA was operating pursuant to a policy or plan to attack a civilian population. They expressly denied that this was the case.²⁰⁸³ High-level, well-informed internationals on the ground, actively investigating whether the KLA had a policy to commit crimes, concluded that it did not. **W04147**,²⁰⁸⁴ **W02135**,²⁰⁸⁵ **CLARK**,²⁰⁸⁶ **DUNCAN**,²⁰⁸⁷ **COVEY**,²⁰⁸⁸ **RUBIN**,²⁰⁸⁹ and **KOUCHNER**²⁰⁹⁰ were all at some point asked the question and were unanimous in response. Their views aligned with the

²⁰⁸⁰ *Kunarac* AJ, paras.90,92 (emphasis added).

²⁰⁸¹ *Haradinaj* TJ, paras.114,122; *Limaj* TJ, paras.210-217.

²⁰⁸² 1D00029_ET.

²⁰⁸³ T-240827, pp.19054-19055 (W04764); T-240710, p.18014, T-240710, pp.18205,18229 (W04752); [REDACTED]; T-241028, p.21277 (W04485); T-230712, pp.5557-5558 (W04746); T-250213, pp.25284-25285 (W04290); T-240624, pp.17077-17079 (W04744).

²⁰⁸⁴ T-240327, p.13863, T-240326, p.13741 (W04147).

²⁰⁸⁵ P02516, pp.121594-121595; T-250120, pp.23945-23949 (W02183); [REDACTED].

²⁰⁸⁶ T-251118, pp.28290-28292 (CLARK); T-250922, pp.27105-27106 (DUNCAN).

²⁰⁸⁷ T-250922, pp.27103-27104, 27120 (DUNCAN).

²⁰⁸⁸ T-251002, pp.27592-27594 (COVEY).

²⁰⁸⁹ T-250915, pp.26542-26543, 26571-26572 (RUBIN).

²⁰⁹⁰ P00743.2, p.SITF00001534.

U.S. State Department.²⁰⁹¹ The KLA was not engaging in an attack against a civilian population. A finding beyond reasonable doubt that it did is not justifiable. The SPO has not established the existence of an attack beyond a reasonable doubt.

(b) A widespread or systematic attack has not been established

637. A widespread attack should be massive, frequent, carried out collectively with considerable seriousness and directed against a multiplicity of victims.²⁰⁹² In determining whether an act forms part of a widespread attack, the characteristics, aims, and nature or consequences of the act are considered.²⁰⁹³ A systematic attack refers to the organised nature of the alleged crimes, and the improbability of their random occurrence. Importantly, the mere repetition of an occurrence, if simply coincidental or unconnected to another, will not meet this requirement.²⁰⁹⁴

638. In terms of the attack being ‘massive’, the SPO has pleaded this case in terms of “*hundreds*” of victims (440 alleged victims).²⁰⁹⁵ This decision would have followed an assessment that the evidence would not support an allegation that “*thousands*” were affected. While there is no numerical threshold to demonstrate that an attack was widespread,²⁰⁹⁶ factors make this finding impossible in this case.

639. First, there is a fundamental disconnect between the allegation of a widespread attack, and the actions of the experienced international diplomats, humanitarians, military leaders and experts who engaged with and worked with the KLA. Had there been evidence that the KLA was engaging in a widespread attack against civilians, it

²⁰⁹¹ 1D00175.

²⁰⁹² *Akayesu* TJ,para.580; *Rutaganda* TJ,para.69; *Ruto* Confirmation Decision,para.176; *Ongwen* TJ,para.2681.

²⁰⁹³ *Bemba* Confirmation Decision,para.86; *Kajelijeli* TJ,para.866; *Semanza* TJ,para.326.

²⁰⁹⁴ *Kunarac* AJ,para.94; *Ongwen* TJ,para.2682.

²⁰⁹⁵ Indictment,paras.19,37,Schedule A; SPO PTB,paras.10,703.

²⁰⁹⁶ *Kunarac* AJ,para.94; *Ongwen* TJ,para.2681.

is inconceivable that the events would have unfolded as they did, or that this international cooperation and support would have been offered and maintained.

640. The Pre-Trial Judge's assessment of 'widespread' is a useful illustration. The Pre-Trial Judge held that "[t]he supporting material indicates a large number of abductions, detentions, executions and disappearances between early 1998 and the summer of 1999, perpetrated by KLA members against hundreds of Serbs, Romas and Albanians perceived as non-supportive of the KLA."²⁰⁹⁷ The evidence cited in support is: (i) three pages from a HRW Report from December 1998;²⁰⁹⁸ (ii) two pages from OSCE's 'As Seen, As Told';²⁰⁹⁹ (iii) four pages from a HRW Report from October 1998;²¹⁰⁰ (iv) the Humanitarian Law Center's spotlight reports dated May 1998 and 5 August 1998;²¹⁰¹ and (v) other evidence which was not admitted. Even if evidence of crimes alleged in these reports is accepted at face value –despite the evidence as to the lack of credibility of the Humanitarian Law Center reports and their reliance on only Serb media²¹⁰²– these excerpts do not demonstrate that the crimes amounted to a **widespread** attack, in terms of a massive attack carried out **collectively** with considerable seriousness. These reports do not characterise the attacks as 'widespread' or contend that they would give rise to crimes against humanity. **W04408** testified, for example, that another HRW report focused on Yugoslav and Serb crimes because they were far greater in number and significance than alleged KLA crimes.²¹⁰³

641. Rather, the reports relied upon by the Pre-Trial Judge set out largely anonymous accounts of attacks allegedly carried out by KLA members without any

²⁰⁹⁷ Confirmation Decision, para.127.

²⁰⁹⁸ IT-03-66 P212.4, pp.00676492-00676494, only two pages admitted as P00377, pp.00676493-00676494.

²⁰⁹⁹ IT-03-66 P150, pp.K0350562-K0350563, admitted as P00743.1, pp.SPOE00198303-SPOE00198305.

²¹⁰⁰ 070905-070944, pp.070925-070928, admitted as P00380, pp.K0364865-K0364877.

²¹⁰¹ P04023, pp.00649677,00649683-00649685,K0078704-K0078708.

²¹⁰² T-230907, pp.7489-7506 (W04408).

²¹⁰³ T-230906, pp.7471-7472 (W04408).

indication that they were carried out **collectively** and with the considerable seriousness required. **W02153** confirmed the accuracy of the OSCE report, which talks elsewhere about the Reçak/Raçak massacre, but noted that “[t]he more frequent occurrence in the period of OSCE-KVM’s presence in Kosovo was, however, **killings on an individual basis**”,²¹⁰⁴ and there was “nothing close to equivalence” between violations by the KLA, and the Yugoslav and Serb forces’ campaign to expel Kosovar Albanians.²¹⁰⁵ The foreword to this same OSCE report by KOUCHNER similarly states that it is “not fair to make comparisons with the situation before or during the war”, and acknowledges that although Serbs and Roma lived in fear and could not move freely, “it is **no longer a matter of policy**. All the parties in Kosovo/Kosova, all leaders, Serbs and Albanians, have stated their positions in favour of a multi-ethnic society [...] The crimes we see are the **acts of individuals**.”²¹⁰⁶ Even the evidence relied upon by the Pre-Trial Judge to confirm the crimes against humanity charges, which can be presumed to represent the supporting evidence at its highest, falls short.

642. Second, as discussed above, the SPO has attempted to narrow down the relevant population from the ‘civilian population’ to “**the civilian population of Opponents**”. While the requirement of ‘widespread’ should be assessed **relative to the civilian population** alleged to have been targeted, “this would not prevent a tribunal from considering the broader context in which that particular attack occurred or the extent to which this context would provide evidence of the attack’s widespread or systematic nature.”²¹⁰⁷ The broader context here is the chaos of armed conflict with a deeply localised and disorganised non-state actor on one side, set against a backdrop of decades of brutal oppression and a campaign of ethnic cleansing. The ‘attack’ must be assessed in this context.

²¹⁰⁴ T-230719,p.6096 (W02153), discussing SPOE00198098-00198366,p.SPOE00198164.

²¹⁰⁵ P00743.4,p.076682; P00743.2,p.SITF00001531.

²¹⁰⁶ P00743.4,p.076685 (emphasis added).

²¹⁰⁷ Mettraux CAH,p.283, citing *Bagosora* AJ,para.390. See also *Ntaganda* Confirmation Decision,para.23; *Mbarushimana* Confirmation Decision,para.265.

643. In the ICC *Kenya* case, for example, a Pre-Trial Chamber majority held that the 2007/2008 acts of post-election violence were not isolated or random but took place on a large scale and targeted a large number of civilian victims. The dissenting judge considered that they reflected something else; a situation “*characterized by chaos, anarchy, a collapse of State authority in most parts of the country and almost total failure of law enforcement agencies*”, which fell short of the requirement of a widespread or systematic attack underscored by a state or organisational policy.²¹⁰⁸ The situation of anarchy and collapse of law enforcement and state authority in Kosovo during the Indictment period is undoubtedly relevant to an assessment of the widespread nature of an attack. It is another obstacle to a finding of a widespread attack.

644. The evidence above about the lack of a KLA policy to commit crimes²¹⁰⁹ and victims’ descriptions of the individual and personal nature of the attacks²¹¹⁰ also precludes a finding of a ‘systematic’ attack. The characteristics cited in prior cases as relevant to establish the systematic nature of an attack are instructive: “*the all-encompassing, indiscriminate, character of the violence*”, “*coordination between relevant actors*”, and “*the result of the attack, in particular as regards its meticulousness*”.²¹¹¹ These factors are not present in the SPO evidence. Even if the SPO’s evidence of crimes is accepted at face value, it does not demonstrate that the KLA was a coordinated entity engaging in an attack characterised by “*all-encompassing and indiscriminate violence*”, and with meticulous results and impact. It shows individual members, in a deeply localised and fractured structure, acting independently without a recurrent *modus operandi*, against the backdrop of a chaotic armed conflict after decades of brutal oppression and violence.²¹¹²

²¹⁰⁸ *Kenya* Decision, Dissenting Opinion of Judge Hans-Peter Kaul, paras.152-153.

²¹⁰⁹ See paras.33-40.

²¹¹⁰ See paras.90-92.

²¹¹¹ Mettraux CAH,p.275.

²¹¹² See paras.42-43,437-452,472-510.

645. In *Ntaganda*, for example, the ICC Pre-Trial Chamber was persuaded by the similar means and methods used by perpetrators to attack different locations: they approached the targets simultaneously, in large numbers, and from different directions, they attacked villages with heavy weapons, and systematically chased the population by similar methods, hunting house by house and into the bushes, burning all properties and looting. The Chamber found that the attack was systematic as it followed a “regular pattern” with a “recurrent *modus operandi*, including the erection of roadblocks, the laying of land mines, and coordinated the commission of the unlawful acts” in order to attack the non-Hema population.²¹¹³ This kind of systematicity has not been demonstrated here.

646. Evidence of consistent language in KLA public statements is not probative of a coordinated attack in the absence of evidence of a link between public statements and the commission of charged crimes, which the SPO has not provided.²¹¹⁴ Evidence that detentions occurred across zones is not evidence beyond reasonable doubt of coordination, given that detentions were occurring in the context of a NIAC.²¹¹⁵ During a NIAC, there will be a multitude of reasons that the parties can lawfully detain; according to the ICRC, “IHL is built on the assumption that all parties to non-international armed conflicts will detain”, and “[d]etention – by states and non-state armed groups (NSAGs) – is a reality in armed conflict.”²¹¹⁶ As such, the fact that some (not all) zones set up detention facilities is not evidence beyond a reasonable doubt of a systematic attack against a civilian population; the use of detention facilities is a conventional response to a situation of armed conflict, particularly considering the evidence of Serb reliance on collaborators and spies.²¹¹⁷ The SPO’s assertion that the crimes charged followed a

²¹¹³ *Ntaganda* Confirmation Decision, para.24.

²¹¹⁴ SPO PTB, paras.705-706.

²¹¹⁵ SPO PTB, para.704.

²¹¹⁶ ICRC Report, pp.8,11.

²¹¹⁷ See para.648.

*“consistent pattern and methodology”*²¹¹⁸ is not reflected by the evidence.

647. The SPO also relies on alleged lists of collaborators as an indicator of the systematic nature of the attack, but without evidence to demonstrate a link between alleged lists and crimes. A 2002 UNMIK document that annexes a handwritten list reportedly seized from the SHIK headquarters lists names of people who *“are now listed as missing persons and, according to unconfirmed intelligence, some have been killed by the UCK.”*²¹¹⁹ The UNMIK document does not demonstrate a link between the lists and the crimes. It was shown to **W02161** who was aware that some *“lists”* of collaborators were made by people in villages who may have wanted revenge against people listed or who were trying to settle personal scores.²¹²⁰ **W01511** also attributes the creation of lists to jealousies, which were about political rivalries within the villages,²¹²¹ [REDACTED] explaining that innocent people could be added just because someone had a grudge against them.²¹²² Again and again, the evidence demonstrates that the violence and incidents were personal, individualised and carried out in a situation of conflict and chaos, rather than being linked to a systematic attack by the KLA.

648. Moreover, like all armed forces throughout history, the KLA was concerned about enemy collaborators who were a military threat, and whom the SPO accepts the KLA had a right to detain.²¹²³ Zoran STIJOVIĆ, former RDB chief of analysis, confirmed Serbian security had about 200 live sources inside the KLA, including in its top echelons. The Panel heard examples: [REDACTED] described that [REDACTED] worked for the Serbs, was operating [REDACTED] zone, and was believed to be

²¹¹⁸ SPO PTB, para.704.

²¹¹⁹ P00104, p.SPOE00089060.

²¹²⁰ T-231211, p.10946 (W02161).

²¹²¹ T-240904, pp.19625-19626 (W01511).

²¹²² [REDACTED].

²¹²³ T-230320, pp.2116-2117 (Status Conference): *“Yes, there can be a valid legal basis to detain.”*

working on behalf of Serbian intelligence to create false-flag operations.²¹²⁴ [REDACTED] said that many people who were identified as spies were actually spies.²¹²⁵ **W04746** said that collaborators revealing military positions and secrets was not significant in the Llap zone, but a much greater issue in other zones.²¹²⁶ In every war you need to exercise caution with enemy collaborators, and the KLA did that as well.²¹²⁷ **W02153** said the KLA was concerned with spies, collaborators, infiltrators in their midst, and accepted that *“the KLA on various occasions in the spring and summer of 1998 were ambushed or were trapped, in their belief, based on the fact that information had been turned over telling the other side about their position”*.²¹²⁸ [REDACTED] testified that the Serbian army issued radio sets to collaborators on the Albanian side of the border to learn about groups coming into Kosovo with weaponry, and there were *“heavy losses”* because of information that was passed to the Serbs from the Albanian side.²¹²⁹ **W04758** explained that in the 1990s the intelligence services and the Serbian police developed a network of collaborators,²¹³⁰ who had *“done so much to harm us”*.²¹³¹ **W02161** knew that Serbs were arming civilians and paying collaborators for information.²¹³² **W04147** said *“I believe the Serbian authorities had very good knowledge of the KLA personnel and activities; I believe they were capable of intercepting communication signals and developed human intelligence”*,²¹³³ namely spies or collaborators. The Serbs had a very effective intelligence system, including being able to *“find Remi in a particular house in a specific village”*, so there was genuine concern in the KLA about collaborators in their ranks.²¹³⁴

²¹²⁴ [REDACTED].

²¹²⁵ [REDACTED].

²¹²⁶ T-230713,pp.5653-5654 (W04746).

²¹²⁷ T-230713,pp.5651-5653 (W04746).

²¹²⁸ T-230718,pp.6034-6035 (W02153).

²¹²⁹ [REDACTED].

²¹³⁰ T-241024,pp.21114-21115 (W04758).

²¹³¹ T-241031,p.21707 (W04758). *See also* 1D00451.

²¹³² T-231207,pp.10753-10754 (W02161).

²¹³³ P01066,para.29.

²¹³⁴ T-240325,pp.13638-13639 (W04147); P01066,para.29. *See also* P04514,p.DHT11419.

649. The idea that lists of alleged collaborators are demonstrative of a systematic attack must be considered against this evidence that enemy collaborators were a military threat. As such, to the extent that these lists were intended to further a military objective –to combat Serbian collaborators– then those listed were not being targeted as Opponents of the common purpose to *gain and exercise control over all of Kosovo*,²¹³⁵ but were targeted for a legitimate military purpose. They therefore fall outside of the allegedly targeted civilian population, further undermining the SPO case of a systematic attack. The SPO has not demonstrated that the alleged attack was widespread or systematic, meaning the contextual elements of crimes against humanity have not been met.

2. *June–September 1999*

650. The SPO must demonstrate that the attack in question was widespread or systematic **at all times** relevant to the charges.²¹³⁶ As discussed above, 800,000 displaced Kosovar Albanians returned home after the NATO campaign to conditions of abject horror.²¹³⁷ Homes were destroyed, and in many cases their families and friends had been murdered by the Serbs. KFOR discovered mass graves and locations where people had been buried or indeed were yet to be.²¹³⁸

651. The evidence of *“revenge crimes committed by Albanians against Serbs for the perceived wrongs committed by them prior to and during the war”* that were sparked by this situation of mass return is overwhelming.²¹³⁹ The Panel also heard evidence of *“a large number of cases where opportunistic individuals or groups were fulfilling personal vendettas*

²¹³⁵ Indictment, para.32.

²¹³⁶ *Taylor* TJ, paras.518–559; *Stanišić* TJ, paras.971-972.

²¹³⁷ See para.97. See also Adjudicated Fact No.134.

²¹³⁸ 240522, pp.15644-15647 (W03881); 1D00540, pp.DHT06054, DHT06061; 1D00546, p.DHT06044.

²¹³⁹ T-250922, p.27113 (DUNCAN), discussing SPOE00000959-00001070, p.SPOE0000963. See also paras.97-104.

or grudges or simply pursuing a criminal enterprise in what was then a relatively lawless society.”²¹⁴⁰ No sensible argument can be made that these crimes were part of the alleged widespread or systematic attack against a population of Opponents. These were individual acts motivated by personal loss, grief, anger, in a situation described by **W02161** as “everything was just chaos [...], [p]eople came back, their houses were destroyed, they were distraught, they got angry, they maybe beat someone up. There was a lot of that.”²¹⁴¹

652. The SPO’s deliberate separation of these “revenge crimes” from alleged “KLA crimes” in its examination of Defence witnesses reinforces that these revenge crimes were unrelated to the alleged attack against a civilian population of Opponents.²¹⁴² The SPO is right to try to separate these crimes out. It means, however, that its ability to demonstrate a widespread or systematic attack against a civilian population of Opponents during this period is obliterated. Putting aside acts of criminality sparked by feelings of anger and revenge, the remaining incidents fall even further below the level of a widespread or systematic attack. The SPO appears to have put its best case to the Defence witnesses, asking **DURKEE**, for example, to comment on a raft of second-hand hearsay and largely anonymous reporting of alleged crimes, namely:

- (i) an HRW Report of 1 October 1998, reporting that an estimated 85 ethnic Serbs were taken into custody “by the UCK” in Rahovec/Orahovac, with 40 unaccounted for, and reports of 17 others being abducted from the village of Reti/Retimlje near Rahovec/Orahovac;²¹⁴³

²¹⁴⁰ T-250922,p.27113 (DUNCAN), discussing SPOE00000959-00001070,p.SPOE0000963. See also paras.90-92.

²¹⁴¹ T-231205,pp.10589-10590 (W02161).

²¹⁴² T-251118,p.28212 (CLARK): “Q. [...] Now, the questions I want to ask now, they are not about the broad wave of violence and house burnings and so on in summer 1999 Kosovo. I only want to focus now on the KLA targeting people for arrests and detention”; T-251113,p.28046 (DURKEE): “Q. Okay. I would like to focus not on retaliatory violence, not on revenge or opportunistic crimes, but on crimes committed against persons held in KLA detention.”

²¹⁴³ P00380,pp.K036-4869-K036-4870.

- (ii) a U.S. State Department Serbia and Montenegro Country Report on Human Rights Practices for 1998, which describes “*elements of the [KLA]*” being responsible for abuses, killings, and torture, and then describes the detentions in Qirez/Ćirez, and that “*separatist fighters*” harassed Serb journalists and took some hostages, and describes so-called ‘collaborators’ being killed,²¹⁴⁴ also referenced in a New York Times article of 13 August 1998;²¹⁴⁵
- (iii) a U.S. State Department Serbia-Montenegro Country Report citing HRW reporting that after the withdrawal of the Serbian forces, KLA members tortured ethnic Serbs, suspected collaborators, and refers to “*a torture chamber in a KLA dormitory in late August*”;²¹⁴⁶ reports of KLA abductions and detention of opponents; KFOR’s release of 15 people held by the KLA in a police station in Prizren, who reported being beaten;²¹⁴⁷ and a local LDK office in Gjilan/Gnjilane being ransacked and some of its representatives detained and harassed;²¹⁴⁸
- (iv) a [REDACTED] about KFOR finding a badly beaten detainee in what appeared to have been a KLA detention centre, characterised as [REDACTED];²¹⁴⁹ and
- (v) an UNMIK record of a meeting on 27 July 1999 between KOUCHNER and **W02135** with **THAÇI** and **ÇEKU**, recording **W02135** being “*worried about PU elements in black uniforms*” who “*had no authority to make arrests*”, so “*[i]t was kidnapping*”, and **THAÇI** allegedly giving an evasive answer.²¹⁵⁰

²¹⁴⁴ P04502,pp.SPOE00397689,SPOE00397692,SPOE00397695.

²¹⁴⁵ P04153.

²¹⁴⁶ P04511,p.SPOE00397728.

²¹⁴⁷ See also P01188.1; P04185,p.013439.

²¹⁴⁸ P04511,pp.SPOE00397728,SPOE00397730.

²¹⁴⁹ P02523,p.SPOE00000058.

²¹⁵⁰ P00755,pp.SITF00172747-SITF00172748.

653. The SPO's approach of reading second-hand hearsay of largely anonymous reporting of alleged KLA crimes to a witness who could not comment on them is not a forensically sound approach to demonstrating that these incidents took place. The HRW Report and the U.S. State Department reports do not address 1999. Regardless, even accepting that each of these other allegations could be demonstrated to have occurred (which is not conceded), they do not support the existence of a widespread or systematic attack against a civilian population of Opponents after June 1999, **precisely because** the persons who were reporting them or raising concerns did not consider them to be so.

654. For example, KOUCHNER may have raised individual alleged incidents with **THAÇI**, but did not consider that post-conflict crimes against Serbs and Roma in Kosovo were part of a policy.²¹⁵¹ **W02135** may well have also been concerned about the discovery of an alleged detention centre, but testified before the English High Court that while he could not say that no individual committed terrorist acts, *"I have no evidence that this was KLA policy [...] You are beginning to imply that this was a policy of the KLA and I cannot say that I agree with you on that"*.²¹⁵² This also reflects [REDACTED].²¹⁵³

655. Taking these individual incidents at their highest, they remain just that: individual incidents. There is no *"cohesiveness"* to the incidents, or the *"massive, frequent"* characteristics required for a widespread attack. There is no systematicity, or *"all encompassing, indiscriminate character"* to the violence as required to demonstrate a systematic attack. Those on the ground, whose roles involved assessing and analysing on the basis of the best information available whether the KLA was engaged in an open (or clandestine) attack against a civilian population, expressly concluded otherwise, raising those individual incidents as and when they did occur. Their eyes

²¹⁵¹ P00743.4,p.076685.

²¹⁵² P02516,pp.121589,121595-121596; T-250120,pp.23945-23948 (W02183).

²¹⁵³ [REDACTED].

were open, and their assessments undermine the SPO case that crimes against humanity were being committed between June and September 1999.

3. *Nexus between THAÇI and the alleged attack*

656. The SPO must also demonstrate a sufficient nexus between THAÇI's acts and the attack.²¹⁵⁴ Namely, that THAÇI committed acts which, by their nature or consequences, were objectively part of the attack; and THAÇI knew that there was an attack on the civilian population of Opponents of which his acts formed part.²¹⁵⁵

657. THAÇI has no notice of which of his purported acts are alleged to form part of the widespread or systematic attack. The Indictment contains only the following circular statement: “[a]ll acts and omissions charged as crimes against humanity in this indictment were part of the widespread or systematic attack directed against Opponents”.²¹⁵⁶ There is also no clarity in the PTB, which refers collectively to acts of the KLA/PGoK leadership.²¹⁵⁷

658. Submissions and evidence would have been required to demonstrate that specific acts of THAÇI were part of the alleged attack.²¹⁵⁸ The Panel is required to consider the context and circumstances of the Accused's alleged acts, and assess whether they were objectively part of the attack (or so far removed from the attack that this conclusion cannot be reached).²¹⁵⁹ The importance of this assessment is heightened in this case given THAÇI's extended absence from Kosovo, as the location of the alleged acts is an “important evidential consideration”.²¹⁶⁰ This assessment is

²¹⁵⁴ Confirmation Decision, para.55, citing *Kunarac* AJ, para.100; *Duch* TJ, para.318.

²¹⁵⁵ *Kunarac* TJ, para.418 citing *Tadić* AJ, paras.248,251,271; *Tadić* TJ, para.659; *Mrkšić* Indictment, para.30.

²¹⁵⁶ Indictment, para.17.

²¹⁵⁷ SPO PTB, paras.703-705.

²¹⁵⁸ *Blagojević* TJ, para.547; *Limaj* TJ, para.190; *Kunarac* AJ, para.100.

²¹⁵⁹ *Milošević* TJ, paras.918-919, citing *Kunarac* AJ, para.100; *Kupreškić* TJ, para.550; *Tadić* TJ, para.119.

²¹⁶⁰ Mettraux CAH, pp.335-336, citing *Gbagbo* Confirmation Decision, para.212, regarding the geographical proximity between the underlying act and the attack. See also *Mugesera* TJ, para.169.

impossible when no specific acts of **THAÇI** have been identified. If the SPO is indeed claiming that **all** the individual allegations against **THAÇI** in the Indictment are alleged to have been committed as part of a widespread or systematic attack, these have been addressed above.

659. In terms of knowledge, the same problems arise. Crimes against humanity require proof that the accused knew of the existence of the attack, and that his acts formed part of the attack. The SPO has presented no direct evidence demonstrating **THAÇI**'s awareness of a widespread or systematic attack against civilians. As such, the SPO's knowledge case is circumstantial, and must be the only reasonable inference available. In the absence of direct evidence of **THAÇI**'s knowledge of a widespread or systematic attack, the SPO alleges that KLA crimes were "*common knowledge*" and "*publicly reported*".²¹⁶¹ Even if accepted, there is a gap between generalised public knowledge of crimes in the context of the armed conflict and its aftermath on the one hand, and **THAÇI**'s knowledge of an alleged widespread or systematic attack against a civilian population (and knowledge that his (unidentified) acts formed part) on the other. Moreover, evidence that Serb media was publishing propaganda that the KLA was a terrorist organisation and committing crimes,²¹⁶² would have reasonably allowed **THAÇI** to question the "*wide reporting*" the SPO now relies on.

660. Prior cases have considered the extent to which crimes were in the media²¹⁶³ to support an inference of knowledge on the part of the accused. However, arguably far

²¹⁶¹ SPO PTB, paras.706-707.

²¹⁶² T-240529,p.16316 (W02144): answering a question regarding allegations in the Serb press about the KLA taking prisoners mostly articulated or made in the Serb press, **W02144** stated there was "*a lot of propaganda going around from both sides, exaggerating*"; referring to P01209_ET,pp.734-737; P01355.3_ET, p.14; 4D00088_ET, pp.DJK01053-ET-DJK01054-ET; T-250916,pp.26729-26730 (RUBIN); **HILL** testified that MILOŠEVIĆ told him **THAÇI** was a "*fierce warrior who had personally tortured people*" but **HILL** believed that some of MILOŠEVIĆ's comments were aimed at "*influencing us rather than informing us*", see 1D00423, pp.DHT12272-DHT12273; T-251110,pp.27695-27696 (HILL).

²¹⁶³ Mettraux CAH,p.351 (emphasis added), citations in fn.657.

more relevant is whether the accused had direct knowledge of crimes arising from his “*presence at the scene of the crime*” and “*proximity to and relationship with the actual perpetrators of the crimes*”, with cases also considering “*the scale and duration of the acts of violence*”; and the “*the consistency and predictability of his criminal acts*”.²¹⁶⁴ **THAÇI**'s absence from Kosovo and his involvement in the international/political aspects of war effort are directly relevant. Even if it was “*common knowledge*” that KLA members were committing crimes, this is not a sufficient basis for the Panel to draw an inference that **THAÇI** was aware of a widespread or systematic attack and that his own acts were a part of it.

661. Indeed, the Panel cannot ignore that none of the numerous international officials with whom **THAÇI** was in contact during the Indictment period ever suggested to him that the KLA was engaged in crimes against humanity. Evidently, like **THAÇI**, they did not perceive a widespread or systematic attack by the KLA.

B. END OF THE ARMED CONFLICT

662. The Defence's Rule 130 Submissions²¹⁶⁵ have now been reinforced by the evidence of high-level well-placed direct observers whose jobs involved assessing the real risk of the resumption of hostilities in real-time. These witnesses have reinforced the conclusions of the UN Security Council,²¹⁶⁶ UNMIK,²¹⁶⁷ the SRSG,²¹⁶⁸ ICTY Judges and Chief Prosecutor,²¹⁶⁹ the Supreme Court of Kosovo and Kosovo local courts,²¹⁷⁰ the

²¹⁶⁴ Mettraux CAH,p.351, citations in fn.657.

²¹⁶⁵ Rule 130 Submissions,paras.111-163.

²¹⁶⁶ 1D00078,para.9(a).

²¹⁶⁷ 1D00254,p.DHT05048,section 1.5; 1D00255,p.DHT05031,section 3.1.

²¹⁶⁸ 1D00209,para.88.

²¹⁶⁹ *Milutinović* TJ,para.1217; *Dorđević* TJ,paras.1579-1580; *Haradinaj* RTJ,fn.2039; 1D00465,p.DHT3006; 1D00466.

²¹⁷⁰ *Kolasinac* Decision,p.21; *Gashi* Decision,pp.10-11; *NK* Decision,para.27; *FG* TJ,p.8; *O.I.* TJ,paras.228-245; *Radivojević* TJ,p.14; *D.S.* AJ,p.6.

SPRK,²¹⁷¹ the Kosovo Parliament,²¹⁷² independent commissions and NGOs,²¹⁷³ that the conflict had ended by 20 June 1999.

663. **CLARK** said that the armed conflict in Kosovo came to an end with the withdrawal of Serb forces in June 1999 and the passage of Resolution 1244, and that “[n]o one in the NATO chain of command, including the North Atlantic Council, perceived an armed conflict to have continued after June 1999”.²¹⁷⁴ **DUNCAN** confirmed the end of hostilities was achieved with the final evacuation of the Serb troops on 21 June 1999, and this can be said “with complete certainty”.²¹⁷⁵ The situation after 21 June 1999 was not hostilities, but civil disturbance. **COVEY** confirmed that UNMIK’s understanding was that the conflict formally ended with the agreement of the Serbs to withdraw, signed on 20 June,²¹⁷⁶ and agreed that this determination aligned with the position recognised in Kosovo.²¹⁷⁷ In UNMIK, they always referred to their work as “post-conflict”.²¹⁷⁸ **DURKEE** said that NATO considered the war between Serbia and the KLA to have ended when the organised Serb forces were withdrawn from Kosovo, and agreed this was on 20 June.²¹⁷⁹ Importantly, **DUNCAN** said that the Serb forces complied with the 21 June deadline. There were occasional miscalculations, when people got too close to the northern border. But in a significant way, they complied.²¹⁸⁰

664. The evidence bears this out. After the MTA was signed on 9 June 1999 between KFOR and the FRY, providing for an immediate ceasefire and complete withdrawal

²¹⁷¹ See, e.g., 1D00193,p.SITF00314848: [REDACTED]; p.SITF00314852: [REDACTED].

²¹⁷² 1D00106_ET,art.3(1).

²¹⁷³ 1D00448,p.DHT07084; 1D00462,p.DHT08517; 1D00467,para.1.

²¹⁷⁴ 1D00430,para.27; T-251117,p.28120 (CLARK).

²¹⁷⁵ T-250923,p.27255 (DUNCAN).

²¹⁷⁶ T-250930,p.27359 (COVEY).

²¹⁷⁷ T-250930,pp.27358-27360 (COVEY); 1D00255,p.DHT05031,section 3.1, discussing “the armed conflict that occurred between 27 February 1998 and 20 June 1999.”

²¹⁷⁸ T-250930,pp.27357-27358 (COVEY); 1D00454,para.4.

²¹⁷⁹ T-251112,p.27999 (DURKEE).

²¹⁸⁰ T-250923,p.27267 (DUNCAN).

of FRY forces from Kosovo by 20 June 1999,²¹⁸¹ this withdrawal was recognised by the UN as being “*completed by 20 June 1999*”.²¹⁸² Contemporaneous documents and records capture this withdrawal by 20 June 1999.²¹⁸³ Members of the Serb forces,²¹⁸⁴ KLA members who witnessed it,²¹⁸⁵ and internationals who were present,²¹⁸⁶ all confirmed that one of the parties to the armed conflict had left the territory by 20 June 1999.

665. The SPO’s Rule 130 Response asserts that “*through at least September 1999 (when the KLA ceased to exist as such), the resumption of broader hostilities in Kosovo was a real risk and ongoing concern among both the parties to the conflict and the international entities*”.²¹⁸⁷ The SPO did not address the evidence of **W02135** saying he thought a Serb counter-attack was not zero but “*quite a remote possibility*”.²¹⁸⁸ His testimony has now been reinforced by **CLARK**, who testified that although you cannot ever disregard responsibilities for force protection and mission accomplishment, “*I didn’t think there was much of a possibility of Serbian forces resuming hostilities*” and that it “[p]robably wasn’t very realistic” that there would have been a Serbian offensive on NATO at that time.²¹⁸⁹ **CLARK** believed **W02135**’s conclusion that the risk of the Serbs mounting a counter-attack was “*quite a remote possibility but it was not zero*” was a “*fair*

²¹⁸¹ Agreed Fact Nos.3.22,3.27; Adjudicated Fact Nos.135-136; P02527,Art.II(2): “*The FRY agrees to a phased withdrawal of all FRY forces from Kosovo to locations in Serbia outside Kosovo*”. See also Art.II(2)(e): “*By EIF [Entry into Force] +11 days, all FRY Forces in Kosovo will have completed their withdrawal from Kosovo (depicted on map at Appendix A to the Agreement) to locations in Serbia outside Kosovo, and not within the 5 km GSZ*”.

²¹⁸² P02563,p.SPOE00000756,para.4. See also Adjudicated Fact No.139.

²¹⁸³ P00814_ET.28,pp.SPOE00055581,SPOE00055584,SPOE00055587,SPOE00055592; P01738_ET,p.095935; P00515_ET.67,pp.008891-008892; P00814_ET.30,pp.SPOE00055603,SPOE00055606-SPOE00055607; P01982,p.SITF00011415; 1D00444; 1D00446,pp.DHT11723-DHT11725; 1D00459,p.DHT06679. See also P01981,p.SITF00011412; 1D00213,p.SPOE00000095,para.5(a).

²¹⁸⁴ T-250121,p.24131 (W02183), discussing P01968,para.15; T-240521,pp.15545-15548 (W02540); T-240819,pp.18609-18610,18695-18696 (W04868); P01047,para.16.

²¹⁸⁵ P01605.6_ET,p.16; T-250325,p.25874 (W04403); T-241106,p.22135 (W01453).

²¹⁸⁶ [REDACTED].

²¹⁸⁷ SPO Rule 130 Response,para.58 (emphasis added).

²¹⁸⁸ Rule 130 Submissions,para.129, citing P02516,p.121595; 1D00214,p.SPOE00212681.

²¹⁸⁹ T-251117,p.28122 (CLARK).

characterisation".²¹⁹⁰ This was a shared position among NATO and KFOR.

666. The SPO questioned **CLARK** on his statement to U.S. Senate Armed Services Committee in 2000 that *"as I look back on it of course, the other things [sic] is I am still concerned about the Serb forces."*²¹⁹¹ But, as **CLARK** explained, *"[i]f you had asked me were they coming back, I would have said no. If you'd asked me what my responsibility was, it was to make sure they did not come back."*²¹⁹² In light of this evidence, the SPO cannot establish beyond reasonable doubt that the resumption of hostilities between the KLA and Serb forces was a *"real risk and ongoing concern"* among the *"international entities"*.²¹⁹³ The leadership of these entities thought that there was not.

667. The SPO's position that the Serb forces were concerned about a real risk of resumption of hostilities is undermined by their repeated statements that they did not intend to resume hostilities. [REDACTED].²¹⁹⁴ [REDACTED].²¹⁹⁵ **CLARK** confirmed [REDACTED].²¹⁹⁶

668. At another meeting [REDACTED] and then reports:

[REDACTED].²¹⁹⁷

CLARK confirmed this was his understanding at the time.²¹⁹⁸

669. The SPO's submission that *"the KLA"* thought that resumption of hostilities

²¹⁹⁰ T-251118,p.28289 (CLARK).

²¹⁹¹ P04516,p.DHT10335.

²¹⁹² T-251118,pp.28204-28205 (CLARK) (emphasis added).

²¹⁹³ SPO Rule 130 Response,para.58.

²¹⁹⁴ [REDACTED].

²¹⁹⁵ [REDACTED].

²¹⁹⁶ T-251117,p.28126 (CLARK).

²¹⁹⁷ [REDACTED].

²¹⁹⁸ T-251117,pp.28127-28128 (CLARK).

between the Serb forces and the KLA was a real risk and ongoing concern is undermined by the evidence that the KLA was actively demobilising in a manner that was largely compliant,²¹⁹⁹ and by the public statements that the SPO relies on.²²⁰⁰ Some of these statements do allude to the possibility of a KLA military response, which can only be viewed as political posturing given the extensive evidence of the daily disintegration of the KLA's capacity to do so.²²⁰¹ Importantly, nowhere in these statements does any quoted KLA member refer to a concern about a resumption of hostilities between **the FRY and the KLA**. This is because the potential adversary for any renewed Serb attack was not the KLA, but KFOR/NATO.

670. The SPO has also never addressed this central problem with its position, namely the reality that from 20 June 1999, any actual renewed hostilities by Serb forces in Kosovo would have then been against KFOR/NATO, and not the KLA. The SPO's case is not simply that there was an ongoing armed conflict between Serb forces and the KLA, but necessarily that there was an ongoing *international armed conflict between Serb forces and NATO of which NATO was not aware*. As explained by **CLARK**, if Serbia had attempted to attack Kosovo or the KLA after 20 June, NATO would have resisted. He agreed that if Serbia had attempted to attack Kosovo or the KLA after it had withdrawn its forces, that would "*have brought Serbia into conflict with NATO*".²²⁰² This was confirmed by **DURKEE** who was asked:²²⁰³

Q. If Serbian paramilitaries were to have engaged in hostilities or if Serbia had decided to send in its forces, how would KFOR have responded?

A. KFOR would have attempted to defend the territory, to defeat the attacking forces, to restore security, and, of course, would have called upon SHAPE to provide additional forces to assist.

Q. [...] would Serbia's re-entry or the activation of Serbian paramilitaries within Kosovo have placed KFOR back into conflict with Serbia?

A. Yes.

²¹⁹⁹ Rule 130 Submissions, paras.156-159.

²²⁰⁰ SPO Rule 130 Response, paras.66(i)-(vii).

²²⁰¹ Rule 130 Submissions, paras.156-159.

²²⁰² T-251117, pp.28121-28122 (CLARK).

²²⁰³ T-251113, p.28068 (DURKEE).

671. This was understood at the time by the demobilising KLA. **THAÇI**, for example, stated on 2 August 1999 that “[i]n spite of the pullout of Serbian and Yugoslav forces from Kosova, a great number of Serbian **paramilitary** forces have remained in Kosova, disguised as farmers and civilians, and the Serbian Secret Service is still widely active in Kosova. ***KFOR should take every measure to eliminate these secret forces and disarm the civilians.***”²²⁰⁴ For **THAÇI**, as KLA troops continued to hand over weapons and move towards the assembly points,²²⁰⁵ the responsibility for any resumption lay with the international forces now in control. The KLA was no longer a warring party. The SPO cannot establish beyond reasonable doubt that the resumption of hostilities between the FRY and the KLA was a real risk and ongoing concern to the KLA.

672. This evidence that there was no real risk of resumption of hostilities between KLA and the FRY –from the internationals who were required at the time to make that assessment, and from the leadership of the alleged instigating parties– is supported by contemporaneous documents. The MTA between KFOR and the Governments of Yugoslavia and Serbia defines “*Air Safety Zone*” as a 25-kilometre zone extending beyond the Kosovo province border into the rest of FRY territory. It includes the airspace above that 25-kilometre zone.²²⁰⁶ The “*Ground Safety Zone*” is then defined as a “*5-kilometre zone that extends beyond the Kosovo province border into the rest of FRY territory. It includes the terrain within that 5-kilometre zone.*”²²⁰⁷ The agreement continues that “[t]o establish a durable cessation of hostilities, under no circumstances shall any Forces of the FRY and the Republic of Serbia enter into, re-enter, or remain within the territory of Kosovo or the Ground Safety Zone [...] [and] the Air Safety Zone [...] described in paragraph 3, Article I without the prior express consent of the international security force (‘KFOR’) commander. Local police will be allowed to remain in the [Ground Safety Zone].”²²⁰⁸ **CLARK**

²²⁰⁴ 1D00257,para.3 (emphasis added). See T-251113,p.28064 (DURKEE).

²²⁰⁵ Rule 130 Submissions,paras.156-159 and evidence cited therein.

²²⁰⁶ P04064,para.3(d).

²²⁰⁷ P04064,para.3(e).

²²⁰⁸ P04064,para.4(a).

confirmed that the Serbs did not, to his recollection, challenge the air and ground safety zones around Kosovo. Rather, “[t]hey were busy dragging their equipment out and trying to recover their military forces.”²²⁰⁹ The SPO has acknowledged “KFOR’s active and necessary enforcement of the MTA”,²²¹⁰ and there is no evidence suggesting these zones were challenged.

673. The SPO’s best case to push the end of the armed conflict beyond any recognised or accepted date appears to have been put to **DURKEE**, and consisted of:

- (i) a [REDACTED]²²¹¹
- (ii) A political declaration by **THAÇI**, saying “[i]n spite of the pullout of Serbian and Yugoslav forces from Kosova, a great number of Serbian *paramilitary* forces have remained in Kosova [and] **KFOR** should take every measure to eliminate these secret forces and disarm the civilians. The cooperation in this respect with the Interim Government of Kosova and the KLA General Staff would restore the normality in Kosova more rapidly.”²²¹²
- (iii) P02535, being second-hand indirect reporting of Serb General Radovan LAZAREVIĆ threatening that, for example, “Serb troops are massed on the border and ready to invade Kosovo ‘at any given moment’”.²²¹³

674. This exercise laid bare that: (i) the SPO has no evidence of resumed hostilities between Serb and KLA forces after 20 June 1999; and (ii) the SPO has no evidence of anyone saying at the time they were concerned about a “real risk” of the resumption of hostilities. The SPO’s best case consists of evidence of continued presence of Serb paramilitaries (but no evidence whatsoever that these paramilitaries met the requisite

²²⁰⁹ T-251117, pp.28123-28124 (CLARK). See also [REDACTED].

²²¹⁰ SPO Rule 130 Response, para.63.

²²¹¹ [REDACTED] (emphasis added). See T-251117, p.28062 (DURKEE).

²²¹² 1D00257 (emphasis added). See T-251113, p.28064 (DURKEE).

²²¹³ P02535, para.6; T-251117, p.28065 (DURKEE).

level of organisation);²²¹⁴ **THAÇI** urging these paramilitaries to be eliminated/disarmed **by KFOR**, and the second-hand reporting of Serb propaganda, which has already been addressed by the Defence.²²¹⁵ When this reporting was presented to **DURKEE** and he acknowledged such threats existed at the time, he was then asked:²²¹⁶

Q. And do you recall whether General Clark was also concerned that the Serbs may re-enter Kosovo or launch counterattacks in Kosovo after June 1999?

*A. I believe that General Clark **was aware of such reports. I am not sure that he took them seriously** because we would regard this to a considerable extent as political posturing delivered through military voices.*

675. After having heard the SPO's best case, **DURKEE** was asked whether anything he had heard changed his view that the armed conflict between the KLA and Serbian forces ended on 20 June, and he replied "*No, I still believe that*".²²¹⁷

676. Interestingly, in its Rule 130 Response, the SPO set out its position that "*the period of 20 June to September 1999 was characterised by hostile and provocative acts by the KLA and Serb forces (in particular, paramilitary forces); non-compliance by the Serbian authorities and KLA with international agreements and obligations; ongoing and incomplete deployment of KFOR; and the reality that the NIAC parties still existed and had the necessary means at their disposal to wage war.*"²²¹⁸ The SPO asserts that "*it is clear that attaining a peaceful settlement was, at a minimum, dependent on: (i) withdrawal of Serbian forces, including paramilitary forces; (ii) deployment of KFOR; (iii) cessation of hostile and provocative acts; and (iv) demilitarisation of the KLA.*"²²¹⁹

677. This is not the recognised standard for the end of a NIAC, by any measure.

²²¹⁴ Rule 130 Submissions, para.148.

²²¹⁵ Rule 130 Submissions, paras.127-128.

²²¹⁶ T-251117, p.28066 (DURKEE) (emphasis added).

²²¹⁷ T-251117, p.28068 (DURKEE).

²²¹⁸ SPO Rule 130 Response, para.58.

²²¹⁹ SPO Rule 130 Response, para.64.

Elsewhere, the SPO asserts that a NIAC “*continues until there is a peaceful settlement as demonstrated by the lasting cessation of armed confrontations without a real risk of resumption*”,²²²⁰ but then introduces this list of four pre-requisite additional barriers. A “*lasting cessation of armed confrontations without a real risk of hostilities*” could of course exist even in the absence of the full demilitarisation of one of the parties, or the complete deployment of a multinational NATO-led peacekeeping mission. These additional minimum pre-requisites have no basis in the prior practice which the SPO cites.

678. For example, the SPO relies on the fact that the “*the NIAC parties still existed and had the necessary means at their disposal to wage war*”.²²²¹ It provides no basis for the apparent requirement that the parties must have ceased to exist or had no means to wage war for a NIAC to have ended, and cites to “*ICRC Commentary, para. 489*”,²²²² which is an unrelated and erroneous citation. Elsewhere in the commentary, the ICRC explains that a NIAC “*can cease by the mere fact that one of the Parties ceases to exist*” and that a party “*may still regroup*” especially where it “*controls territory or continues to recruit, train and arm forces*”.²²²³ This does not mean that a NIAC can only be considered to have ended once the parties cease to exist and have no ability to wage war. The SPO is trying to move the goalposts.

679. This is because the established indicators which demonstrate the end of a NIAC do not work in their favour.²²²⁴ As the Panel has now heard again from **COVEY** giving the UNMIK perspective, and corroborating the testimony of zone commander **W01453** who was on the ground,²²²⁵ after 20 June 1999, there were no cities or towns in Kosovo

²²²⁰ SPO Rule 130 Response, para.12.

²²²¹ SPO Rule 130 Response, para.58.

²²²² SPO Rule 130 Response, fn.200.

²²²³ ICRC Commentary, para.523 (emphasis added).

²²²⁴ *Boškoski* TJ, para.175; *Mrkšić* TJ, para.407; *Rutaganda* TJ, para.93.

²²²⁵ T-241106, pp.22135-22137 (W01453).

besieged by combatants, no roads blocked by combatants, no heavy weapons fired in combat, no civilians fleeing combat zones, no civilian casualties caused by fighting between KLA and Serbian forces, and no UN Security Council statements or resolutions expressing any concerns about an ongoing armed conflict in Kosovo.²²²⁶ This was not a situation where the parties were at risk of finding themselves in a “*revolving door between applicability and non-applicability*”,²²²⁷ this was an “*effective and lasting cessation of armed confrontations without a real risk of resumption*”,²²²⁸ with none of the factors which would give rise to this risk being present.

680. Lastly, the claim that there was a state of armed conflict in Kosovo “*through September 1999*”²²²⁹ cannot be reconciled with UNMIK not having a mandate to descend into an ongoing conflict or indeed become a party to it. UNMIK was, and has always been considered, a post-conflict mission. The SPO has failed to demonstrate otherwise, and did not even suggest to its own UNMIK witnesses that they had been part of a UN mission that was operating in a situation of armed conflict.²²³⁰ **W02183**, an UNMIK legal adviser, indeed linked UNMIK’s deployment to the end of the conflict, testifying that “[*o*]*therwise, we wouldn’t have gone there*”.²²³¹ The evidence heard in this case does not support what would be a monumental shift in the understanding of Kosovo’s history. It does not establish beyond a reasonable doubt that the armed conflict extended until September 1999, nor does it support the SPO position that until this date “*the redeployment of FRY forces and resumption of hostilities in Kosovo was a real concern among the parties to the conflict.*”²²³² This was not the case, nor have the witnesses in this trial said that it was. The conflict in Kosovo was over by 20 June 1999, and there

²²²⁶ T-250930,pp.27359-27360 (COVEY).

²²²⁷ SPO Rule 130 Response,para.56, quoting *Gotovina TJ*,para.1694.

²²²⁸ SPO Rule 130 Response,para.57.

²²²⁹ Indictment,para.16.

²²³⁰ *See generally* W02183, W02144.

²²³¹ T-250120,p.23920 (W02183).

²²³² SPO PTB,paras.698-699.

is no evidence capable of supporting a conviction for war crimes for any acts alleged to have commenced thereafter.

VII. SENTENCING

681. The only just outcome of this trial is **THAÇI**'s acquittal on all counts. Should the Panel nevertheless decide to consider sentencing, **THAÇI** should be afforded leniency.

682. At the outset, the maximum sentence available is 15 years. The KSC is bound by the Constitution. Article 33(2) of the Constitution states, "*No punishment for a criminal act shall exceed the penalty provided by law at the time the criminal act was committed.*" Article 33(4) states, "*Punishments shall be administered in accordance with the law in force at the time a criminal act was committed, unless the penalties in a subsequent applicable law are more favorable to the perpetrator.*" Needless to say, in case of any conflict between the Law and the Constitution, the Constitution prevails. Accordingly, this Panel must determine the maximum penalty that was provided by law in 1998 and 1999.

683. The Appeals Panel ruled in *Mustafa*²²³³ that the Law provides that war crimes are defined under customary international law at the time of commission, and therefore the KSC does not violate the principle of *nulla poena sine lege* by not applying domestic law in force at the time of commission. To the extent that the Appeals Panel suggested that the KSC is entitled to impose a punishment greater than the penalty provided by domestic law at the time of the criminal act, the Appeals Panel is plainly wrong. Nothing in the Law can override any Constitutional provision that contradicts it. Simply put, the Kosovo Assembly had no legal authority to pass the Law, or any

²²³³ *Mustafa* AJ, para.470. See also *Mustafa* SC Decision; *Mustafa* CC April Decision; *Mustafa* CC July Decision.

law, that is unconstitutional.

684. The Appeals Panel emphasised that under Article 14(1) of the Law, war crimes are defined “*under customary international law.*”²²³⁴ Respectfully, the definition of the crime is separate from the question of the maximum punishments that were administered under the law in force at the time of commission. Furthermore, Chapter 16 of the SFRY Criminal Code specifically criminalised “*Criminal Acts against Humanity and International Law,*” including customary law, and provided sentencing guidelines for such crimes. The Appeals Panel has found that 15 years was the maximum sentence allowed under the SFRY Criminal Code, after the death penalty was removed.²²³⁵ The Appeals Panel noted that this has been confirmed by the Supreme Court of Kosovo and the Constitutional Court.²²³⁶ Accordingly, this Court is constitutionally prohibited from imposing a sentence of more than 15 years even for customary law crimes.

685. The Kosovo Assembly would have been acting unconstitutionally had it attempted to pass a law that could retroactively impose an even greater sentence “*under customary international law*” than was applicable under Serbian law at the time of the commission of the offense. This Court will be acting unconstitutionally if it adopts the same unconstitutional interpretation of Article 33 of the Constitution.

686. At a minimum, the Panel is bound to take into account the contemporaneous sentencing range and any other subsequent more lenient range for the crime provided under Kosovo laws when determining the punishment to be imposed on a person found guilty of a crime under international law, in accordance with Article 44(2).²²³⁷

²²³⁴ *Mustafa* AJ, para.469.

²²³⁵ *Mustafa* AJ, para.473.

²²³⁶ *Mustafa* AJ, fn.1282.

²²³⁷ *Mustafa* CC April Decision, paras.115,120.

This includes the SFRY Criminal Code,²²³⁸ which also criminalised customary law violations in Chapter 16, and which was wrongly excluded by the Supreme Court panel.²²³⁹ Accordingly, the Panel should take into account the sentencing range applicable at the time of commission, of 5 to 15 years,²²⁴⁰ which also constitutes the most lenient sentencing range in comparison with the subsequent versions of the Kosovo Criminal Code.²²⁴¹ The Panel should further take into account the Kosovo jurisprudence contemporary to the crime or concerning the same crime and armed conflict in determining his sentence.

687. The Panel should also consider several factors in mitigation. Mitigating factors need to be established on the balance of probabilities.²²⁴² First, it is not an exaggeration to say that there would be no KSC, and no SPO, if not for the efforts of **THAÇI**. Despite the political and social pressure to which he was subjected, **THAÇI** personally advocated for and defended the initiative for the establishment of the KSC and SPO in the Assembly of Kosovo. In the Assembly of Kosovo session held on 26 June 2015, –one day after the KLA Associations protests against their establishment– **THAÇI** stated that the KSC and SPO as “*independent international institution[s]*” were necessary in order to clean (purify) the KLA’s liberation war and to show to the world that “*we have nothing to hide.*”²²⁴³

²²³⁸ See *Mustafa* CC April Decision, para.121, fn.299, the Chamber was not persuaded by the Supreme Court’s findings excluding the SFRY Criminal Code and its amendments from the analysis to be conducted pursuant to Articles 44(2)(a) and (b) of the Law, and in determining sentence, ICTY Trial Chambers consistently had recourse to the statutory provisions governing sentencing in the former Yugoslavia, and the sentencing practice of its courts.

²²³⁹ *Mustafa* SC Decision, paras.93-97.

²²⁴⁰ *Mustafa* AJ, para.473.

²²⁴¹ Compare, e.g. *Mustafa* SC Decision, para.100.

²²⁴² *Blagojević* TJ, para.850; *Kordić* AJ, paras.1052-1053; *Babić* AJ, para.43; *Bralo* SJ, para.42; *Hadžihasanović* TJ, para.2078.

²²⁴³ Transcript of 26 June 2015, pp.17-18. **THAÇI**’s support for the establishment of the KSC and SPO was characterised as “*servility towards the international community,*” by the head of the then opposition, Albin KURTI, the leader of the *Vetëvendosje* Movement: p.76.

688. While the rhetoric of the opposition and the protests of the KLA Associations succeeded in preventing the adoption of Article 162 of the Constitution on 26 June 2015, **THAÇI** and the Government of Kosovo reintroduced the same motion to the Assembly of Kosovo shortly thereafter, on 3 August 2015, when it was adopted.²²⁴⁴ **THAÇI** and the Government also faced criticism for bypassing the rules of procedure of the Assembly of Kosovo by reintroducing a motion to amend the Constitution that failed to pass in the 26 June 2015 session.²²⁴⁵ Notwithstanding this criticism, **THAÇI** sought and succeeded in convincing the qualified (2/3) majority of Assembly of Kosovo members (including the qualified majority (2/3) of Assembly of Kosovo members representing non-majority communities) to adopt Article 162 by which the KSC and SPO were established.²²⁴⁶ On the same day, thanks to the efforts of **THAÇI** and the Government of Kosovo, the Assembly of Kosovo also adopted the Law.²²⁴⁷ **THAÇI**'s support for the KSC was in part driven by his determination to have the Marty Report's infamous allegations of organ trafficking proven to be the lies that they were. They no longer form any part of the allegations in this case despite being a principal incentive for the establishment of the KSC.

689. Second, on 5 November 2020, **THAÇI** resigned from the position of President of the Republic of Kosovo,²²⁴⁸ voluntarily surrendered to KSC officials in Kosovo, and was transferred to the KSC's detention facilities.²²⁴⁹ His full cooperation and immediate resignation as Head of State should be given significant credit.

²²⁴⁴ Transcript of 3 August 2015.

²²⁴⁵ *Ibid.*

²²⁴⁶ *Ibid.*

²²⁴⁷ *Ibid.*

²²⁴⁸ See, e.g., Euronews, 'Kosovo's president Hashim Thaçi resigns to face war crimes charges', 5 November 2020, <https://www.euronews.com/2020/11/05/kosovo-s-president-hashim-Thaçi-steps-down-to-face-war-crimes-charges>, **THAÇI** had already announced on 1 July 2020 that he would resign if the Indictment issued against him by the SPO was confirmed and he kept his word. See, e.g. Guardian, 'Kosovo president Hashim Thaçi vows to resign if war crimes trial goes ahead', 1 July 2020, <https://www.theguardian.com/world/2020/jul/01/kosovo-president-hashim-Thaçi-vows-to-resign-if-war-crimes-trial-goes-ahead#img-1>.

²²⁴⁹ See F00065, paras.3-7.

690. Third, even while Head of State, **THAÇI** sat for full interviews by the SPO on multiple occasions, evidencing further cooperation with the KSC.

691. Fourth, the Panel has heard substantial evidence that **THAÇI** made numerous statements in favour of peaceful co-existence of peoples and calling on Albanians not to seek revenge against their Serb neighbours in the summer of 1999, for which he received acknowledgment from numerous witnesses in this trial. **HILL** testified that **THAÇI** was not the type of person to commit violence against others,²²⁵⁰ while **COVEY** testified similarly.²²⁵¹

692. Fifth, during the opening statements of this trial, **THAÇI** took the opportunity to express his sorrow and regret for the pain of all the victims of the war regardless of their ethnicity, religion, or political views.²²⁵²

693. Sixth, witnesses recognised **THAÇI**'s constructive role *"that helped advance UNMIK's peacebuilding aims"*,²²⁵³ and explained that *"UNMIK engaged with Mr. Thaci in this spirit, and Mr. Thaci reciprocated, demonstrating a clear willingness to cooperate with UNMIK on initiatives crucial to UNMIK's peace keeping function"*.²²⁵⁴ Without **THAÇI**'s support, building the post-conflict institutions in Kosovo *"would have been much more difficult"*.²²⁵⁵

694. Finally, **THAÇI** was granted provisional release four times, and at all times

²²⁵⁰ T-251110,p.27696 (HILL).

²²⁵¹ T-251002,pp.27589,27608-27609 (COVEY).

²²⁵² T-230404,pp.2346-2347 (Opening Statements).

²²⁵³ 1D00390,para.16(c).

²²⁵⁴ 1D00390,para.47.

²²⁵⁵ 1D00390,para.47.

complied with the Panel's orders and displayed exemplary conduct.²²⁵⁶

VIII. CONCLUSION

695. The Panel is requested to acquit **THAÇI** of all counts in the Indictment, and order his immediate release.

[Word count: 88,943 words]

Respectfully submitted,



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Monday, 19 January 2026

At New York, United States

²²⁵⁶ F01591, paras.16,18; [REDACTED].