

In: KSC-BC-2020-07

The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: Pre-Trial Judge

Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hysni Gucati

Date: 2 September 2021

Language: English

Classification: Public

**Public Redacted Version of Defence Pre-Trial Brief
on behalf of Hysni Gucati**

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I. INTRODUCTION

1. On 23rd June 2021, the Pre-Trial Judge ordered the Defence to file, by Monday 12 July 2021, if they so wish, their Pre-Trial Briefs as set out in Rule 95(5) of the Rules¹.

II. APPLICABLE LAW

2. Rule 95(5) provides that:

After submission by the Specialist Prosecutor of the items mentioned in paragraph 95(4), the Pre-Trial Judge shall invite the Defence to file, within a set time limit, a Pre-Trial Brief indicating:

- (a) In general terms, the nature of the Accused's defence;
- (b) The charges and matters which the Accused disputes, by reference to particular paragraphs in the Specialist Prosecutor's Pre-Trial Brief, and the reasons why the Accused disputes them; and
- (c) A list of potential witnesses the Defence intends to call, without prejudice to any subsequent amendment or filing thereof. In relation to each witness,

¹ "Order for the Submission of a Corrected Indictment and for a Second Revised Calendar for the Remainder of the Pre-Trial Proceedings", KSC-BC-2020-07/F00244 at paragraphs 17 and 22(b)

the Defence shall specify to which particular relevant issue the evidence relates.

In addition, within a time limit set by the Pre-Trial Judge, the Defence shall notify the Specialist Prosecutor of its intent to offer a defence of alibi or any other grounds excluding criminal responsibility, including that of diminished or lack of mental capacity, intoxication, necessity, duress, and mistake of fact or law.

3. The Pre-Trial Judge has ordered the Defence to incorporate in their respective Pre-Trial Briefs any objections to the admissibility of disclosed evidentiary material, any proposed agreements on points of law and fact and any notice of grounds excluding criminal responsibility².
4. The objections to the admissibility of disclosed evidentiary material are to be incorporated by way of an annexed list or chart providing for each item: (i) the number on the SPO Exhibit List; (ii) the reasons for the objection, stated briefly; and (iii) the relevant provision of the Law or the Rules under which the objection is made³.
5. Any proposed agreements on points of law or fact are to be incorporated by way of an annexed list or chart⁴.

² *“Revised Calendar for the Remainder of the Pre-Trial Proceedings and Order Setting the Date for the Sixth Status Conference”*, KSC-BC-2020-07/F00224 at paragraph 29(b)

³ *“Revised Calendar for the Remainder of the Pre-Trial Proceedings and Order Setting the Date for the Sixth Status Conference”*, KSC-BC-2020-07/F00224 at paragraph 24

⁴ *“Revised Calendar for the Remainder of the Pre-Trial Proceedings and Order Setting the Date for the Sixth Status Conference”*, KSC-BC-2020-07/F00224 at paragraph 25

III. THE NATURE OF THE ACCUSED'S DEFENCE IN GENERAL TERMS

6. Hysni Gucati ("The Accused") faces six counts:

Count 1: OBSTRUCTING OFFICIAL PERSONS IN PERFORMING OFFICIAL DUTIES, by serious threat, between at least 7 and 25 September 2020, a CRIMINAL OFFENCE AGAINST PUBLIC ORDER, punishable under the Criminal Code of the Republic of Kosovo, Code No.06/L-074 (2019) ('KCC') Articles 17, 28, 31, 32(1)-(3), 33, 35, and 401(1) and (5), and Articles 15(2) and 16(3) of the Law;

Count 2: OBSTRUCTION OFFICAL PERSONS IN PERFORMING OFFICIAL DUTIES, by participating in the common action of a group between at least 7 and 25 September 2020, a CRIMINAL OFFENCE AGAINST PUBLIC ORDER, punishable under KCC Articles 17, 28, 32(1)-(3), 33, 35, 401(2)-(3) and (5), and Articles 15(2) and 16(3) of the Law;

Count 3: INTIMIDATION DURING CRIMINAL PROCEEDINGS, between at least 7 and 25 September 2020, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 17,28, 31, 32(1)-(3), 33, 35, and 387, and Articles 15(2) and 16(3) of the Law;

Count 4: RETALIATION, between at least 7 and 25 September 2020, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 17, 28, 31, 32(1)-(2), 33, 35, and 388(1), and Articles 15(2) and 16(3) of the Law;

Count 5: VIOLATING THE SECRECY OF PROCEEDINGS, through unauthorised revelation of secret information disclosed in official proceedings, between at least 7 and 25 September 2020, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 17, 31, 32(1)-(2), 33, 35, and 392(1), and Articles 15(2) and 16(3) of the Law; and

Count 6: VIOLATING THE SECRECY OF PROCEEDINGS, through unauthorised revelation of the identities and personal data of protected witnesses, between at least 7 and 25 September 2020, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 17, 28, 31, 32(1)-(3), 33, 35, and 392(2)-(3), and Articles 15(2) and 16(3) of the Law.

7. The Accused denies individual criminal responsibility as alleged on each count.
8. The Accused did not obstruct any official person in performing official duties.
9. The Accused did not participate in the common action of a group to obstruct any official person in performing official duties.

10. The Accused did not make any threat, serious or otherwise.
11. The Accused denies any alleged intimidation during criminal proceedings. The Accused did not use force or serious threat, or any other means of compulsion, a promise of a gift or any other form of benefit to induce another person to refrain from making a statement or to make a false statement or to otherwise fail to state true information to the police, a prosecutor or a judge.
12. The Accused denies any alleged retaliation. The Accused did not take any action harmful to any person, including interference with lawful employment or livelihood of any person, with the intent to retaliate for providing truthful information relating to the commission or possible commission of any criminal offense to police, an authorized investigator, a prosecutor or a judge.
13. The Accused denies the allegation of unauthorised revelation of secret information disclosed in official proceedings.
14. The Accused denies the allegation of unauthorised revelation of the identities and personal data of protected witnesses.
15. The Accused denies committing, alone and/or in co-perpetration, the crimes of obstructing official persons in performing official duties, intimidation during criminal proceedings, retaliation, and violating the secrecy of proceedings⁵.

⁵ See the Statement of Crimes paragraph 47(i) in KSC-BC-2020-07/F00075/A01

16. The Accused denies attempting to commit the crimes of obstructing official persons in performing official duties, intimidation during criminal proceedings, retaliation, and violating the secrecy of proceedings through the revelation of the identities and personal data of protected witnesses⁶.
17. The Accused denies agreeing to commit the crimes of obstructing official persons in performing official duties, intimidation during criminal proceedings, retaliation, and violating the secrecy of proceedings, and taking substantial acts towards the commission of any such crimes⁷.
18. The Accused denies inciting and assisting in the commission of crimes of obstructing official persons in performing official duties, intimidation during criminal proceedings, retaliation, and violating the secrecy of proceedings⁸.
19. The Accused denies inciting the commission of the crimes of obstructing official persons in performing official duties, intimidation during criminal proceedings, retaliation, and violating the secrecy of proceedings, and such crimes were not attempted⁹.
20. The Accused denies inciting the commission of the crimes of obstructing official persons in performing official duties, intimidation during criminal proceedings, and violating the secrecy of proceedings through the revelation of the identities and personal data of protected witnesses, and such crimes were neither committed, nor attempted¹⁰.

⁶ See the Statement of Crimes paragraph 47(ii) in KSC-BC-2020-07/F00075/A01

⁷ See the Statement of Crimes paragraph 47(iii) in KSC-BC-2020-07/F00075/A01

⁸ See the Statement of Crimes paragraph 47(iv) in KSC-BC-2020-07/F00075/A01

⁹ See the Statement of Crimes paragraph 47(v) in KSC-BC-2020-07/F00075/A01

¹⁰ See the Statement of Crimes paragraph 47(vi) in KSC-BC-2020-07/F00075/A01

21. The Accused does accept exercising his constitutional rights under Article 22 of the Constitution of the Republic of Kosovo including *inter alia*:
- (a) The right to freedom of opinion and expression including the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers, as guaranteed by Article 19 of the Universal Declaration of Human Rights;
 - (b) The right to freedom of expression including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice, as guaranteed by Article 19 of the International Covenant on Civil and Political Rights and its Protocols; and
 - (c) The right to freedom of expression including the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers, as guaranteed by Article 10 of the European Convention on Human Rights.
22. The Accused does accept exercising his constitutional rights under Article 40 of the Constitution of the Republic of Kosovo which specifically guarantees freedom of expression including the right to express oneself, to disseminate and receive information, opinions and other messages without impediment.
23. The Accused acknowledges his right of access to documents of public institutions and organs of state authorities, as guaranteed under Article 41 of the Constitution of the Republic of Kosovo, and the prohibition contained within Article 42 of the Constitution of the Republic of Kosovo on censorship

and the prevention of the dissemination of information or ideas through media. Moreover, Article 42 of the Constitution of the Republic of Kosovo further guarantees everyone the right to correct untrue, incomplete and inaccurate published information, if it violates her/his rights and interests.

24. The modern, open and liberal Constitution of the Republic of Kosovo represents the final and triumphant rejection - fought for by the Accused and others - of the secretive, authoritarian and repressive years Kosovo endured under Communist Yugoslavia, then Nationalist Serbia.
25. The continuing rejection by Serbia of a modern, open, liberal and independent future for Kosovo demonstrates that, for Serbia at least, the conflict is not over and the peace not yet won.
26. Seemingly, Serbia does not stand alone in its attempts to maintain its legal stranglehold over Kosovo.
27. The attempt by the Specialist Prosecutor's Office to interpret the modern, open and liberal Constitution of the Republic of Kosovo, and its new Criminal Code, through the lens of the fossilised case-law of the regimes of Communist Yugoslavia and Slobodan Milosevic's Serbia is repugnant and is to be rejected as a grossly inappropriate attempt to re-attach the legal shackles of those regimes over Kosovo, many years after Kosovo has rightly and proudly broken free of them¹¹.
28. Under Article 2(3) of the KCC,

¹¹ "Annex 2 to the Submission of Indictment for Confirmation and Related Requests – Rule 86(3)(b) Outline", KSC-BC-2020-07/F00063/A02, Footnote 11

“the definition of a criminal offense shall be strictly construed and interpretation by analogy shall not be permitted. In case of ambiguity, the definition of a criminal offense shall be interpreted in favor of the person against whom the criminal proceedings are ongoing.”

29. Likewise, any limit to the exercise by the Accused of his constitutional rights under Articles 22, 40, 41 and 42 of the Constitution must be strictly construed, and applied only where clearly demonstrated to be strictly necessary and in accordance with the law and Articles 22, 40, 41 and 42 themselves. Any ambiguity shall be interpreted in favour of the Accused.
30. For example, whereas Article 41 provides that the right of access to documents of public institutions and organs of state authorities can be limited by law due to security classification, any such limitation must be strictly in accordance with the law on security classification, that is, the Law on Classification of Information and Security Clearances Law No.03/L-178, 1 July 2010.
31. Whereas the Specialist Prosecutor asserts that the Accused’s right of access to records of the Specialist Chambers and the Specialist Prosecutor’s Office is limited by Article 62 of the Law, Article 2 of the Law makes clear that (i) the Law is subject to Article 55 of the Constitution; and (ii) any limitations on fundamental rights and freedoms shall only be imposed to the extent necessary to fulfil the interest of Kosovo as an open and democratic society.
32. Article 55 of the Constitution requires all public authorities, and in particular courts, to pay special attention to the essence of the right limited, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and the purpose to be achieved

and the review of the possibility of achieving the purpose with a lesser limitation. The limitation of fundamental rights and freedoms guaranteed by the Constitution shall in no way deny the essence of the guaranteed right.

33. In the present case, the SPO has not demonstrated in relation to Batches 1, 2 and 3 that any such limitation was necessary and not, for example: (i) imposed to conceal violations of law, abuse of authority, inefficiency or administrative error; or (ii) to prevent embarrassment to a person, public authority or organisation; or (iii) to prevent or delay the release of information, which is not otherwise clearly related to security considerations. The principles set out in the Law on Classification of Information and Security Clearances Law No.03/L-178 are valid. It is not accepted that the effect of Article 62 of the Law is to reverse the modern constitutional principle of openness and transparency, which courses through the veins of all public institutions in modern Kosovo, and to replace it with a presumption of secrecy in the case of the SC/SPO.
34. The Accused maintains, therefore, that his conduct throughout was lawful.
35. If, however, any part of the Accused's conduct is found to be otherwise unlawful (contrary to the Accused's belief):
 - a. the Accused did not know that his conduct was prohibited, and accordingly is not criminally liable under Article 26 of the KCC (Mistake of Law); and
 - b. the Accused maintains further that he acted only to avert an imminent and unprovoked danger to others (namely, malicious prosecution) which could not have otherwise been averted, and thus his conduct

cannot, in any event, amount to a criminal offence in the circumstances under Article 13 of the KCC (Necessity); and

- c. if, contrary to b above, it is found that there was no imminent and unprovoked danger to others (namely, malicious prosecution), the Accused believed there was and acted accordingly, and thus he is not criminally liable under Article 25 of the KCC (Mistake of Fact); and
- d. in the absence of admissible and probative evidence as to any adverse consequences¹², the Accused's conduct shall not constitute a criminal offence in any event in accordance with Article 11 of the KCC (Act of Minor Significance).

- 36. Further, and if contrary to the above, any part of the Accused's conduct is found to be otherwise unlawful, the Accused raises the plea of incitement¹³.
- 37. The conduct complained of by the Specialist Prosecutor could not have occurred without the delivery to the KLA WVA HQ of Batches 1, 2 and 3.
- 38. Those deliveries came with the express and implied incitement to make the contents thereof available to the media.
- 39. There can be no issue of fact as to whether (i) incitement occurred and (ii) that the conduct complained of could not have occurred without it.

¹² See Annex 2 – List of Objections to the Admissibility of Disclosed Evidentiary Material

¹³ "Police incitement occurs where the officers involved – whether members of the security forces or persons acting on their instructions – do not confine themselves to investigating criminal activity in an essentially passive manner, but exert such an influence on the subject as to incite the commission of an offence that would otherwise not have been committed, in order to make it possible to establish the offence, that is, to provide evidence and institute a prosecution", *Ramanauskas v Lithuania* (74420/02), (2010) 51 EHRR 11 (2008), ECtHR Grand Chamber at paragraph 55

40. The only issue of fact is who was involved in that incitement of the Accused.
41. Such evidence as has been disclosed suggests *prima facie* that officers of the SPO, or persons acting on their instructions, were so involved (and there is no evidence relied upon by the SPO to the contrary):
- a. The SPO has demonstrated that it will resort to leaking material contrary to the Law and the Rules of Procedure and Evidence for its own tactical purposes – on 24th June 2020 the Specialist Prosecutor revealed to the public the existence of an unconfirmed indictment charging Hashim Thaçi, Kadri Veseli and others with nearly 100 murders, contrary to Rules 85(4), 86(2) and 88;
 - b. The material said by the SPO to be contained within Batches 1, 2 and 3 is also said to have been under the control of the SPO prior to the deliveries, and in relation to Batch 3 specifically, *only* under the control of the SPO prior to the deliveries – no other body had access to Batch 3, it is said, other than officers of the SPO;
 - c. Although the SPO were alert to the potential of further deliveries being made after the delivery of Batch 1, and after the delivery of Batch 2, no attempts were made to physically prevent the further delivery of further Batches (such as the obvious tactic of placing the entrances to the KLA WVA HQ under observation, with officers in place to seize any further batches before delivery was effective). The inference to be drawn is that the SPO wanted the delivery of Batches 2 and 3 (and, indeed Batch 1 also) to be effective; and

- d. The delivery to the KLA WVA HQ of alleged 'internal work product' was foreseen by the SPO¹⁴ 13 days before delivery was alleged to have occurred within Batch 3, suggestive of planning on the part of the SPO.
42. Moreover, the SPO had the motive to carry out a 'sting operation', to use the label ascribed by the SPO itself. The KLA WVA had been lawfully vocal for some time regarding their concerns about the operation of the Kosovo Specialist Chambers and the Specialist Prosecutor's Office. Moreover, it is clear that the arrests of Hashim Thaçi, Kadri Veseli and others were imminent in September 2020. Despite stating unequivocally in the June 2020 leak that Mr Thaçi and Mr Veseli had made 'repeated efforts... to obstruct and undermine the work of the KSC' and, even more remarkably, setting out the Specialist Prosecutor's *belief* that Mr Thaçi and Mr Veseli 'have carried out a secret campaign to overturn the law creating the Court and otherwise obstruct the work of the Court in an attempt to ensure that they do not face justice', it is clear now that the SPO had no evidence upon which to base those claims and no such charges appear on the confirmed indictment subsequently faced by Mr Thaçi and Mr Veseli (who, as First Deputy Prime Minister and President of the Assembly of the Republic of Kosovo respectively on the date that Law No.05/L-053 was signed, sponsored the law creating the Court in the first instance).
43. A 'sting operation' designed to 'make it possible to establish the offence, that is, to provide evidence and institute a prosecution' against the leadership of the KLA WVA, in the circumstances set out in paragraphs 41-44 above, is far from wholly improbable.

¹⁴ See SPOE00220914-00220914 dated 9th September 2020

44. Indeed, it is not wholly improbable that the ultimate target of a ‘sting operation’ in those circumstances might have been Mr Thaçi and Mr Veseli themselves, with the person(s) responsible for the deliveries of Batches 1 – 3 hoping that Mr Thaçi and Mr Veseli would become indirectly ensnared. Certainly, the SPO has as a matter of fact used the circumstances surrounding Batches 1 to 3 against Mr Thaçi, Mr Veseli and others as a ground to resist their interim release¹⁵, even though they face no charges relating thereto.
45. Where “police incitement” occurs (incitement by those responsible for the investigation of crime or persons acting on their instructions) the Accused’s right to a fair trial under Article 6(1) of the European Convention of Human Rights is violated¹⁶.
46. Article 6 of the Convention will also be violated where the Accused is not effectively able to raise the issue of incitement during trial. Where the court does not adequately investigate the allegations of entrapment the Accused will be deprived of a fair trial under Article 6 of the Convention¹⁷.
47. It falls to the prosecution in the above circumstances to prove that there was no incitement. A simple denial by the authorities that there has been any incitement is not sufficient¹⁸. It is the task of the judicial authorities to take the

¹⁵ See “Public redacted version of Prosecution response to Application for Interim Release on behalf of Mr Hashim Thaçi”, KSC-BC-2020-06/F00149/RED, 21 December 2020 at paragraphs 15-17; “Public redacted version of Prosecution response to Application for Interim Release on behalf of Mr Rexhep Selimi”, KSC-BC-2020-06/F00154/RED, 22 December 2020 at paragraphs 19-21; “Public redacted version of Prosecution response to Application for Interim Release on behalf of Mr Jakup Krasniqi”, KSC-BC-2020-06/F00153/RED, 22 December 2020 at paragraphs 30-32; “Public redacted version of Prosecution response to Application for Interim Release on behalf of Mr Kadri Veseli”, KSC-BC-2020-06/F00161/RED, 15 January 2021 at paragraphs 24-26

¹⁶ *Teixeira de Castro v Portugal* (1999) 28 EHRR 101, ECtHR Chamber at paragraph 39

¹⁷ *Pătraşcu v Romania*, (7600/09) ECtHR Chamber 14 February 2017 at paragraph 53

¹⁸ *Ramanaukas v Lithuania*, ante at paragraph 72

necessary steps to uncover the truth in order to determine whether there was any incitement by the authorities¹⁹.

48. At this point in proceedings the SPO has steadfastly refused to engage with the issue of incitement. Disclosure has been refused repeatedly. The Accused is being prevented from effectively raising the issue of incitement during the trial, and faces being deprived of a fair trial in violation of Article 6 of the Convention accordingly.
49. Where there is a violation of Article 6 of the Convention, the court must demonstrate a capacity to deal with the violation, such as offering a substantive defence or the exclusion of evidence obtained as a result or other similar consequences.²⁰
50. Accordingly, the Accused maintains that, in the event that the defence is unable to effectively raise the issue of incitement at trial, the Trial Panel must dismiss the indictment by ruling, or pronounce judgment rejecting the charges, on the ground that there are circumstances which bar prosecution, namely that the Accused cannot have a fair trial²¹; or otherwise, the Prosecution evidence in its entirety must be excluded under Rule 138(2) of the Rules (as it all results from the delivery of the three Batches to the KLA WVA HQ) and a judgment of acquittal be pronounced.

¹⁹ *Ramanauskas v Lithuania*, ante at paragraph 70

²⁰ *Ramanauskas v Lithuania*, ante at paragraph 60; *Ramanauskas v Lithuania (no 2)* (55146/14) ECtHR Chamber 20 February 2018 at paragraph 59

²¹ See Rules 4(1), 130, 158 and 159 of the Rules and Articles 358 and 363 of the Kosovo Criminal Procedure Code Law No.04/L-123; see also the *Guide to the Criminal Procedure Code of Kosovo (2013)*, Jon Smibert, Resident Legal Advisor, US Dept of Justice at page 9: "At the end of the main trial, the court can either dismiss the indictment under Article 358 or issue a judgment under Chapter XX. The judgment can reject the charge under Article 363, acquit the defendant under Article 364 or adjudge the defendant guilty under Article 365"

IV. THE CHARGES AND MATTERS WHICH THE ACCUSED DISPUTES, BY REFERENCE TO PARTICULAR PARAGRAPHS IN THE SPECIALIST PROSECUTOR'S PRE-TRIAL BRIEF, AND THE REASONS WHY THE ACCUSED DISPUTES THEM

The below sub-headings relate to paragraph numbers within the Statement of Facts contained within the Prosecutor's Pre-Trial Brief

Paragraph 1

51. The Accused does not accept the documents delivered on 7 September 2020 contained confidential and non-public information. The SPO are required to prove the same.
52. The Accused does not accept the documents delivered on 7 September 2020 were authentic²². The SPO are required to prove the same.

Paragraph 2

53. The Accused does not accept that he revealed and distributed confidential and non-public information on 7th September 2020. The SPO are required to prove the same. The Accused does accept that he has publicly demonstrated concern

²² ERN 081358-01-TR-ET at page 5 lines 27-28; 081358-01-TR-ET at page 6 line 3

about persons bearing false testimony. He was, and is, lawfully entitled to do so.

Paragraph 3

54. On 8th September 2020, the Accused was in Albania and was not present at the KLA WVA premises. The Accused was informed that SPO investigators had attended the KLA WVA premises and that a handover document had been left at the premises. On his return, the Accused did see a document confirming the handover of documentation on 8th September 2020 but did not see any order prohibiting the Accused and the KLA WVA from further disseminating the First Disclosure and its content. The Accused was not aware of any such order and did not ignore any such order accordingly. In any event, as far as the Accused is aware no further dissemination of the First Disclosure and its content took place.

Paragraph 4

55. The Accused denies any unlawful action.

Paragraph 5

56. The Accused does not accept the contents of paragraph 5 and will deal with the specific allegations as they arise below.

57. The Accused has never been opposed to the investigation and prosecution of criminal offences, whoever committed them²³.
58. The Accused has repeatedly made clear that he supports the investigation by the 'SC/SPO' of *all* alleged crimes during the period 1998-2000.
59. For example, the Accused has publicly invited the 'SC/SPO' to investigate the alleged killing of five Serbs in Paje, Kosovo by the Serbian authorities (the Panda case)²⁴.
60. The Accused has always made clear his opposition to the one-sided investigation of crimes allegedly committed by Kosovan Albanians only. 'Selective justice' is injustice. The Accused does not oppose the administration of justice but does - candidly and rightly - oppose the administration of injustice.
61. In relation to footnote 1, the SPO is invited to identify the legal basis for the proposition that 'witness' is to be interpreted to include 'any person(s) likely to have information about a crime, the perpetrator, or important circumstances relevant to SC proceedings'.

Paragraph 6

62. The Accused does not accept the contents of paragraph 6 and will deal with the specific allegations as they arise below.

²³ ERN 081347-01-TR-ET at page 3

²⁴ ERN 082106-01-TR-ET at page 11, line 28 to page 12, line 16

63. The Accused has never threatened any witness.

Paragraph 7

64. The Accused has only ever pursued true justice for all victims of all crimes. The Accused is opposed only to the injustice of 'selective justice'.

Paragraph 8

65. The Accused denies each of the charges, for the reasons set out above and below.

Paragraph 9

66. The First Disclosure was delivered in a box to the KLA WVA HQ by an unknown male with the instruction that it be made available to the media²⁵. The unknown male stated that there would be a further delivery/deliveries.

67. The delivery of the First Disclosure was entirely unexpected. After initial caution as to whether the box contained a bomb, the contents were seen to be documents only. The Accused assumed that copies of the First Disclosure had

²⁵ ERN 081358-01-TR-ET at page 1 line 19

similarly been delivered to other persons and organisations and that the material was therefore in the public domain.

68. The box contained four copies of the same material (the figure of 4000 files was an estimate). The Accused had not considered the contents in detail. The Accused wanted the public to know that the KLA WVA did not know who brought the documents or where they had come from.

Paragraphs 10 - 15

69. There is no issue that the Accused is seen on the footage. The Accused's conduct is as per can be seen and heard on the footage, as is the conduct of others.
70. The Accused maintains his belief, then and now, that everything said and done by all persons present during that press conference was lawful.
71. The Accused understands that his co-Accused and family have spent some 67 years as political prisoners at the hands of Serbian officials, as have many others in Kosovo.
72. It was entirely in the public interest for the public to be informed that the SPO (and SITF) has collaborated with:

- [REDACTED];

- [REDACTED];

- [REDACTED];
- [REDACTED];
- [REDACTED];
- [REDACTED];
- [REDACTED]²⁶;
- [REDACTED]
- [REDACTED]

73. [REDACTED], [REDACTED], [REDACTED], and [REDACTED]²⁷ were all subjected to unlawful oppression by Serbian forces during the war. The genuine public interest in these matters is demonstrated by the participation of the responsible media in the events of 7th September 2020 and thereafter.

74. Prior to 7th September 2020, [REDACTED]²⁸. [REDACTED].

75. Indeed, and contrary to the assertion in paragraph 24 of the Prosecution Pre-Trial Brief, [REDACTED]. [REDACTED]²⁹, [REDACTED].

²⁶ [REDACTED]

²⁷ [REDACTED]

²⁸ [REDACTED]

²⁹ [REDACTED]

76. [REDACTED]. As far as the Accused is aware, however, there was no mention of the identity and personal data of any protected witness during the course of the conference on 7th September 2020.

Paragraph 17

77. It is not accepted that the source of any material referred to in the media was the KLA WVA. As set out above, the Accused assumed that the same material had been leaked to other persons and organisations by those behind the delivery of Batch 1 to the KLA WVA HQ. The SPO are required to prove that any reference to, or images of, documents appearing in the media are references to, or images of, documents obtained from the KLA WVA and not from another or other sources.
78. For example, article ERN 081361-081378 states that Infokus Newspaper had secured or obtained documents – the article does not state that those documents were secured or obtained from the KLA WVA only, or at all.
79. It is not accepted that the articles referred to in paragraph 17 ‘reported names and other personal details of at least three persons cooperating with the SITF, including a potential witness, all mentioned in the First Disclosure. No disclosure has been provided to allow the above assertion to be verified or otherwise challenged.
80. Moreover, it is not accepted that (1) any persons named were ‘protected witnesses’ or (2) that the Accused is responsible for the contents of articles written by professional and responsible journalists in any event.

81. In fact, footnote 34 refers only to the article at ERN 081914-081919-ET dated 25th September 2020. That article was an article by Gazeta Newborn entitled, “Other Specialist Chambers’ scandal: It cooperated with Serbia army officers, who were also active during the time of Milosevic”. The article comments on the work of the Specialist Chambers and its cooperation with persons accused of war crimes. According to the report, *NewBorn* newspaper obtained a document which shows that a person wanted by Interpol for war crimes in Kosovo seems to be a witness against the KLA in the Specialist Chambers. The article does not state that it obtained that document from the KLA WVA.

82. The article continues:

“In 2005, as the trial of the Butcher of Balkans Slobodan Milosevic was proceeding in the Hague, the face of Kosovo Albanian Muharrem IBRAJ also appeared in the cameras. He was a witness for Milosevic.

Muharrem IBRAJ comes from one of the areas where the most terrible crimes were committed by the Serb state apparatus and then he went to the Hague to defend Slobodan Milosevic.

Muharrem IBRAJ is accused of crimes and rapes during the war in Kosovo.

Similarly, IBRAJ is one of 17 people wanted by Interpol for war crimes, and the only one with Albanian ethnic background.

THIS IS THE LIST OF 17 SERBS and 1 KOSOVAR WANTED BY INTERPOL
FOR CRIMES IN KOSOVO

Momir STOJANOVIC

Momcilo STOJIC

Zoran MIRKOVIC

Nikola MICUNOVIC

Momcilo NOVAKOVIC

Milutin NOVAKOVIC

Miladin NOVAKOVIC

Alexander PEKOVIC

Zivko VUKSANOVIC

Miras GEGOVIC

Pregrad STOJANOVIC

Muharrem IBRAJ

Miso POPOVIC

Dimitrije RASOVIC

Sreten CAMOVIC

Lazar DRASKOVIC"

83. It is assumed that the author of the article, and the editors of Gazeta Newborn who published it online, quite rightly maintain that publication thereof was

in the public interest and in the lawful and proper exercise of the right of freedom of expression. As far as the Accused is aware, no proceedings are faced by the author of that article for the publication in national media of the identity of the persons therein.

84. Some of the same names had previously appeared in an article by Serbeze Haxhiaj and Milica Stojanovic for BIRN on 27 April 2020 entitled “Evidence Reveals Serbian Officers’ Role in Kosovo Massacre was Ignored”³⁰:

“The attacks on [the villages of Meja and Korenica on April 27, 1999 by] the Yugoslav Army, Serbian police and paramilitary units killed at least 377 civilians, of whom 36 were under 18 years old. Thousands were expelled to neighbouring Albania, and 13 people are still listed as missing.

... Analysis of the Hague Tribunal evidence by BIRN has revealed that more than 30 people were involved in or knew about the killings – one of the biggest massacres of the Kosovo war – and did not do anything to stop it or act to punish those who committed crimes.

Despite the evidence that exists, none of them have ever been prosecuted for the massacre in Meja and Korenica. All of them are still free and live in Serbia, Montenegro or Slovenia.

³⁰ [Evidence Reveals Serbian Officers’ Role in Kosovo Massacre was Ignored | Balkan Insight](#), 27 April 2020

...[Former Yugoslav Army officer Nike Peraj] accused three people of bearing most responsibility for the killings. "Nikola Micunovic (aka Dragan), Milan Kotur and Milovan Kovacevic are the main people responsible for the massacre in Meja and Korenica. They planned and led the entire operation.'

...Also present was Momir Stojanovic, commander of Military Security of the Pristina Corps. ...Peraj said he heard Stojanovic ... order a retaliatory operation to be staged in which at least '100 heads' would be eliminated and 'everything burned'.

...[in 2015] Interpol issued a 'red notice' calling for the arrest of 17 people over crimes committed in Meja and Korenica. On the list were suspects already mentioned in testimony at the ICTY [including] Momir Stojanovic [and] Nikola Micunovic ...

...the other 11 names were revealed by Interpol for the first time – Muharem Ibraj, Miras Gegovic, Momcilo Stijovic, Dragan and Aleksandar Pekovic, Miso Popovic, Lazar Draskovic, Zoran Mirkovic and Momcilo, Milutin and Miladin Novakovic."

85. The Meja Massacre was also referred to by a second article from Gazeta Newborn on 25th September 2020³¹ entitled, "Gjakova former police commander Milan STOJANOVIC, collaborator of Specialist Chambers". In that article, it was stated:

³¹ ERN 081914-081919-ET

“Although they wake up every day in panic in anticipation of news about their loved ones, it has been over two decades and no information has been passed on about the Gjakova disappeared persons, reports *NewBorn* newspaper.

However, it appears that Gjakova former police commander during the rule of Milosevic, Milan STOJANOVIC, is a close collaborator of the Specialist Chambers despite the fact that he is responsible for the Meja massacre in Gjakova.

Former commander Milan STOJANOVIC is cooperating with the Specialist Chambers in order to find evidence against the former KLA soldiers.

NewBorn newspaper obtained a document confirming the collaboration of STOJANOVIC with the Specialist Chambers.”

86. The article does not state that it obtained that document from the KLA WVA.
87. It is assumed that the author of the article, and the editors of *Gazeta Newborn* who published it online, quite rightly maintain that publication thereof was in the public interest and in the lawful and proper exercise of the right of freedom of expression. As far as the Accused is aware, no proceedings are faced by the author of that article for the publication in national media of the identity of the persons therein.

Paragraph 18

88. The Accused was clear in that interview that no witness names were to be mentioned³².
89. As is set out in paragraph 18, the Accused made it clear that the unknown person who had delivered Batch 1 had indicated that more disclosures were promised. As stated above, although the SPO were alerted to the potential of further deliveries being made after the delivery of Batch 1 and after the delivery of Batch 2, no attempts were made to physically prevent the further delivery of further Batches (such as the obvious tactic of placing the entrances to the KLA WVA HQ under observation, with officers in place to seize any further batches before delivery was effective). The inference to be drawn is that the SPO wanted the delivery of Batches 2 and 3 (and, indeed Batch 1 also) to the KLA WVA HQ to be effective.

Paragraph 19

90. The Accused mentioned no witness' name therein. Each of the persons mentioned therein had been unlawfully killed or imprisoned, or had otherwise suffered at the hands of Serbia, the very country the SPO incredulously now sought information from.

³² ERN 081358-01-TR-ET at page 6 lines 29-30

91. As stated above, and contrary to what is asserted in paragraph 19, the SPO had leaked the existence of an unconfirmed indictment in which they had charged Hashim Thaçi and others. The collaboration between the SITF/SPO and the Serbian Prosecutor's Office in that investigation was well known and had been made public previously by Vladimir Vukcevic and by Clint Williamson.

Paragraph 20

92. The Accused did not identify any individual therein.
93. The Accused did express his fear that malicious prosecutions were imminent based on the systematic fabrication of false evidence organised by Serbian authorities³³.
94. The Accused is entitled to hold that belief and to publicly express it.
95. The Accused is similarly entitled to – and moreover has every reason to - hold the belief that the Serbian authorities, who refuse to accept Kosovo's independence, do not have the best interests of Kosovo (or the KLA which fought for Kosovo's independence) at heart. The Accused is entitled to publicly express that belief.
96. The Accused is similarly entitled to hold and express the opinion that those who lie let down their country.

³³ ERN 081358-01-TR-ET at page 11 lines 19 to 28

Paragraph 21

97. The Accused maintains that it is right that the public are informed that the SPO has collaborated with the Serbian authorities.
98. The Accused does not accept the assertion that, 'when the presenter noted that things could happen because the documents contained names, GUCATI responded that this could happen'. That exchange is not audible on the footage and the transcript ERN 081358-01-TR-ET at page 8 is incorrect.
99. Instead, the Accused repeated that no witness names were released by the KLA WVA and he raised again the issue as to who had leaked the material in the first instance.

Paragraph 22

100. The Accused was not present and the SPO does not propose to call the author of the Official Note ERN 083988-083991 RED as a witness to those events. The contents of paragraph 22 are not accepted in the circumstances and the Accused objects to the admissibility of ERN 083988-083991 RED.

Paragraph 23

101. The Accused was not present on 8 September 2020. The Accused was not made aware of the contents of the First Order by the SPO or any other person.

102. SPO officers told those who were present that the KLA WVA could keep the documents for up to one month.

Paragraph 24

103. The Accused was not present and the SPO does not propose to call the author of the Official Note ERN 083988-083991 RED as a witness to those events. The contents of paragraph 24 are not accepted in the circumstances and the Accused objects to the admissibility of ERN 083988-083991 RED.

Paragraphs 25-29

104. In the absence of disclosure of Batch 1, the assertions set out herein are not accepted. The Accused objects to the admissibility of ERN 084015-084026, 091791-091792, 093492-093590 and the Annexes thereto.

Paragraph 30-31

105. The Accused was not present and did not participate in either event.

Paragraph 32

106. Only the first post was shared on the GUCATI Facebook page (not the subsequent comment).

107. The CCTV referred to therein showed the delivery of the documents to the KLA WVA. When the SPO attended the KLA WVA HQ on 8th September 2020 the attention of SPO Officers was drawn to the CCTV, which may have assisted in identifying and tracing the deliverer of Batch 1, yet they were disinterested (the CCTV was not seized until 25th September 2020). The inference to be drawn is that the SPO already knew the identity of the person making the delivery.

Paragraph 33

108. The Accused was unaware of this post.

Paragraph 34

109. The Accused was not present and the SPO does not propose to call the author of the Official Note ERN 083988-083991 RED as a witness to those events. The Accused objects to the admissibility of ERN 083988-083991 RED.

110. The Accused was not present and the SPO does not propose to call the author of the Official Note ERN 083896-083987 RED as a witness to those events. The Accused objects to the admissibility of ERN 083986-083987 RED, 091907-091917 RED, and 091927-091930.

Paragraphs 35-36

111. In the absence of disclosure of Batches 1 and 4, the assertions set out herein are not accepted. The Accused objects to the admissibility of ERN 091927-091930.

112. The Accused was not present and the SPO does not propose to call the author of the Official Note ERN 083999-083999 or the author of the email referred to therein. The Accused objects to the admissibility of ERN 083999-083999 and 084000-084001 RED.

Paragraphs 37-40

113. The Accused was not present and did not participate.

Paragraph 41

114. Batch 2 was delivered on 16th September 2020 by another unknown male. The Accused was not expecting a delivery of further documents that day but was aware that further documentation might be brought to the KLA WVA HQ at some point (see earlier).

115. According to the SPO, Batch 2 consisted of 937 pages in total, of which 931 pages (which have been disclosed) were publicly available records from prior

proceedings in Kosovo and the ICTY and which do not bear any logos or marks typical of SITF or SPO documents. According to the SPO, the remaining 6 pages (which have not been disclosed) were included in Batch 1³⁴.

116. Although the SPO seemingly made no attempt to keep watch, and certainly made no attempt to prevent a further delivery of documentation, the delivery of Batch 2 was observed and recorded by a journalist and cameraman from the media outlet Arbresh Info³⁵. They observed a car containing two persons pull up a short distance from the KLA WVA HQ and a male in dark clothing, a cap, mask and gloves exit the passenger side of the car. The male retrieved some big boxes from the car and then made his way to the entrance of the KLA WVA HQ. A short time later, the man exited the building and ran away through a tunnel.

117. The SPO has made no contact with the journalist who observed the above.

118. Although the SPO were alert to the potential of further deliveries being made after the delivery of Batch 1 (i) no attempt was made to physically prevent the further delivery of further Batches (such as the obvious tactic of placing the entrances to the KLA WVA HQ under observation, with officers in place to seize any further batch before delivery was effective) and (ii) no attempt to contact the journalist who observed the making of the delivery in order to attempt to identify and trace the deliverer. The CCTV from the KLA WVA HQ was again ignored by the SPO after the delivery of Batch 2.

119. The inference to be drawn is that the SPO wanted the delivery of Batch 2 (which consisted, in any event, of already public documentation) to be

³⁴ KSC-BC-2020-07/F00110 confidential at paragraph 22

³⁵ ERN 083171-083173

effective and, indeed, knew the identity of the person making the delivery all along.

120. During the press conference on 16th September, the Accused again did not mention the name of any witness.

121. As set out during the conference, the Accused acted under the belief, pursuant to legal advice, that they were acting lawfully³⁶. The Accused maintains that they were acting lawfully.

122. No threat was made during the conference and intimidation was specifically renounced as a betrayal of Kosovo³⁷.

123. The Accused did refer to [REDACTED].

124. The purpose of doing so was to continue to inform the public that the SPO cooperates with Serbian officials, a matter of legitimate public interest which raises questions about the independence and impartiality of the SPO³⁸, as does the silence of the SPO in relation to the investigation of alleged offences in Kosovo between 1998 and 2000 by Serbians and Serbian authorities.

125. Although reference was subsequently made in the conference to the locations [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]³⁹, it was not stated that they were locations of interest to SITF/SPO investigations.

³⁶ ERN 081344-02-TR-ET pages 4 and 7; ERN 082106-01-TR-ET at page 2

³⁷ ERN 081344-02-TR-ET page 4

³⁸ ERN 081344-02-TR-ET at page 1

³⁹ In any event, it is noted that [REDACTED], [REDACTED], [REDACTED] and [REDACTED], at least, have already been the subject of high profile trials

126. The indictments of Ramush Haradinaj (IT-04-84) and Fatmir Limir (IT-03-66) before the ICTY are both publicly available. Mr Haradinaj and Mr Limir were found not guilty on all counts that they faced.

127. It was not stated that there was any 'duty to discredit the SC'. It was stated that no one had discredited the SC/SPO more than it had discredited itself by allowing leaks (such as the leaking by the SPO of the existence of the unconfirmed indictment against Mr Thaçi and others contrary to Rules 85(4), 86(2) and 88).

128. The Accused did make clear that they were 'not against the investigation of crimes' but were opposed to a 'one-sided' approach.

Paragraph 44

129. Although it is asserted therein that 'GUCATI appeared on several television programmes after the Second Press Conference, ensuring that the contents of the First and Second Disclosures achieved maximum dissemination', no specific programme, or conduct on the part of the Accused, is identified. In any event, the Second Disclosure consisted of publicly available documentation and the Accused does not accept that there was anything confidential and non-public in the First Disclosure.

Paragraphs 45 to 46

130. The Accused was not present and did not participate.

Paragraph 47

131. The account of the attendance at the KLA WVA HQ in the Official Note at ERN 082010-082013 RED is inaccurate and misleading. In the absence of the SPO calling the author of the note as a witness, the Accused objects to the admissibility of ERN 082010-082013 RED.
132. Copies of ERN 092017-092027; 091981-091991 were not provided to the Accused in Albanian.
133. SPO officers had previously informed KLA WVA persons that they could retain such material for up to one month.
134. The Accused specifically invited the SPO Officer [REDACTED] (the author of the Official Note) to work with the KLA WVA to identify the person(s) making the deliveries to the KLA WVA HQ. The SPO officer was disinterested.
135. [REDACTED] was given access to an image of the vehicle in which the deliverer attended but did not retain it. [REDACTED] was provided with the index number of the vehicle, but no attempt to trace it was undertaken by the SPO until 25th November 2020⁴⁰, months after the delivery of Batches 2 and 3, and the sham interview of the owner not conducted until 18th December 2020⁴¹. The inference to be drawn is that the SPO knew the identity of the person making the delivery of Batch 2 all along and was not concerned about stopping a further delivery (Batch 3).

⁴⁰ ERN 089049-089053 RED

⁴¹ ERN 088935-TR-ET Part 1 RED and 088935-TR-ET Part 2

136. The Accused had noticed the same car following him in the days leading up to 16th September 2020. The Accused told [REDACTED] this but he was disinterested. The inference to be drawn is that the SPO were not watching the KLA WVA HQ to prevent a further delivery of documentation being made, but they were watching the Accused in the days between the delivery of Batch 1 and Batch 2.

Paragraph 48

137. The Accused did not publish any witness' name and did not imperil any lives. Copies of Batch 2 were taken by journalists. The SPO staff retrieved the remaining copies.

Paragraph 49

138. In the absence of disclosure, the Accused does not accept that six pages of Batch 2 contained references to the identity and personal data of protected witnesses. The Accused objects to the admissibility of ERN 084015-084026 and 093493-093493 and Annexes thereto.

Paragraphs 50-51

139. The Accused's conduct is as seen and heard on the footage.

140. It is in the public interest that the public are informed that the SPO collaborates with Serbian authorities, a matter which raises legitimate concerns about the independence and impartiality of the SPO, as does the silence of the SPO in relation to the investigation of alleged offences in Kosovo between 1998 and 2000 by Serbians and Serbian authorities.

141. As stated in the press conference, the Accused and the KLA WVA has never been opposed to the investigation and prosecution of criminal offences, whoever committed them⁴². The Accused, however, is rightly opposed to the injustice of 'selective justice' and has consistently been opposed to the administration of injustice.

142. The Accused acted in the belief, on legal advice, that it was lawful to provide the documentation to the press and to make public the relations between officials of the SPO/SC with Serbian prosecution authorities⁴³.

Paragraph 52

143. The Accused was not present and did not participate.

Paragraph 53

144. The Accused was not present and did not participate.

⁴² ERN 081347-01-TR-ET at page 3

⁴³ ERN 081347-01-TR-ET at page 3-4

Paragraph 54

145. The Accused was not present and did not participate.

Paragraph 55

146. The Accused was not present and did not participate.

147. It is noted, however, the article referred to therein appears to be the same article as referred to in paragraphs 78-79 above. It is assumed that the author of the article, and the editors of Gazeta Newborn who published it online, quite rightly maintain that publication thereof was in the public interest and in the lawful and proper exercise of the right of freedom of expression. As far as the Accused is aware, no proceedings are faced by the author of that article for the publication in national media of the identity of the persons therein.

148. It is not accepted that the source of any material referred to in the media was the KLA WVA. As set out above, the Accused assumed that the same material had been leaked to other persons and organisations by those behind the delivery of Batch 1 to the KLA WVA HQ. The SPO are required to prove that any reference to, or images of, documents appearing in the media are references to, or images of, documents obtained from the KLA WVA and not from another or other sources. In the absence of disclosure, the Accused objects to the admissibility of ERN 084015-084026.

Paragraphs 56-58

149. The Accused was not present and did not participate.

Paragraph 59

150. The article referred to therein states:

“Other documents speak of the cooperation the Specialist Chambers had with Serb officers who were in active duty during the time of the Butcher of Balkans, Slobodan MILOSEVIC.

Dusan KERANOVIC and Veljko LOJANICA are two names of Serb officers who were present in some the macabre massacres committed in Kosovo by the MILOSEVIC regime.

NewBorn newspaper obtained the document showing that these Serb offices were contacted by the Specialist Chambers in order to give testimony against the KLA and its members”.

151. It is assumed that the author of the article, and the editors of Gazeta Newborn who published it online, quite rightly maintain that publication thereof was in the public interest and in the lawful and proper exercise of the right of freedom of expression. As far as the Accused is aware, no proceedings are faced by the author of that article for the publication in national media of the identity of the persons therein.

152. It is not accepted that the source of any material referred to in the media was the KLA WVA. As set out above, the Accused assumed that material had been

leaked to other persons and organisations by those behind the delivery of Batch 1 to the KLA WVA HQ. The SPO are required to prove that any reference to, or images of, documents appearing in the media are references to, or images of, documents obtained from the KLA WVA and not from another or other sources. In the absence of disclosure, the Accused objects to the admissibility of ERN 084015-084026.

153. The Accused accepts that there was a Facebook account in his name which he had access to and, occasionally, did access. He did not, however, have sole access to the account and it was used by KLA WVA staff and family to post material.

Paragraphs 60-65

154. The Accused was not present and did not participate.

Paragraph 66

155. The Accused was not present and did not participate. In the absence of disclosure, the Accused objects to the admissibility of ERN 093492-093590.

Paragraph 67

156. The Accused accepts that there was a Facebook account in his name which he had access to and, occasionally, did access. He did not, however, have sole

access to the account and it was used by KLA WVA staff and family to post material.

157. In the post referred to, the allegation that there was an intention to intimidate was firmly repudiated as an ‘unfounded and clichéd allegation against the KLA WVA’⁴⁴.

158. It was also stated that:

“the documents... were leaked by the Court itself, for their own purposes, which we are not privy to. The KLA WVA was chosen by them, or their connections as the addressee for these files”.

159. The post continued:

“The files handed over the KLA WVA offices do not reveal anything new”.

160. Without reference to the name of any specific witness, the post did raise legitimate concerns about the independence and impartiality of the investigations undertaken by the SPO and the veracity of material gathered:

“We have said it publicly previously, several years before the files’ scandal occurred, that part of the witnesses processed in Serbia were war prisoners or detainees and that their testimonies were taken under torture and duress. Others were asylum seekers and they made statements for the purpose of being granted asylum status, i.e. they lied in their statements against the KLA.

⁴⁴ ERN 081983-081988-ET-Revised at page 2

Yet another group of witnesses are tools of political parties and were urged to testify because of political rivalries.

...All the suspicions and allegations against KLA members originate in Serbia and all the witnesses were processed in Serbia; the Specialist Chambers received the statements and allegations against the KLA from Serbia. This means that we are being put on trial by Serbia rather than the Specialist Chambers ... we are being condemned through accusations drawn up in Serbia, by an aggressor that destroyed the Albanian people during the time we were under occupation.”

161. Certainly, the Accused feared that malicious prosecutions were imminent based on the systematic fabrication of false evidence organised by Serbian authorities. It was – and is - in the public interest that the public are informed that the SPO collaborates with Serbian authorities, a matter which raises legitimate concerns about the independence and impartiality of the SPO, as does the silence of the SPO in relation to the investigation of alleged offences in Kosovo between 1998 and 2000 by Serbians and Serbian authorities.

162. The Accused and the KLA WVA has never been opposed to the investigation and prosecution of criminal offences, whoever committed them⁴⁵. The Accused, however, is rightly opposed to the injustice of ‘selective justice’ and has consistently been opposed to the administration of injustice.

Paragraph 68

⁴⁵ ERN 081347-01-TR-ET at page 3

163. The Accused does not accept the account provided in ERN 093457-093458-ET (for example, [REDACTED] and the SPO does not propose to call the author of ERN 083988-083991 or any of the [REDACTED] or [REDACTED] as a witness to those events. The Accused objects to the admissibility of ERN 093457-093458.

Paragraph 69

164. Despite a clear and consistent pattern having emerged, the SPO seemingly made no attempt to keep watch, and certainly made no attempt to prevent a further delivery of documentation (such as the obvious tactic of placing the entrances to the KLA WVA HQ under observation, with officers in place to seize any further batches before delivery was effective). The inference to be drawn is that the SPO wanted the delivery of Batch 3 to the KLA WVA HQ to be effective.

165. The Accused's conduct in the press conference can be seen and heard in the footage.

Paragraph 70

166. The existence of an unconfirmed indictment charging Hashim Thaçi, Kadri Veseli and others with nearly 100 murders was leaked by the SPO on 24th June 2020, contrary to Rules 85(4), 86(2) and 88.

Paragraph 71-78

167. The conduct of the Accused and others during the press conference can be seen and heard in the footage.
168. The Accused does not accept that anything said or done was unlawful. The Accused does not accept that the identity and personal data of any protected witness or non-public and confidential information was revealed.
169. The Accused does not accept that '[REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]' are crime sites. Plainly in contrast to the SPO, the Accused believes in the principle, consistent with the burden and standard of proof, that it is for the prosecution to prove in a court of law that a crime was committed rather than to simply pronounce it so.
170. [REDACTED] is a person who has been a vocal, open and public collaborator with authorities investigating the KLA⁴⁶.
171. The name [REDACTED] was introduced by a journalist. It is assumed that that journalist quite rightly maintains that asking about [REDACTED] was in the public interest and in the lawful and proper exercise of the right of freedom of expression. As far as the Accused is aware, no proceedings are faced by the author of that journalist for referring to [REDACTED] during the press conference.

⁴⁶ For example, see [Naim Miftari: Ua bej 500 herë më zi se nazim Bllaca - Zëri i Kosovës - Themeluar më 1981 \(zerikosoves.com\)](http://zerikosoves.com)

172. Indeed, [REDACTED] was publicly named by the rapporteur Dick Marty as a “whistleblower” who claimed publicly to have carried out murders upon orders before he was arrested and placed under protection⁴⁷. As far as the Accused is aware, no proceedings are faced by Dick Marty for revealing a detailed account of [REDACTED] collaboration.

Paragraph 79

173. The content of the Official Note ERN 082014-082016 is not accepted. The Accused does not accept that a copy of SPOE00220914-00220914 was served in full upon Tome Gashi. The SPO does not propose to call the author of ERN 082014-082016. The Accused objects to the admissibility of ERN 082014-082016.

174. The Accused notes that both SPOE00220914-00220914 and SPOE00220915-00220915 are both in English, and that the date on SPOE00220914-00220914 was originally 9 September 2020.

175. It is further noted that the order SPOE00220914-00220914 dated 9 September 2020 refers to ‘[REDACTED]’ of the Specialist Prosecutor’s Office (some 13 days before the delivery of Batch 3 to the KLA WVA HQ actually took place).

Paragraph 80

⁴⁷ The Marty Report, 12 December 2010, [Microsoft Word - ajdoc46 2010 prov amended.doc \(coe.int\)](#)

176. The Accused had again noticed that he was under surveillance by car on 18th, 19th and 20th September 2020. The Accused again mentioned that fact to [REDACTED]. Again, [REDACTED] was disinterested. The inference to be drawn is that the SPO were not watching the KLA WVA HQ to prevent a further delivery of documentation being made, but they were watching the Accused in the days between the delivery of Batch 2 and Batch 3.

Paragraph 81

177. In the absence of disclosure of Batch 3, the assertions set out herein are not accepted. The Accused objects to the admissibility of ERN 084015-084026 and 093492-093590.

Paragraph 82

178. It is not accepted that the source of any material referred to in the media was the KLA WVA. The Accused assumed that material had been leaked to other persons and organisations by those behind the delivery of Batch 3 to the KLA WVA HQ. The SPO are required to prove that any reference to, or images of, documents appearing in the media are references to, or images of, documents obtained from the KLA WVA and not from another or other sources.

179. Specifically, the article ERN 081381-081391 (referred to at footnote 224) states that: “We have secured the complete 260-page dossier, marked confidential, *from a source in the Specialist Prosecution Office in the Hague*”.

Paragraphs 83-85

180. The conduct of the Accused and others can be seen and heard on the footage.

181. The Accused does not accept that anything said or done was unlawful. The Accused does not accept that the identity and personal data of any protected witness or non-public and confidential information was revealed.

Paragraph 86

182. The conduct of the Accused can be seen and heard on the footage.

183. As the Accused stated therein, the Accused and the KLA WVA are not opposed to justice, but they do oppose the injustice of 'selective justice'⁴⁸.

184. The Accused feared that malicious prosecutions were imminent based on the systematic fabrication of false evidence organised by Serbian authorities. It was – and is - in the public interest that the public are informed that the SPO collaborates with Serbian authorities, a matter which raises legitimate concerns about the independence and impartiality of the SPO, as does the silence of the SPO in relation to the investigation of alleged offences in Kosovo between 1998 and 2000 by Serbians and Serbian authorities.

Paragraphs 87-89

⁴⁸ ERN 082106-02-TR-ET Revised 1 at page 1

185. The conduct of the Accused can be seen and heard on the footage.
186. The Accused repeated his belief that he had acted entirely within the law: “We know that we haven’t done anything illegal, we know that we haven’t done anything that is against the law”⁴⁹.
187. The Accused maintains that he acted entirely within the law.
188. Nothing stated by the Accused therein establishes that his constitutional right to access the documents of public institutions and organs of state authorities (SITF/SPO/SC) was lawfully limited.
189. The Accused specifically rejected the allegation of an intention to undermine the administration of justice⁵⁰. As the Accused stated therein, the Accused and the KLA WVA are not opposed to justice, but they do rightly oppose the injustice of ‘selective justice’:
- “As far as justice and us is concerned, we are all for an honest justice, and not a selective justice or a one-sided justice”.
190. The Accused feared that malicious prosecutions were imminent based on the systematic fabrication of false evidence organised by Serbian authorities. It was – and is - in the public interest that the public are informed that the SPO collaborates with Serbian authorities, a matter which raises legitimate concerns about the independence and impartiality of the SPO, as does the silence of the SPO in relation to the investigation of alleged offences in Kosovo between 1998 and 2000 by Serbians and Serbian authorities.

⁴⁹ ERN 082106-01-TR-ET at page 2 lines 1-2

⁵⁰ ERN 082106-01-TR-ET at page 1 lines 8-9

Paragraphs 90-95

191. The Accused was not present and did not participate.

Paragraph 96-101

192. The Accused denies that he obstructed official persons in performing official duties (Count 1) – see above.

193. No threats, serious or otherwise, direct or indirect, were made at the SPO, SPO officials including Prosecutors, investigators and other staff members or witnesses.

194. In accordance with Article 2(3) of the KCC, the criminal offence in Count 1 is to be strictly construed and interpretation by analogy shall not be permitted.

195. The attempt by the Specialist Prosecutor's Office to interpret Article 401 of the KCC through the lens of the fossilised case-law of the regimes of Communist Yugoslavia and Slobodan Milosevic's Serbia is repugnant and is to be rejected as a grossly inappropriate attempt to re-attach the legal shackles of those regimes over Kosovo, many years after Kosovo has rightly and proudly broken free of them⁵¹.

⁵¹ "Annex 2 to the Submission of Indictment for Confirmation and Related Requests – Rule 86(3)(b) Outline", KSC-BC-2020-07/F00063/A02, Footnote 11

Paragraph 101

196. The only impact from the Accused's actions was that the public were informed that the SPO collaborates with Serbian authorities, a matter which raises legitimate concerns about the independence and impartiality of the SPO, as does the silence of the SPO in relation to the investigation of alleged offences in Kosovo between 1998 and 2000 by Serbians and Serbian authorities.

197. The Accused specifically rejects the allegation of an intention to undermine the administration of justice. As the Accused has repeatedly stated, the Accused is not opposed to justice, but he does rightly oppose the injustice of 'selective justice':

"As far as justice and us is concerned, we are all for an honest justice, and not a selective justice or a one-sided justice".

198. The Accused feared that malicious prosecutions were imminent based on the systematic fabrication of false evidence organised by Serbian authorities. The Accused hoped that the potential impact of his actions, by causing the SPO to reconsider its collaboration with Serbia and one-sided approach, would be to avoid malicious prosecutions based on the systematic fabrication of false evidence organised by Serbian authorities, and the establishment of an independent and impartial investigation into all criminal offences committed by whoever. Unfortunately, that potential impact has not yet been realised.

199. The SPO does not intend to call either the authors or the subjects of the exhibits referred to in footnote 281. The Accused does not accept a single word of what

is said therein and objects to the admissibility of the exhibits referred to in footnote 281.

Paragraph 102

200. The Accused denies any intention to obstruct official persons in performing official duties (see above).

Paragraph 103

201. The Accused denies making public confidential and non-public documents and the identities and personal details of witnesses (see above).

Paragraph 104

202. The Accused denies making clear any intention to obstruct the work of the SC/SPO. The Accused is not opposed to the administration of justice. The Accused is rightly opposed to the injustice of 'selective justice'.

Paragraph 105

203. The Accused was perfectly entitled to hold and express the views set out therein. Serbia and the SPO may dislike it, but Kosovo is a modern, liberal and independent democracy.

Paragraph 106

204. The Accused was not present and did not participate.

Paragraph 107

205. The Accused was not present and did not participate (in relation to the third press conference, see above).

Paragraph 108

206. The SPO selectively omits the concern expressed by the Accused related to the fact that the purported summonses failed to make clear the critical distinction as to whether persons had been summonsed in the capacity of a witness or a suspect⁵². The purported summonses were, as the Accused put it, inappropriately similar to the requests for 'informative talks' held by the former Yugoslav security services⁵³.

Paragraph 109

⁵² ERN 089185-02-TR-ET at page 1

⁵³ ERN 089185-03-TR-ET at page 1

207. The Accused was perfectly entitled to hold and express the views set out therein. Serbia and the SPO may dislike it, but Kosovo is a modern, liberal and independent democracy.

Paragraph 110

208. The Accused does not accept that anything stated therein amounts to an intention to obstruct the administration of justice.

209. Indeed, in ERN SPOE00222219-SPOE00222219-ET, the 'public request' was specifically made 'to the Specialist Prosecutor of the Specialist Chambers to call [the public figure] as soon as possible for an interview in the capacity as a "serious witness" ... in order to produce evidence for the crimes he alleges to have been committed because KLA WVA supports the uncovering and punishment of all crimes" (see also ERN SPOE00222268-SPOE00222268-ET, where it was stated that the KLA WVA called on the justice authorities to summons the public figure in order for him to produce the evidence which he was using to accuse the KLA of war crimes).

Paragraph 111

210. The leak by the SPO on 24th June 2020 making public the existence of an unconfirmed indictment charging Hashim Thaçi, Kadri Veseli and others with nearly 100 murders did take the Accused and others by surprise as it was revealed contrary to Rules 85(4), 86(2) and 88. That tactical leak appeared to be, at least in part, politically motivated as it was timed to coincide with the

travel of Mr Thaçi to meet with President Trump of the United States of America with a view to seeking an agreement which would include the recognition of Kosovo's independence by Serbia. That attempt to seek a permanent peace was stalled indefinitely and deliberately by a tactical leak from the SPO contrary to Rules 85(4), 86(2) and 88.

Paragraph 112

211. The conduct of the Accused can be seen and heard on the footage. The Accused was perfectly entitled to hold and express the views set out therein. Serbia and the SPO may dislike it, but Kosovo is a modern, liberal and independent democracy. As set out therein, the Accused has no knowledge of witnesses being threatened.

Paragraph 113

212. The Accused was not present and did not participate.

Paragraph 114

213. The Accused was not present and did not participate.

214. It is noted, however, that the SPO has selectively quoted from ERN 083985-03-TR-ET. The full quote, as transcribed in ERN 083985-03-TR-ET at least, reads as follows: "it is just a pamphlet of the court, outside the legal

requirements, because the indictment is not yet ... it has just been sent to the pre-trial judge. So, as far as we are concerned, in fact ... this action has more the semblance of a media war, and it is blackmail in relation to the meetings we are having ... in the United States ... than of a real indictment.”

Paragraph 115

215. There was no agreed form of words to be used during the conference itself and each participant spoke on their own initiative and responsibility. The Accused does not accept that anything stated therein amounts to an intention to obstruct the administration of justice in any event. The conduct of the Accused can be seen and heard on the footage.

Paragraph 116

216. The Accused was not present and did not participate.

Paragraph 117

217. The Accused was not present and did not participate.

Paragraph 118

218. There was no agreed form of words to be used during the conference itself and each participant spoke on their own initiative and responsibility. The Accused does not accept that anything stated therein amounts to an intention to obstruct the administration of justice in any event. The conduct of the Accused can be seen and heard on the footage.

Paragraph 119

219. The Accused was not present and did not participate.

Paragraph 120

220. The Accused was not present and did not participate.

Paragraph 121

221. The Accused's conduct is as seen and heard on the footage.

222. It is in the public interest that the public are informed that the SPO collaborates with Serbian authorities, a matter which raises legitimate concerns about the independence and impartiality of the SPO, as does the silence of the SPO in relation to the investigation of alleged offences in Kosovo between 1998 and 2000 by Serbians and Serbian authorities.

223. As stated in the press conference, the Accused and the KLA WVA has never been opposed to the investigation and prosecution of criminal offences, whoever committed them⁵⁴. The Accused, however, is rightly opposed to the injustice of 'selective justice' and has consistently been opposed to the administration of injustice.

224. The Accused acted in the belief, on legal advice, that it was lawful to provide the documentation to the press and to make public the relations between officials of the SPO/SC with Serbian prosecution authorities⁵⁵.

Paragraph 122

225. The Accused was not present and did not participate.

Paragraph 123

226. The Accused was not present and did not participate.

Paragraph 124

227. The Accused was not present and did not participate.

⁵⁴ ERN 081347-01-TR-ET at page 3

⁵⁵ ERN 081347-01-TR-ET at pages 3-4

Paragraph 125

228. The Accused was not present and did not participate.

Paragraph 126

229. The conduct of the Accused can be seen and heard on the footage.

230. As the Accused stated therein, the Accused and the KLA WVA are not opposed to justice, but they do oppose the injustice of 'selective justice'⁵⁶.

231. The Accused feared that malicious prosecutions were imminent based on the systematic fabrication of false evidence organised by Serbian authorities. It was – and is - in the public interest that the public are informed that the SPO collaborates with Serbian authorities, a matter which raises legitimate concerns about the independence and impartiality of the SPO, as does the silence of the SPO in relation to the investigation of alleged offences in Kosovo between 1998 and 2000 by Serbians and Serbian authorities.

Paragraph 127

⁵⁶ ERN 082106-02-TR-ET Revised 1 at page 1

232. The conduct of the Accused can be seen and heard on the footage.
233. The Accused repeated his belief that he had acted entirely within the law: “We know that we haven’t done anything illegal, we know that we haven’t done anything that is against the law”⁵⁷.
234. The Accused maintains that he acted entirely within the law.
235. Nothing stated by the Accused therein establishes that his constitutional right to access the documents of public institutions and organs of state authorities (SITF/SPO/SC) was lawfully limited.
236. The Accused specifically rejected the allegation of an intention to undermine the administration of justice⁵⁸. As the Accused stated therein, the Accused and the KLA WVA are not opposed to justice, but they do rightly oppose the injustice of ‘selective justice’:
- “As far as justice and us is concerned, we are all for an honest justice, and not a selective justice or a one-sided justice”.
237. The Accused feared that malicious prosecutions were imminent based on the systematic fabrication of false evidence organised by Serbian authorities. It was – and is - in the public interest that the public are informed that the SPO collaborates with Serbian authorities, a matter which raises legitimate concerns about the independence and impartiality of the SPO, as does the

⁵⁷ ERN 082106-01-TR-ET at page 2 lines 1-2

⁵⁸ ERN 082106-01-TR-ET at page 1 lines 8-9

silence of the SPO in relation to the investigation of alleged offences in Kosovo between 1998 and 2000 by Serbians and Serbian authorities.

Paragraph 128

238. There was no agreed form of words to be used during the interview and each participant spoke on their own initiative and responsibility. The Accused does not accept that anything stated therein amounts to an intention to obstruct the administration of justice in any event.

239. The conduct of the Accused can be seen and heard on the footage.

240. It is in the public interest that the public are informed that the SPO collaborates with Serbian authorities, a matter which raises legitimate concerns about the independence and impartiality of the SPO, as does the silence of the SPO in relation to the investigation of alleged offences in Kosovo between 1998 and 2000 by Serbians and Serbian authorities.

241. As stated in the press conference, the Accused and the KLA WVA has never been opposed to the investigation and prosecution of criminal offences, whoever committed them⁵⁹. The Accused, however, is rightly opposed to the injustice of 'selective justice' and has consistently been opposed to the administration of injustice.

⁵⁹ ERN 081931-01-TR-ET at pages 4-5

242. The Accused acted in the belief, on legal advice, that it was lawful to provide the documentation to the press and to make public the relations between officials of the SPO/SC with Serbian prosecution authorities⁶⁰.

Paragraph 129

243. The Accused was not present and did not participate.

Paragraph 130

244. The Accused was not present and did not participate.

Paragraph 131

245. The Accused did not review the documents in any detail and did not display a high degree of familiarity with the contents thereof. At the First Press Conference, the Accused confirmed that others, who themselves had looked at the documents only briefly, were better informed than he⁶¹. At the Second Press Conference, the Accused confirmed that they did not have time to check the documents⁶². At the Third Press Conference, the Accused confirmed that

⁶⁰ ERN 081931-01-TR-ET at pages 2-5

⁶¹ ERN 081344-01-TR-ET Revised at page 1; see also ERN 081358-01-TR-ET at page 6

⁶² ERN 081344-02-TR-ET at page 1

he had less than 30 minutes with the documents⁶³. It is not understood what is meant by the suggestion that the Accused had a particular 'affinity' for the names of persons mentioned therein.

246. The documents were not made public by the Accused. The only persons who had access to the documents were professional and responsible members of the press.

Paragraph 132

247. The Accused confirmed that the documents had only been looked at briefly⁶⁴.

248. On the same day, the Accused acknowledged that the documents could be false⁶⁵.

Paragraph 133

249. The Accused again confirmed that the documents had only been looked at briefly⁶⁶.

250. The Accused acknowledged that the documents could be false⁶⁷.

⁶³ ERN 082136-01-TR-ET at page 2

⁶⁴ ERN 081344-01-TR-ET Revised at page 1; see also ERN 081358-01-TR-ET at page 6

⁶⁵ ERN 081358-01-TR-ET at pages 5-6

⁶⁶ ERN 081344-01-TR-ET Revised at page 1; see also ERN 081358-01-TR-ET at page 6

⁶⁷ ERN 081358-01-TR-ET at pages 5-6

Paragraphs 134 to 138

251. The Accused was not present and did not participate.

Paragraph 139

252. The Accused does not accept the account provided in ERN 093457-093458-ET (for example, [REDACTED] and the SPO does not propose to call the author of ERN 083988-083991 or any of the [REDACTED] or [REDACTED] as a witness to those events. The Accused objects to the admissibility of ERN 093457-093458.

253. At the Third Press Conference, the Accused stated that he had less than 30 minutes with the documents⁶⁸.

Paragraph 140

254. At the First Press Conference, the Accused confirmed that others, who themselves had looked at the documents only briefly, were better informed than he⁶⁹. At the Second Press Conference, the Accused confirmed that they

⁶⁸ ERN 082136-01-TR-ET at page 2

⁶⁹ ERN 081344-01-TR-ET Revised at page 1; see also ERN 081358-01-TR-ET at page 6

did not have time to check the documents⁷⁰. At the Third Press Conference, the Accused confirmed that he had less than 30 minutes with the documents⁷¹.

Paragraph 141

255. The Accused did not review the documents in any detail. The documents were not made public by the Accused. The only persons who had access to the documents were professional and responsible members of the press.

256. It is in the public interest that the public are informed that the SPO collaborates with Serbian authorities, a matter which raises legitimate concerns about the independence and impartiality of the SPO, as does the silence of the SPO in relation to the investigation of alleged offences in Kosovo between 1998 and 2000 by Serbians and Serbian authorities.

Paragraph 142

257. The Accused did not review the documents in any detail. The documents were not made public by the Accused. The only persons who had access to the documents were professional and responsible members of the press.

⁷⁰ ERN 081344-02-TR-ET at page 1

⁷¹ ERN 082136-01-TR-ET at page 2

258. The Accused did not know whether the documents (and any markings purporting to indicate confidentiality and/or internal work product) were authentic or false⁷².
259. The Accused acknowledges his right of access to documents of public institutions and organs of state authorities, as guaranteed under Article 41 of the Constitution of the Republic of Kosovo.
260. Article 41 provides that the right of access to documents of public institutions and organs of state authorities can be limited by law due to security classification, any such limitation must be strictly in accordance with the law on security classification, that is, the Law on Classification of Information and Security Clearances Law No.03/L-178, 1 July 2010.
261. Whereas the Specialist Prosecutor asserts that the Accused's right of access to records of the Specialist Chambers and the Specialist Prosecutor's Office is limited by Article 62 of the Law, Article 2 of the Law makes clear that (i) the Law is subject to Article 55 of the Constitution; and (ii) any limitations on fundamental rights and freedoms shall only be imposed to the extent necessary to fulfil the interest of Kosovo as an open and democratic society.
262. Article 55 of the Constitution requires all public authorities, and in particular courts, to pay special attention to the essence of the right limited, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and the purpose to be achieved and the review of the possibility of achieving the purpose with a lesser limitation. The limitation of fundamental rights and freedoms guaranteed by the Constitution shall in no way deny the essence of the guaranteed right.

⁷² ERN 081358-01-TR-ET at pages 5-6

263. In the present case, the SPO has not demonstrated in relation to Batches 1, 2 and 3 that any such limitation was necessary and not, for example: (i) imposed to conceal violations of law, abuse of authority, inefficiency or administrative error; or (ii) to prevent embarrassment to a person, public authority or organisation; or (iii) to prevent or delay the release of information, which is not otherwise clearly related to security considerations. The principles set out in the Law on Classification of Information and Security Clearances Law No.03/L-178 are valid. It is not accepted that the effect of Article 62 of the Law is to reverse the modern constitutional principle of openness and transparency, which courses through the veins of all public institutions in modern Kosovo, and to replace it with a presumption of secrecy in the case of the SC/SPO.

Paragraphs 143-144

264. The Accused does not accept that the documents delivered on 7 September 2020 contained confidential and non-public information.

265. The Accused does not accept that the documents delivered on 7 September 2020 were authentic⁷³.

266. The Accused did not review the documents in any detail.

267. In the absence of disclosure of Batch 1, the assertions set out herein are not accepted. The Accused objects to the admissibility of ERN 084015-084026, 091791-091792, 093492-093590 and the Annexes thereto.

⁷³ ERN 081358-01-TR-ET at page 5 line 27-28; 081358-01-TR-ET at page 6 line 3

Paragraph 145

268. The Accused does not accept that the documents delivered on 16 September 2020 contained confidential and non-public information.
269. The Accused does not accept that the documents delivered on 16 September 2020 were authentic.
270. The Accused did not review the documents in any detail.
271. In the absence of disclosure, the Accused does not accept that six pages of Batch 2 contained references to the identity and personal data of protected witnesses. The Accused objects to the admissibility of ERN 084015-084026 and 093493-093493 and Annexes thereto.

Paragraph 146

272. The Accused does not accept that the documents delivered on 22 September 2020 contained confidential and non-public information.
273. The Accused does not accept that the documents delivered on 16 September 2020 were authentic.
274. The Accused did not review the documents in any detail.

275. In the absence of disclosure of Batch 3, the assertions set out herein are not accepted. The Accused objects to the admissibility of ERN 084015-084026 and 093492-093590.

276. It is not accepted that the source of any material referred to in the media was the KLA WVA. As set out above, the Accused assumed that the same material had been leaked to other persons and organisations by those behind the delivery of Batches 1, 2 and 3 to the KLA WVA HQ. The SPO are required to prove that any reference to, or images of, documents appearing in the media are references to, or images of, documents obtained from the KLA WVA and not from another or other sources.

Paragraph 147

277. The Accused did not review the documents in any detail. The documents were not made public by the Accused. The only persons who had access to the documents were professional and responsible members of the press.

278. The Accused did not know whether the documents (and any markings purporting to indicate confidentiality and/or internal work product) were authentic or false⁷⁴.

279. The Accused acknowledges his right of access to documents of public institutions and organs of state authorities, as guaranteed under Article 41 of the Constitution of the Republic of Kosovo.

⁷⁴ ERN 081358-01-TR-ET at pages 5-6

280. Article 41 provides that the right of access to documents of public institutions and organs of state authorities can be limited by law due to security classification, any such limitation must be strictly in accordance with the law on security classification, that is, the Law on Classification of Information and Security Clearances Law No.03/L-178, 1 July 2010.
281. Whereas the Specialist Prosecutor asserts that the Accused's right of access to records of the Specialist Chambers and the Specialist Prosecutor's Office is limited by Article 62 of the Law, Article 2 of the Law makes clear that (i) the Law is subject to Article 55 of the Constitution; and (ii) any limitations on fundamental rights and freedoms shall only be imposed to the extent necessary to fulfil the interest of Kosovo as an open and democratic society.
282. Article 55 of the Constitution requires all public authorities, and in particular courts, to pay special attention to the essence of the right limited, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and the purpose to be achieved and the review of the possibility of achieving the purpose with a lesser limitation. The limitation of fundamental rights and freedoms guaranteed by the Constitution shall in no way deny the essence of the guaranteed right.
283. In the present case, the SPO has not demonstrated in relation to Batches 1, 2 and 3 that any such limitation was necessary and not, for example: (i) imposed to conceal violations of law, abuse of authority, inefficiency or administrative error; or (ii) to prevent embarrassment to a person, public authority or organisation; or (iii) to prevent or delay the release of information, which is not otherwise clearly related to security considerations. The principles set out in the Law on Classification of Information and Security Clearances Law No.03/L-178 are valid. It is not accepted that the effect of Article 62 of the Law

is to reverse the modern constitutional principle of openness and transparency, which courses through the veins of all public institutions in modern Kosovo, and to replace it with a presumption of secrecy in the case of the SC/SPO.

284. It is in the public interest that the public are informed that the SPO collaborates with Serbian authorities, a matter which raises legitimate concerns about the independence and impartiality of the SPO, as does the silence of the SPO in relation to the investigation of alleged offences in Kosovo between 1998 and 2000 by Serbians and Serbian authorities.

285. The Accused acted in the belief, on legal advice, that it was lawful to provide the documentation to the press and to make public the relations between officials of the SPO/SC with Serbian prosecution authorities⁷⁵.

Paragraph 148

286. There was no agreed form of words to be used during the conference and each participant spoke on their own initiative and responsibility.

287. The only persons who had access to the documents were professional and responsible members of the press.

288. The Accused did not review the documents in any detail. The Accused did not know whether the documents (and any markings purporting to indicate

⁷⁵ ERN 081347-01-TR-ET at page 3-4

confidentiality and/or internal work product) were authentic or false⁷⁶. It is noted that the SPO does not, in fact, allege that any document within Batch 1 bears the classification 'Top Secret'.

Paragraph 149

289. The Accused was not present and did not participate. It is noted that the SPO does not, in fact, allege that any document within Batch 1 bears the classification 'Top Secret'.

Paragraph 150

290. The Accused was not present and did not participate.

Paragraph 151

291. The Accused was not present and did not participate.

Paragraph 152

⁷⁶ ERN 081358-01-TR-ET at pages 5-6

292. The Accused accepts that there was a Facebook account in his name which he had access to and, occasionally, did access. He did not, however, have sole access to the account and it was used by KLA WVA staff and family to post material.

293. In the post referred to, the allegation that there was an intention to intimidate was firmly repudiated as an 'unfounded and cliched allegation against the KLA WVA'⁷⁷.

294. It was also stated that:

"the documents... were leaked by the Court itself, for their own purposes, which we are not privy to. The KLA WVA was chosen by them, or their connections as the addressee for these files".

295. The post continued:

"The files handed over to the KLA WVA offices do not reveal anything new".

296. Without reference to the name of any specific witness, the post did raise legitimate concerns about the independence and impartiality of the investigations undertaken by the SPO and the veracity of material gathered:

"We have said it publicly previously, several years before the files' scandal occurred, that part of the witnesses processed in Serbia were war prisoners or detainees and that their testimonies were taken under torture and duress.

⁷⁷ ERN 081983-081988-ET-Revised at page 2

Others were asylum seekers and they made statements for the purpose of being granted asylum status, i.e. they lied in their statements against the KLA. Yet another group of witnesses are tools of political parties and were urged to testify because of political rivalries.

...All the suspicions and allegations against KLA members originate in Serbia and all the witnesses were processed in Serbia; the Specialist Chambers received the statements and allegations against the KLA from Serbia. This means that we are being put on trial by Serbia rather than the Specialist Chambers ... we are being condemned through accusations drawn up in Serbia, by an aggressor that destroyed the Albanian people during the time we were under occupation.”

297. Certainly, the Accused feared that malicious prosecutions were imminent based on the systematic fabrication of false evidence organised by Serbian authorities. It was – and is - in the public interest that the public are informed that the SPO collaborates with Serbian authorities, a matter which raises legitimate concerns about the independence and impartiality of the SPO, as does the silence of the SPO in relation to the investigation of alleged offences in Kosovo between 1998 and 2000 by Serbians and Serbian authorities.

298. The Accused and the KLA WVA has never been opposed to the investigation and prosecution of criminal offences, whoever committed them⁷⁸. The Accused, however, is rightly opposed to the injustice of ‘selective justice’ and has consistently been opposed to the administration of injustice.

⁷⁸ ERN 081347-01-TR-ET at page 3

Paragraph 153

299. The conduct of the Accused can be seen and heard on the footage.

300. The Accused did not know whether the documents (and any markings purporting to indicate confidentiality) were authentic or false⁷⁹.

Paragraph 154

301. There was no agreed form of words to be used during the interview and each participant spoke on their own initiative and responsibility.

302. In any event, all that was acknowledged therein was that the material *appeared* to be sensitive and to relate to criminal investigations and that the SPO claimed ownership of the documentation.

Paragraph 155

303. The Accused has heeded the warning and has not disclosed any such information. The SPO does not identify any such occasion when the Accused has made such a disclosure.

⁷⁹ ERN 082106-01-TR-ET at page 11 line 1

304. The Accused did act in the belief, on legal advice, that it was lawful to provide the documentation to the press and to make public the relations between officials of the SPO/SC with Serbian prosecution authorities⁸⁰.

Paragraph 156

305. For the reasons set out above, the assertions set out herein are not accepted.

Paragraph 157

306. The Accused was clear in that interview that no witness names were to be mentioned⁸¹. The Accused did not identify any individual therein.

307. The Accused did express his fear that malicious prosecutions were imminent based on the systematic fabrication of false evidence organised by Serbian authorities⁸².

308. The Accused is entitled to hold that belief and to publicly express it. The Accused maintains that it is right that the public are informed that the SPO has collaborated with the Serbian authorities.

309. The Accused does not accept the assertion that, 'when the presenter noted that things could happen because the documents contained names, GUCATI

⁸⁰ ERN 081355-03-TR-ET Revised 1, pp.14-15; ERN 081347-01-TR-ET at pages 3-4

⁸¹ ERN 081358-01-TR-ET at page 6 lines 29-30

⁸² ERN 081358-01-TR-ET at page 11 lines 19-28

responded that this could happen'. That exchange is not audible on the footage and the transcript ERN 081358-01-TR-ET at page 8 is incorrect.

310. The Accused did make it clear that the unknown person who had delivered Batch 1 had indicated that more disclosures were promised. As stated above, although the SPO were alerted to the potential to further deliveries being made after the delivery of Batch 1 and after the delivery of Batch 2, no attempts were made to physically prevent the further delivery of further Batches (such as the obvious tactic of placing the entrances to the KLA WVA HQ under observation, with officers in place to seize any further batches before delivery was effective). The inference to be drawn is that the SPO wanted the delivery of Batches 2 and 3 (and, indeed Batch 1 also) to the KLA WVA HQ to be effective.

Paragraph 158

311. The Accused was not present and did not participate.

Paragraph 159

312. The Accused was not present and did not participate.

Paragraph 160

313. The account of the attendance at the KLA WVA HQ in the Official Note at ERN 082010-082013 RED is inaccurate and misleading (see above). In the absence of the SPO calling the author of the note as a witness, the Accused objects to the admissibility of ERN 082010-082013 RED.

Paragraph 161

314. The Accused was not present and did not participate.

Paragraph 162

315. The Accused was not present and did not participate.

Paragraph 163

316. The Accused accepts that there was a Facebook account in his name which he had access to and, occasionally, did access. He did not, however, have sole access to the account and it was used by KLA WVA staff and family to post material.

317. In the post referred to, the allegation that there was an intention to intimidate was firmly repudiated as an ‘unfounded and clichéd allegation against the KLA WVA’⁸³.

318. It was also stated that:

“the documents... were leaked by the Court itself, for their own purposes, which we are not privy to. The KLA WVA was chosen by them, or their connections as the addressee for these files”.

319. The post continued:

“The files handed over to the KLA WVA offices do not reveal anything new”.

320. Without reference to the name of any specific witness, the post did raise legitimate concerns about the independence and impartiality of the investigations undertaken by the SPO and the veracity of material gathered:

“We have said it publicly previously, several years before the files’ scandal occurred, that part of the witnesses processed in Serbia were war prisoners or detainees and that their testimonies were taken under torture and duress. Others were asylum seekers and they made statements for the purpose of being granted asylum status, i.e. they lied in their statements against the KLA. Yet another group of witnesses are tools of political parties and were urged to testify because of political rivalries.

⁸³ ERN 081983-081988-ET-Revised at page 2

...All the suspicions and allegations against KLA members originate in Serbia and all the witnesses were processed in Serbia; the Specialist Chambers received the statements and allegations against the KLA from Serbia. This means that we are being put on trial by Serbia rather than the Specialist Chambers ... we are being condemned through accusations drawn up in Serbia, by an aggressor that destroyed the Albanian people during the time we were under occupation.”

321. Certainly, the Accused feared that malicious prosecutions were imminent based on the systematic fabrication of false evidence organised by Serbian authorities. It was – and is - in the public interest that the public are informed that the SPO collaborates with Serbian authorities, a matter which raises legitimate concerns about the independence and impartiality of the SPO, as does the silence of the SPO in relation to the investigation of alleged offences in Kosovo between 1998 and 2000 by Serbians and Serbian authorities.

322. The Accused and the KLA WVA has never been opposed to the investigation and prosecution of criminal offences, whoever committed them⁸⁴. The Accused, however, is rightly opposed to the injustice of ‘selective justice’ and has consistently been opposed to the administration of injustice.

Paragraph 164

⁸⁴ ERN 081347-01-TR-ET at page 3

323. There was no agreed form of words to be used during the conference and each participant spoke on their own initiative and responsibility.

324. The Accused did act in the belief, on legal advice, that it was lawful to provide the documentation to the press and to make public the relations between officials of the SPO/SC with Serbian prosecution authorities⁸⁵.

325. It is noted that it was the journalist who mentioned the name [REDACTED]. It is assumed that that journalist quite rightly maintains that asking about [REDACTED] was in the public interest and in the lawful and proper exercise of the right of freedom of expression. As far as the Accused is aware, no proceedings are faced by that journalist for referring to [REDACTED] during the press conference.

Paragraph 165

326. The Accused was not present and did not participate.

327. The documents were not made public by the Accused. The only persons who had access to the documents were professional and responsible members of the press.

Paragraph 166

328. The Accused was not lying.

⁸⁵ ERN 081355-03-TR-ET Revised 1, pp.14-15; ERN 081347-01-TR-ET at pages 3-4

329. The conduct of the Accused can be seen and heard on the footage.

330. The Accused repeated his belief that he had acted entirely within the law: “We know that we haven’t done anything illegal, we know that we haven’t done anything that is against the law”⁸⁶.

331. The Accused maintains that he acted entirely within the law.

332. Nothing stated by the Accused therein establishes that his constitutional right to access the documents of public institutions and organs of state authorities (SITF/SPO/SC) was lawfully limited.

333. The Accused specifically rejected the allegation of an intention to undermine the administration of justice⁸⁷. As the Accused stated therein, the Accused and the KLA WVA are not opposed to justice, but they do rightly oppose the injustice of ‘selective justice’:

“As far as justice and us is concerned, we are all for an honest justice, and not a selective justice or a one-sided justice”.

334. The Accused feared that malicious prosecutions were imminent based on the systematic fabrication of false evidence organised by Serbian authorities. It was – and is - in the public interest that the public are informed that the SPO collaborates with Serbian authorities, a matter which raises legitimate concerns about the independence and impartiality of the SPO, as does the

⁸⁶ ERN 082106-01-TR-ET at page 2 lines 1-2

⁸⁷ ERN 082106-01-TR-ET at page 1 lines 8-9

silence of the SPO in relation to the investigation of alleged offences in Kosovo between 1998 and 2000 by Serbians and Serbian authorities.

335. The documents were not made public by the Accused. The only persons who had access to the documents were professional and responsible members of the press.

Paragraph 168

336. For the reasons set out above, the assertions therein are not accepted.

Paragraph 169

337. The Accused was not present on 8th September 2020 and the SPO does not propose to call the author of the Official Note ERN 083988-083991 RED as a witness to those events. The contents of paragraph 22 are not accepted in the circumstances and the Accused objects to the admissibility of ERN 083988-083991 RED.

Paragraph 170

338. The account of the attendance at the KLA WVA HQ in the Official Note at ERN 082010-082013 RED is inaccurate and misleading. In the absence of the

SPO calling the author of the note as a witness, the Accused objects to the admissibility of ERN 082010-082013 RED.

339. Copies of ERN 092017-092027; 091981-091991 were not provided to the Accused in Albanian.

340. The Accused has complied with such oral instructions as were given to him. The documents were not made public by the Accused. The only persons who had access to the documents were professional and responsible members of the press.

341. The Accused specifically invited the SPO Officer [REDACTED] (the author of the Official Note) to work with the KLA WVA to identify the person(s) making the deliveries to the KLA WVA HQ. The SPO officer was disinterested.

342. [REDACTED] was given access to an image of the vehicle in which the deliverer attended but did not retain it. [REDACTED] was provided with the index number of the vehicle, but no attempt to trace it was undertaken by the SPO until 25th November 2020⁸⁸, months after the delivery of Batches 2 and 3, and the sham interview of the owner not conducted until 18th December 2020⁸⁹. The inference to be drawn is that the SPO knew the identity of the person making the delivery of Batch 2 all along and was not concerned about stopping a further delivery (Batch 3).

343. The Accused had noticed the same car following him in the days leading up to 16th September 2020. The Accused told [REDACTED] this but he was disinterested. The inference to be drawn is that the SPO were not watching

⁸⁸ ERN 089049-089053 RED

⁸⁹ ERN 088935-TR-ET Part 1 RED and 088935-TR-ET Part 2

the KLA WVA HQ to prevent a further delivery of documentation being made, but they were watching the Accused in the days between the delivery of Batch 1 and Batch 2.

Paragraph 171

344. The Accused was not present and did not participate.

345. A copy of ERN 092017-092027; 091981-091991 in Albanian was not shown to the camera.

346. The footage of the English version of the 'Decision Authorising a Seizure', apparently marked 'Strictly Confidential' (in English) was recorded by the broadcaster ABC News 24/7 in the presence of a journalist⁹⁰. It is assumed that that journalist and broadcaster quite rightly maintains that recording that footage was in the public interest and in the lawful and proper exercise of the right of freedom of expression. As far as the Accused is aware, no proceedings are faced by that journalist or broadcaster for recording that footage.

Paragraph 172

347. The content of the Official Note ERN 082014-082016 is not accepted. The Accused does not accept that a copy of SPOE00220914-00220914 was served in full upon Tome Gashi. The SPO does not propose to call the author of ERN

⁹⁰ ERN 081979-05, min.00:12:44-00:15:00

082014-082016. The Accused objects to the admissibility of ERN 082014-082016.

348. The Accused notes that both SPOE00220914-00220914 and SPOE00220915-00220915 are both in English, and that the date on SPOE00220914-00220914 was 9 September 2020 (before being altered by hand).

349. It is further noted that the order SPOE00220914-00220914 dated 9 September 2020 refers to '[REDACTED]' of the Specialist Prosecutor's Office (some 13 days before the delivery of Batch 3 to the KLA WVA HQ actually took place).

Paragraphs 173-177

350. For the reasons set out above, the assertions therein are not accepted.

351. The extent of any review of the material by the Accused has been set out above.

352. The conduct of the Accused can be seen and heard on the footage. The Accused's account and explanation of that conduct is set out in detail above.

Paragraph 178-179

353. For the reasons set out above, the assertions therein are not accepted.

354. In relation to ERN 081344-01-TR-ET, the Accused's conduct is as per can be seen and heard on the footage, as is the conduct of others.

355. The Accused maintains his belief, then and now, that everything said and done by all persons present during that press conference was lawful.

356. Nothing said therein amounted to a threat.

357. The Accused understands that his co-Accused and family have spent some 67 years as political prisoners at the hands of Serbian officials, as have many others in Kosovo.

358. It was entirely in the public interest for the public to be informed that the SPO (and SITF) has collaborated with:

- [REDACTED];
- [REDACTED];
- [REDACTED];
- [REDACTED]⁹¹;
- [REDACTED];

⁹¹ During the Siege of Dubrovnik, RTS claimed that smoke rising from the city's Old Town was the result of 'automobile tyres set on fire by locals'; during the Siege of Sarajevo, RTS newscasts showed an image of Sarajevo from the 1980s untouched, thereby downplaying the severity of the siege (on 20 April 1999, the Supreme Allied Commander Europe, General Wesley Clark, ordered that RTS was to be bombed off air – NATO officials stated that RTS was a legitimate target because of its biased and distorted coverage of the Kosovo War).

- [REDACTED];

- [REDACTED]⁹²;

- [REDACTED]

- [REDACTED]

359. [REDACTED], [REDACTED], [REDACTED] and [REDACTED]⁹³ were all subjected to unlawful oppression by Serbian forces during the war. The genuine public interest in these matters is demonstrated by the participation of the responsible media in the events of 7th September 2020 and thereafter.

360. Prior to 7th September 2020, [REDACTED]⁹⁴.

361. [REDACTED]⁹⁵.

362. [REDACTED].

363. In relation to ERN 082136-01-TR-ET Revised, the conduct of the Accused and others during the press conference can be seen and heard in the footage.

⁹² "Under Orders: War Crimes in Kosovo", Human Rights Watch, 2001, pages 200-209

⁹³ "Under Orders: War Crimes in Kosovo" at pages 119, 149, 200-209 and 337-343

⁹⁴ [Serbia 'Provided War Crimes Evidence' Against Kosovo President | Balkan Insight](#), BIRN, Milica Stojanovic, Belgrade 14 July 2020

⁹⁵ [Statement of the Chief Prosecutor of the SITF EN.pdf \(balkaninsight.com\)](#)

364. The Accused does not accept that anything said or done was unlawful. The Accused does not accept that the identity and personal data of any protected witness or non-public and confidential information was revealed.

365. The Accused does not accept that '[REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]' are crime sites. Plainly in contrast to the SPO, the Accused believes in the principle, consistent with the burden and standard of proof, that it is for the prosecution to prove in a court of law that a crime was committed rather than to simply pronounce it so.

366. [REDACTED] is a person who has been a vocal, open and public collaborator with authorities investigating the KLA⁹⁶.

367. The name [REDACTED] was introduced by a journalist. It is assumed that that journalist quite rightly maintains that asking about [REDACTED] was in the public interest and in the lawful and proper exercise of the right of freedom of expression. As far as the Accused is aware, no proceedings are faced by the author of that journalist for referring to [REDACTED] during the press conference.

368. Indeed, [REDACTED] was publicly named by the rapporteur Dick Marty as a "whistleblower" who claimed publicly to have carried out murders upon orders before he was arrested and placed under protection⁹⁷. As far as the

⁹⁶ For example, see [Naim Miftari: Ua bej 500 herë më zi se nazim Bllaca - Zëri i Kosovës - Themeluar më 1981 \(zerikosoves.com\)](#)

⁹⁷ The Marty Report, 12 December 2010, [Microsoft Word - ajdoc46 2010 prov amended.doc \(coe.int\)](#)

Accused is aware, no proceedings are faced by Dick Marty for revealing a detailed account of [REDACTED] collaboration.

369. The documents were not made public by the Accused. The only persons who had access to the documents were professional and responsible members of the press.

370. In relation to ERN, 081355-04, the Accused was not present and did not participate.

Paragraph 180

371. The Accused's conduct can be seen and heard on the footage.

372. In relation to ERN 081355-04, the Accused was not present and did not participate. It is noted, however, that references therein to exploitation, and risks to the person, appear to relate to exploitation by, and risks to the person from, Serbia.

Paragraph 181

373. The documents were not made public by the Accused. The only persons who had access to the documents were professional and responsible members of the press.

374. In relation to ERN 081355-02, the Accused was not present and did not participate.

Paragraph 182

375. The Accused was not present and did not participate.

Paragraph 183

376. There is nothing disparaging about speaking Albanian.

377. The Accused did express his fear that malicious prosecutions were imminent based on the systematic fabrication of false evidence organised by Serbian authorities⁹⁸.

378. The Accused is entitled to hold that belief and to publicly express it.

379. The Accused is similarly entitled to – and moreover has every reason to - hold the belief that the Serbian authorities, who refuse to accept Kosovo's independence, do not have the best interests of Kosovo (or the KLA which fought for Kosovo's independence) at heart. The Accused is entitled to publicly express that belief.

380. The Accused is similarly entitled to hold and express the opinion that those who lie let down their country.

⁹⁸ ERN 081358-01-TR-ET at page 11 lines 19-28

Paragraph 184

381. The Accused has never been opposed to the investigation and prosecution of criminal offences, whoever committed them⁹⁹.

382. The Accused has repeatedly made clear that he supports the investigation by the 'SC/SPO' of *all* alleged crimes during the period 1998-2000.

383. For example, the Accused has publicly invited the 'SC/SPO' to investigate the alleged killing of five Serbs in Paje, Kosovo by the Serbian authorities (the Panda case)¹⁰⁰.

384. The Accused has always made clear his opposition to the one-sided investigation of crimes allegedly committed by Kosovan Albanians only. 'Selective justice' is injustice. The Accused does not oppose the administration of justice but does - candidly and rightly - oppose the administration of injustice.

Paragraph 185

385. Contrary to what is asserted therein, the Accused – in common with the SPO, it is hoped - desires only that witnesses refrain from making false statements and instead tell the truth.

⁹⁹ ERN 081347-01-TR-ET at page 3

¹⁰⁰ ERN 082106-01-TR-ET at page 11, line 28 to page 12, line 16

Paragraphs 186-187

386. For the reasons set out above, the assertions therein are not accepted.

Paragraph 188

387. The Accused does not accept the assertion that, 'when the presenter noted that things could happen because the documents contained names, GUCATI responded that this could happen'. That exchange is not audible on the footage and the transcript ERN 081358-01-TR-ET at page 8 is incorrect.

Paragraph 189-191

388. The assertions therein are not accepted.

389. The Accused was not present when any of the alleged statements referred to therein were made, and the SPO does not propose to call the makers of those statements (or indeed, in many cases, the authors of the notes recording those statements). The contents of paragraphs 189 to 191 are not accepted in the circumstances and the Accused objects to the admissibility of ERN 084008-084010, 088301-088301 RED, 090025-090025 RED, 084249-084250 RED, 082102-

082103 RED, 089940-089941 RED, 090177-090177 RED, 089946-089947 RED, 089938-089939 RED, 084247-084248 RED, 085880-085883 RED, 084236-084242 RED, 089936-089937 RED, 089953-089954 RED, 089955-089956 RED, 089988-089988 RED, 089991-089992 RED, 090004-090005 RED, 090006-090007 RED, 090052-090053 RED, 090175-090176 RED, 091216-091217 RED, 084303-084303 RED, 092911-092912 RED, 093383-093383 RED, 093386-093387 RED, 093388-093388 RED.

Paragraph 192

390. Contrary to what is asserted therein, the Accused – in common with the SPO, it is hoped - desires only that witnesses refrain from making false statements and instead tell the truth.

Paragraph 193

391. For the reasons set out above, the assertions therein are not accepted.

Paragraph 194

392. For the reasons set out above, the assertions therein are not accepted.

Paragraph 195

393. The SPO did not take immediate action. Although the SPO were alert to the potential of further deliveries being made after the delivery of Batch 1, and after the delivery of Batch 2, no attempts were made to physically prevent the further delivery of further Batches (such as the obvious tactic of placing the entrances to the KLA WVA HQ under observation, with officers in place to seize any further batches before delivery was effective). The inference to be drawn is that the SPO wanted the delivery of Batches 2 and 3 (and, indeed Batch 1 also) to be effective.

394. When the SPO attended the KLA WVA HQ on 8th September 2020 the attention of SPO Officers was drawn to the CCTV, which may have assisted in identifying and tracing the deliverer of Batch 1, yet they were disinterested (the CCTV was not seized until 25th September 2020). The inference to be drawn is that the SPO already knew the identity of the person making the delivery.

395. Batch 2 was delivered on 16th September 2020 by another unknown male. The Accused was not expecting a delivery of further documents that day but was aware that further documentation might be brought to the KLA WVA HQ at some point (see earlier).

396. According to the SPO, Batch 2 consisted of 937 pages in total, of which 931 pages (which have been disclosed) were publicly available records from prior proceedings in Kosovo and the ICTY and which do not bear any logos or

marks typical of SITF or SPO documents. According to the SPO, the remaining 6 pages (which have not been disclosed) were included in Batch 1¹⁰¹.

397. Although the SPO seemingly made no attempt to keep watch, and certainly made no attempt to prevent a further delivery of documentation, the delivery of Batch 2 was observed and recorded by a journalist and cameraman from the media outlet Arbresh Info¹⁰². They observed a car containing two persons pull up a short distance from the KLA WVA HQ and a male in dark clothing, a cap, mask and gloves exit the passenger side of the car. The male retrieved some big boxes from the car and then made his way to the entrance of the KLA WVA HQ. A short time later, the man exited the building and ran away through a tunnel.

398. The SPO has made no contact with the journalist who observed the above.

399. Although the SPO were alert to the potential of further deliveries being made after the delivery of Batch 1 (i) no attempt was made to physically prevent the further delivery of further Batches (such as the obvious tactic of placing the entrances to the KLA WVA HQ under observation, with officers in place to seize any further batch before delivery was effective) and (ii) no attempt to contact the journalist who observed the making of the delivery in order to attempt to identify and trace the deliverer. The CCTV from the KLA WVA HQ was again ignored by the SPO after the delivery of Batch 2.

400. The inference to be drawn is that the SPO wanted the delivery of Batch 2 (which consisted, in any event, of already public documentation) to be

¹⁰¹ KSC-BC-2020-07/F00110 confidential at paragraph 22

¹⁰² ERN 083171-083173

effective and, indeed, knew the identity of the person making the delivery all along.

401. The Accused specifically invited the SPO Officer [REDACTED] (the author of the Official Note) to work with the KLA WVA to identify the person(s) making the deliveries to the KLA WVA HQ. The SPO officer was disinterested.

402. [REDACTED] was given access to an image of the vehicle in which the deliverer attended but did not retain it. [REDACTED] was provided with the index number of the vehicle, but no attempt to trace it was undertaken by the SPO until 25th November 2020¹⁰³, months after the delivery of Batches 2 and 3, and the sham interview of the owner not conducted until 18th December 2020¹⁰⁴. The inference to be drawn is that the SPO knew the identity of the person making the delivery of Batch 2 all along and was not concerned about stopping a further delivery (Batch 3).

403. The Accused had noticed the same car following him in the days leading up to 16th September 2020. The Accused told [REDACTED] this but he was disinterested. The inference to be drawn is that the SPO were not watching the KLA WVA HQ to prevent a further delivery of documentation being made, but they were watching the Accused in the days between the delivery of Batch 1 and Batch 2.

404. In relation to Batch 3, despite a clear and consistent pattern having been said to have emerged, the SPO seemingly made no attempt to keep watch, and certainly made no attempt to prevent a further delivery of documentation (such as the obvious tactic of placing the entrances to the KLA WVA HQ

¹⁰³ ERN 089049-089053 RED

¹⁰⁴ ERN 088935-TR-ET Part 1 RED and 088935-TR-ET Part 2

under observation, with officers in place to seize any further batches before delivery was effective). The inference to be drawn is that the SPO wanted the delivery of Batch 3 to the KLA WVA HQ to be effective.

Paragraph 196

405. For the reasons set out above, the assertions therein are not accepted.

Paragraphs 197-205

406. For the reasons set out above, the assertions therein are not accepted.

Paragraphs 206-220

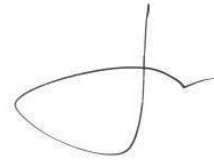
407. For the reasons set out above, the assertions therein are not accepted.

V. CLASSIFICATION

408. In accordance with Rule 82(4), this document bears the same classification as the Prosecution Pre-Trial Brief to which it responds pursuant to Rule 95(5). There is no objection to this document and the Prosecution Pre-Trial Brief being re-classified as Public. There is nothing herein, or in the Prosecution Pre-Trial Brief, which necessitates confidentiality.

409. As stated above, it is not accepted that the effect of Article 62 of the Law is to reverse the modern constitutional principle of openness and transparency, which courses through the veins of all public institutions in modern Kosovo, and to replace it with a presumption of secrecy in the case of the SC/SPO.

Word count: 21,116 words

A handwritten signature in black ink, appearing to be 'J. E. Rees', written in a cursive style.

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2 September 2021

The Hague, Netherlands