



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

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Public Redacted Version of

**Decision on the Confirmation of Amendments to the Indictment Against Hashim
Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi**

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- I. PROCEDURAL BACKGROUND 2**
- II. SUBMISSIONS..... 5**
- III. APPLICABLE LAW 8**
- IV. PRELIMINARY MATTERS..... 9**
 - A. Redactions..... 9
 - B. Material Allegedly Obtained in Violation of the Law and the Rules 11
- V. NATURE AND SCOPE OF REVIEW..... 13**
- VI. PROPOSED AMENDMENTS TO THE CHARGES 16**
 - A. Contextual Requirements 17
 - B. First Category of Amendments 19
 - 1. Counts 2 and 3: Imprisonment and Arbitrary Detention 21
 - 2. Counts 4 and 5: Other Inhumane Acts and Cruel Treatment 26
 - 3. Counts 6 and 7: Torture 32
 - 4. Counts 8 and 9: Murder..... 35
 - 5. Count 10: Enforced Disappearance of Persons 38
 - 6. Count 1: Persecution..... 40
 - 7. Additional Requirements for Crimes Against Humanity and War Crimes 43
 - C. Second Category of Amendments..... 45
 - 1. Counts 2 and 3: Imprisonment and Arbitrary Detention 46
 - 2. Counts 4 and 5: Other Inhumane Acts and Cruel Treatment 48
 - 3. Counts 6 and 7: Torture..... 51
 - 4. Counts 8 and 9: Murder..... 53
 - 5. Count 1: Persecution..... 56
 - 6. Additional Requirements for Crimes Against Humanity and War Crimes 60
 - D. Modes of Liability..... 63
 - 1. Links to the Accused..... 63
 - 2. Links to the Alleged Purpose of the JCE..... 65
 - E. Overall Conclusion..... 68
- VII. DELAYED DISCLOSURE OF WITNESSES..... 68**
- VIII. DISPOSITION 69**

THE PRE-TRIAL JUDGE,¹ pursuant to Article 39(2) and (8) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 86 and 90(1)(b) and (2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby issues the following decision.

I. PROCEDURAL BACKGROUND

1. On 26 October 2020, the Pre-Trial Judge confirmed the indictment against Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi ("Mr Thaçi", "Mr Veseli", "Mr Selimi" and "Mr Krasniqi", respectively, and collectively referred to as the "Accused") ("Confirmation Decision").²

2. On 30 October 2020, the Specialist Prosecutor's Office ("SPO") submitted the indictment as confirmed ("Confirmed Indictment"),³ with redactions as authorised by the Pre-Trial Judge.⁴

¹ KSC-BC-2020-06, F00001, President, *Decision Assigning a Pre-Trial Judge*, 23 April 2020, public.

² KSC-BC-2020-06, F00026, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi* ("Confirmation Decision"), 26 October 2020, strictly confidential and *ex parte*. A public redacted version was filed on 30 November 2020, F00026/RED.

³ KSC-BC-2020-06, F00034, Specialist Prosecutor, *Submission of confirmed Indictment and related requests*, 30 October 2020, confidential, with Annex 1, strictly confidential and *ex parte*, and Annexes 2-3, confidential; F00045/A03, Specialist Prosecutor, *Further Redacted Indictment*, 4 November 2020, public; F00134, Specialist Prosecutor, *Lesser Redacted Version of Redacted Indictment*, KSC-BC-2020-06/F00045/A02, 4 November 2020, 11 December 2020, confidential; A further corrected confirmed indictment was submitted on 3 September 2021, strictly confidential and *ex parte* (F00455/A01), with confidential redacted (F00455/CONF/RED/A01) and public redacted (F00455/RED/A01) versions. On 17 January 2022, the SPO submitted a confidential, corrected, and lesser redacted version of the Confirmed Indictment, F00647/A01 ("Confirmed Indictment").

⁴ Confirmation Decision, para. 521(c)-(d).

3. On 4 and 5 November 2020, upon order of the Pre-Trial Judge,⁵ Mr Krasniqi, Mr Thaçi, Mr Veseli and Mr Selimi were arrested⁶ and transferred to the detention facilities of the Specialist Chamber (“SC”) in The Hague, the Netherlands.⁷
4. On 11 December 2020, the SPO submitted confidential redacted Rule 86(3)(b) outlines (“Rule 86(3)(b) Outlines”).⁸
5. On 22 July 2021, the Pre-Trial Judge issued a decision wherein the SPO was ordered to file a corrected version of the Confirmed Indictment by 3 September 2021.⁹
6. On 3 September 2021, the SPO filed its “Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)” (“Request”).¹⁰ In the Request,

⁵ KSC-BC-2020-06, F00027, Pre-Trial Judge, *Decision on Request for Arrest Warrants and Transfer Orders*, 26 October 2020, strictly confidential and *ex parte*, with Annexes 1-8, strictly confidential and *ex parte*. Corrected versions of Annexes 7 and 8 were filed on 28 October 2020 as F00027/A07/COR and F00027/A08/COR, respectively.

⁶ KSC-BC-2020-06, F00044, Registrar, *Notification of Arrest of Jakup Krasniqi Pursuant to Rule 55(4)*, 4 November 2020, strictly confidential and *ex parte*; KSC-BC-2020-06, F00049, Registrar, *Notification of Arrest of Rexhep Selimi Pursuant to Rule 55(4)*, 5 November 2020, strictly confidential and *ex parte*; F00050, Registrar, *Notification of Arrest of Kadri Veseli Pursuant to Rule 55(4)*, 5 November 2020, strictly confidential and *ex parte*; F00051, Registrar, *Notification of Arrest of Hashim Thaçi Pursuant to Rule 55(4)*, 5 November 2020, strictly confidential and *ex parte*.

⁷ KSC-BC-2020-06, F00048, Registrar, *Notification of Reception of Jakup Krasniqi in the Detention Facilities of the Specialist Chambers*, 4 November 2020, strictly confidential and *ex parte*, with Annex, strictly confidential and *ex parte*; KSC-BC-2020-06, F00053, Registrar, *Notification of Reception of Hashim Thaçi in the Detention Facilities of the Specialist Chambers and Appointment of Counsel*, 5 November 2020, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential and *ex parte*; F00054, Registrar, *Notification of Reception of Kadri Veseli in the Detention Facilities of the Specialist Chambers and Appointment of Counsel*, 5 November 2020, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential and *ex parte*; F00055, Registrar, *Notification of Reception of Rexhep Selimi in the Detention Facilities of the Specialist Chambers*, 5 November 2020, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*.

⁸ KSC-BC-2020-06, F00136, Specialist Prosecutor, *Submission of Confidential Redacted Rule 86(3)(b) Outlines*, 11 December 2020, public, with Annexes 1-2, confidential. On 17 January 2022, the SPO submitted confidential, corrected, and lesser redacted outlines, F00647/A02.

⁹ KSC-BC-2020-06, F00413, Pre-Trial Judge, *Decision on Defence Motions Alleging Defects in the Form of the Indictment*, 22 July 2021, confidential, para. 179(d). A public redacted version was filed the same day.

¹⁰ KSC-BC-2020-06, F00455, Specialist Prosecutor, *Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)*, 3 September 2021, strictly confidential and *ex parte*, with Annexes 1-5, strictly confidential and *ex parte*. Confidential redacted and public redacted versions were filed on 8 September 2021, F00455/CONF/RED and F00455/RED, respectively.

the SPO also submitted an amended Indictment to be confirmed by the Pre-Trial Judge (“Proposed Amended Indictment”).¹¹

7. On 23 December 2021, the Pre-Trial Judge issued the “Decision Concerning Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)” (“First Decision on Request to Amend”) in which the Parties were ordered to file their responses and reply, as the case may be, on the question of whether the supporting material to the amendments deemed to constitute new charges support a finding of well-grounded suspicion pursuant to Rule 86(4) of the Rules.¹²

8. On 31 January 2022, the Defence for Hashim Thaçi (“Thaçi Defence”), the Defence for Kadri Veseli (“Veseli Defence”), and the Defence for Jakup Krasniqi (“Krasniqi Defence”) filed their responses (respectively, “Thaçi Response”, “Veseli Response”, “Krasniqi Response” and collectively, “Defence Responses”).¹³

9. On 4 February 2022, the SPO replied to the Thaçi Response, Veseli Response, and the Krasniqi Response (“Reply”).¹⁴

¹¹ KSC-BC-2020-06, F00455/A02, Specialist Prosecutor, *Annex 2 to Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)*, 3 September 2021, strictly confidential and *ex parte*. A confidential redacted version was filed on 8 September 2021, F00455/CONF/RED/A02.

¹² KSC-BC-2020-06, F00635, Pre-Trial Judge, *Decision Concerning Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)*, 23 December 2021, confidential, paras 48, 53(d), (e).

¹³ KSC-BC-2020-06, F00666, Specialist Counsel, *Thaçi Defence Motion on Whether There is a Well Grounded Suspicion in Relation to the SPO’s Request to Amend the Indictment*, 31 January 2022, confidential; F00668, Specialist Counsel, *Veseli Defence Submissions on the Supporting Material Submitted by the SPO in Respect of the First Category and Second Category of Amendments to the Indictment*, 31 January 2022, confidential; F00669, Specialist Counsel, *Krasniqi Defence Submissions Pursuant to Decision KSC-BC-2020-06/F00635*, 31 January 2022, confidential.

¹⁴ KSC-BC-2020-06, F00680, Specialist Prosecutor, *Prosecution Reply Regarding Request to Amend Pursuant to Rule 90(1)(b)*, 4 February 2022, confidential.

10. On 22 March 2022, the Court of Appeals denied the Defence appeals against the First Decision on Request to Amend (“Appeal Decision on First Decision on Request to Amend”).¹⁵

II. SUBMISSIONS

11. The SPO requests leave to amend the Confirmed Indictment to include allegations relating to: (i) two related detention sites located at Budakovë/Budakovo and Semetishtë/Semetište, Suharekë/Suva Reka municipality, at or in connection with which Kosovo Liberation Army (“KLA”) members committed acts of persecution, imprisonment/arbitrary detention, other inhumane acts/cruel treatment, torture, murder, and enforced disappearance (“First Category”) and (ii) two incidents of persecution and murder committed in connection with the Gjilan/Gnjilane detention site and a modification of the timeframe for the Gjilan/Gnjilane detention site (“Second Category”) (collectively, “Proposed Amendments”).¹⁶ The SPO submits that the supporting material meets the standard of Rule 86(4) of the Rules and the Proposed Amendments are sufficiently detailed and clear to enable adequate defence preparation.¹⁷

12. The Thaçi Defence responds that the SPO’s redactions violate its right to be heard under Article 39(8) of the Law and Rule 90(1)(b) of the Rules.¹⁸ The Thaçi Defence submits that the SPO has not established a well-grounded suspicion with respect to the First Category¹⁹ or Second Category of amendments.²⁰ It also

¹⁵ KSC-BC-2020-06/IA018, F00007, Court of Appeals, *Decision on Defence Appeals Against Decision Concerning Request to Amend the Indictment Pursuant to Rule 90(1)(b) of the Rules*, 22 March 2022, public, para. 53.

¹⁶ Request, paras 1, 15. The SPO was previously granted leave to amend the Confirmed Indictment with respect to a third category of amendments; *see* First Decision on Request to Amend, paras 9, 53(a).

¹⁷ Request, para. 4.

¹⁸ Thaçi Response, paras 22, 27.

¹⁹ Thaçi Response, paras 11-33.

²⁰ Thaçi Response, paras 34-42.

maintains that SPO has not made sufficient links between the alleged crimes and Mr Thaçi,²¹ and in relation to the alleged killing of two persons within the Second Category, the armed conflict or an attack against a civilian population.²² The Thaçi Defence accordingly submits that the Pre-Trial Judge should deny the SPO permission to amend the Indictment to include new paragraphs 68, 93, 105, 157, and 174.²³

13. The Veseli Defence responds that sweeping redactions to the evidentiary material underpinning the First Category of amendments prevent the Defence from being heard.²⁴ The Veseli Defence submits that the evidentiary material submitted by the SPO fails to establish any link between the charged events and Mr Veseli, any of the co-accused, or any named member of the joint criminal enterprise (“JCE”) in the Confirmed Indictment.²⁵ In addition, the Veseli Defence argues that certain witness statements were obtained in violation of the Law and the Rules.²⁶ The Veseli Defence further argues that the SPO has not connected the Second Category of amendments to the alleged common criminal plan.²⁷ In the alternative, the Veseli Defence submits that the SPO has failed to meet its evidentiary threshold with regard to the crimes charged in relation to the First Category²⁸ and Second Category²⁹ of amendments. The Veseli Defence contends that the requisite evidentiary threshold with respect to the state of armed conflict has not been met with respect to the Second Category of amendments.³⁰ The Veseli Defence requests the Pre-Trial Judge to find that the SPO has not met its

²¹ Thaçi Response, paras 32, 38, 41.

²² Thaçi Response, para. 38.

²³ Thaçi Response, para. 43.

²⁴ Veseli Response, paras 32-33.

²⁵ Veseli Response, paras 8-13, 34.

²⁶ Veseli Response, paras 14-17.

²⁷ Veseli Response, paras 38-41.

²⁸ Veseli Response, paras 18-31.

²⁹ Veseli Response, paras 42-43.

³⁰ Veseli Response, paras 35-37.

evidentiary burden with respect to the First Category and Second Category of amendments.³¹

14. The Krasniqi Defence submits that redactions to the First Category of amendment prevent meaningful Defence submissions and make illusory the right to be heard on applications to amend the Confirmed Indictment.³² The Krasniqi Defence requests, with respect to the First Category of amendment, that a lesser redacted version of the Request, including supporting material and evidence, and confirmation be put off until the Defence has had the opportunity to review the supporting material and make meaningful submissions on it.³³ The Krasniqi Defence further submits that the SPO has failed to produce material supporting each necessary element of each offence in relation to the Second Category of amendment regarding the murder or killing at Gjilan/Gnjilane,³⁴ including links to Mr Krasniqi, the armed conflict, an attack on a civilian population, or to any alleged common criminal plan.³⁵ In relation to the Second Category of amendment, it is requested that the Pre-Trial Judge not confirm the relevant paragraphs of the proposed amendment.³⁶

15. In the Reply, the SPO argues that the Defence Responses: (i) exceed the scope of submissions authorised by the Pre-Trial Judge; (ii) seek to circumvent the applicable framework for confirming new charges to an Indictment; and (iii) impermissibly re-litigate matters already decided in relation to the Indictment.³⁷ In addition, the SPO argues that the Defence effectively seeks reconsideration of the applicable standard and scope of review without demonstrating any error or injustice and these arguments should therefore be

³¹ Veseli Response, para. 44.

³² Krasniqi Response, paras 11-15.

³³ Krasniqi Response, paras 11, 24.

³⁴ Krasniqi Response, paras 16-23.

³⁵ Krasniqi Response, para. 22.

³⁶ Krasniqi Response, para. 25.

³⁷ Reply, para. 1.

summarily dismissed.³⁸ The SPO further argues that Defence arguments concerning the extent of redactions amount to nothing more than an attempt to impermissibly re-litigate the Pre-Trial Judge's findings on this matter.³⁹ As to Defence arguments that the supporting material was obtained in violation of the Law and the Rules, the SPO states that the relevant individuals were not determined to be suspects and therefore were not interviewed in that capacity.⁴⁰ Finally, with respect to Defence arguments that the crimes are not adequately linked to the Accused, the conflict or an attack against the civilian population the SPO maintains that such arguments ignore the Indictment, which has already been confirmed and must be read as a whole.⁴¹ The SPO asserts that the Thaçi Response, Veseli Response and Krasniqi Response should be summarily dismissed.⁴²

III. APPLICABLE LAW

16. Article 39(1) and (2) of the Law and Rule 86(4) of the Rules provide that the Pre-Trial Judge shall have the power to review an indictment. Pursuant to Article 39(2) of the Law and Rule 86(4) and (5) of the Rules, if satisfied that a well-grounded suspicion has been established by the Specialist Prosecutor, the Pre-Trial Judge shall confirm the indictment. If the Pre-Trial Judge is not so satisfied, the indictment or charges therein shall be dismissed. Rule 86(5) of the Rules provides that the Pre-Trial Judge must render a reasoned decision.

17. Pursuant to Article 39(8) of the Law, after the indictment is confirmed but before the trial has begun, the Specialist Prosecutor may, with the permission of the Pre-Trial Judge, having heard the parties, amend the indictment. Rule 90(2) of

³⁸ Reply, paras 4-6.

³⁹ Reply, para. 3.

⁴⁰ Reply, paras 7-8.

⁴¹ Reply, paras 9-12.

⁴² Reply, para. 1.

the Rules provides that Rule 86(4) of the Rules applies *mutatis mutandis* where the SPO seeks to amend an indictment and include new charges.

18. Pursuant to Article 39(8) of the Law and Rule 90(3) of the Rules, if the Specialist Prosecutor seeks to add new charges or to substitute more serious charges, the Pre-Trial Judge shall review such charges and hold an initial hearing. If the Accused has already appeared before a Panel in accordance with Rule 92 of the Rules, a further appearance shall be held as soon as practicable.

19. Pursuant to Rule 90(4) of the Rules, the Defence shall be granted twenty-one (21) days to file preliminary motions pursuant to Rule 97 of the Rules in respect of the new charge.

IV. PRELIMINARY MATTERS

A. REDACTIONS

20. The Thaçi Defence submits it is limited in the submissions it can make about whether or not a well-grounded suspicion exists in relation to the allegations under the First Category of amendments as it cannot review all the relevant evidence.⁴³ The Thaçi Defence submits that the SPO's redactions violate its right to be heard under Article 39(8) of the Law and Rule 90(1)(b) of the Rules and therefore reserves its right to make more detailed submissions when such redactions are lifted.⁴⁴

21. The Veseli Defence submits that the sweeping redactions, including to the evidentiary material underpinning the First Category of amendments, prevent the Defence from being heard.⁴⁵

⁴³ Thaçi Response, paras 22, 27.

⁴⁴ Thaçi Response, paras 22, 27.

⁴⁵ Veseli Response, paras 32-33.

22. The Krasniqi Defence submits that redactions prevent meaningful Defence submissions in relation to the First Category amendments and make illusory the right to be heard on applications to amend the Indictment. The Krasniqi Defence argues, therefore, that the amended Indictment should not be confirmed until the Defence has had the opportunity to review this material and make meaningful submissions on it.⁴⁶

23. The SPO replies that Defence arguments concerning the extent of redactions amount to nothing more than an attempt to impermissibly re-litigate the Pre-Trial Judge's findings that the redactions are necessary and proportionate and the Defence is in a position to meaningfully challenge the amendments to the Indictment.⁴⁷

24. As concerns redactions to the Proposed Amendments and related supporting material, the Pre-Trial Judge recalls his finding that the redactions stem from previously granted protective measures.⁴⁸ The Pre-Trial Judge further recalls that, in light of the stage of the case, he ordered the SPO to scrutinise and provide lesser redacted versions, if possible, of the Confirmed Indictment, Rule 86(3)(b) Outlines and the Request.⁴⁹ With respect to the Request, including the supporting material to the Proposed Amendments, the SPO indicated that the redactions remain necessary.⁵⁰ The Pre-Trial Judge accordingly reiterates his previous finding that the redactions to the Proposed Amendments and supporting material to the Proposed Amendments, which relate to witnesses for whom protective measures have been granted previously,⁵¹ remain necessary and proportionate to protect the

⁴⁶ Krasniqi Response, paras 11-15, 24.

⁴⁷ Reply, para. 3.

⁴⁸ First Decision on Request to Amend, para. 47.

⁴⁹ First Decision on Request to Amend, paras 47, 53(c).

⁵⁰ KSC-BC-2020-06, F00647, Specialist Prosecutor, *Prosecution Submission of Lesser Redacted Versions of Indictment and Rule 86(3)(b) Outline*, 17 January 2022, public, para. 2, with Annexes 1-2, confidential.

⁵¹ [REDACTED] and [REDACTED]: [REDACTED]; [REDACTED], [REDACTED] and [REDACTED]: [REDACTED]; F00630, Pre-Trial Judge, *Decision on Specialist Prosecutor's Request for Temporary Extension*

identities of the witnesses and the confidentiality of the information related to said witnesses.⁵²

25. That being said, the Pre-Trial Judge underlines that core information as to time, location and alleged conduct, has been provided, to the extent possible, in the amended indictment, the Rule 86(3) Outlines⁵³ and the supporting material. Therefore, the Pre-Trial Judge is of the view that the Defence is in an overall position to provide meaningful challenges to the Proposed Amendments on the basis of the confidential redacted version of the Proposed Amended Indictment and the supporting material.⁵⁴ These redactions shall therefore not be lifted until such time as ordered in the relevant protective measures decision(s).⁵⁵

26. The Pre-Trial Judge accordingly dismisses the Defence submissions in this regard.

B. MATERIAL ALLEGEDLY OBTAINED IN VIOLATION OF THE LAW AND THE RULES

27. The Veseli Defence submits that certain individuals are listed as perpetrators in the SPO's pre-trial brief in relation to alleged crimes in Budakovë/Budakovo and Semetishtë/Semetište, but when interviewed, only one was interviewed as a suspect, and in the presence of his counsel, thereby violating the constitutional rights of these individuals who were not interviewed as suspects.⁵⁶

of Delayed Disclosure of Identity, 17 December 2021, strictly confidential and *ex parte*. A confidential redacted version was issued the same day, F00630/CONF/RED ("Delayed Disclosure Decision").

⁵² First Decision on Request to Amend, para. 47. *See also* the Court of Appeal Panel confirming that the information available to the Defence may be restricted by necessary and proportionate redactions, Appeal Decision on First Decision on Request to Amend, para. 15.

⁵³ *See* the Rule 86(3) Outlines contained in F00455/CONF/RED/A03 and F00455/CONF/RED/A04.

⁵⁴ First Decision on Request to Amend, para. 47. Indeed, the Thaçi Defence and the Veseli Defence were clearly in a position to make substantial submissions on the First Category amendments, *see* Thaçi Response, paras 11-21, 23-29; Veseli Response, paras 18-31.

⁵⁵ First Decision on Request to Amend, para. 47.

⁵⁶ Veseli Response, paras 14-17.

28. The SPO replies that, despite the fact that the pre-trial brief lists certain witnesses as those who arrested and detained persons, this does not demonstrate that the SPO considered such persons to be suspects.⁵⁷ The SPO indicates that it interviewed [REDACTED] and [REDACTED] as witnesses upon careful consideration of multiple factors and that these witnesses were informed of their rights, including the right not to incriminate themselves.⁵⁸

29. The Pre-Trial Judge understands the Veseli Defence to seek the exclusion of certain witness statements as inadmissible, pursuant to Rule 138(2) of the Rules, as they were purportedly collected in violation of the Law and/or the Rules. It is recalled that, at this stage of the proceedings, the Pre-Trial Judge evaluates the supporting material, without encroaching the Trial Panel's prerogatives under Rules 137-139 of the Rules. That being said, the Pre-Trial Judge shall not rely on material that is manifestly: (i) non-authentic or (ii) obtained by means of a violation of the Law, the Rules, or standards of international human rights law, or under torture or any other inhumane or degrading treatment, as provided in Rule 138(2)-(3) of the Rules.⁵⁹

30. The Pre-Trial Judge notes that, pursuant to Rules 2 and 43(1) of the Rules, a suspect is a person whom the Specialist Prosecutor has grounds to believe committed or participated in the commission of a crime within the jurisdiction of the SC. Further, Article 38(3) of the Law provides that, when questioned, a suspect cannot be compelled to incriminate himself or herself or to confess guilt. Pursuant to Article 38(3)(b) of the Law, he or she has the right to remain silent, without such silence being considered in the determination of guilt or innocence. In light of the fact that the SPO has indicated that it does not consider these individuals to be

⁵⁷ Reply, para. 7.

⁵⁸ Reply, para. 8.

⁵⁹ Confirmation Decision, para. 50.

suspects either now or at the time of their interview,⁶⁰ and the witnesses were informed that they were being interviewed in their capacities as witnesses,⁶¹ the Pre-Trial Judge finds that there is currently no basis for the submission that their rights have been violated, or that these witnesses should have been afforded the protections guaranteed to suspects. Thus, it cannot be said that the material has been manifestly obtained in violation of the Law and the Rules within the meaning of Rule 138(2) of the Rules.

31. The Pre-Trial Judge accordingly dismisses the Veseli Defence's submissions in this regard.

V. NATURE AND SCOPE OF REVIEW

32. The Thaçi Defence submits that the Pre-Trial Judge has mistakenly omitted from the test of well-grounded suspicion in the Confirmation Decision the fact that the evidence upon which the assessment is made must be admissible.⁶²

33. The Veseli Defence submits that determination of whether a well-grounded suspicion exists necessarily involves weighing the evidence and therefore the Pre-Trial Judge may evaluate ambiguities, inconsistencies and contradictions in the evidence or doubts as to the credibility of witnesses.⁶³ The Veseli Defence further argues, that contrary to what is stipulated in the Confirmation Decision, the Pre-Trial Judge may rely on publicly available information adduced by the Defence as the present proceedings are not conducted on an *ex parte* basis.⁶⁴

34. The SPO replies that considerations regarding admissibility and weight are generally reserved for the Trial Panel and may only be considered where material

⁶⁰ Reply, para. 7.

⁶¹ 088941-TR-ET Part 1, pp. 2-3; 078562-TR-ET Part 1, pp. 3-4.

⁶² Thaçi Response, para. 8.

⁶³ Veseli Response, para. 5.

⁶⁴ Veseli Response, para. 6.

is manifestly non-authentic or falls under Rule 138(2)-(3) of the Rules. The SPO argues that the Kosovo Procedure Code employs a different confirmation procedure, but nevertheless supports the scope of review adopted by the Pre-Trial Judge.⁶⁵ The SPO further argues that limited evidence evaluation is permitted at the International Criminal Court because they are consistent with its framework, but this is not the case at the SC.⁶⁶

35. The Pre-Trial Judge recalls that well-grounded suspicion is reached when the evidence “would satisfy an objective observer that a criminal offence has occurred and the defendant has committed the offence”.⁶⁷ The Pre-Trial Judge bases his findings on concrete and tangible supporting material, demonstrating a clear line of reasoning underpinning the charges in the indictment. In so doing, the Pre-Trial Judge evaluates the supporting material holistically, without scrutinising each item of evidentiary material in isolation.⁶⁸

36. The Pre-Trial Judge further recalls, that pursuant to Rule 86(4) of the Rules, to determine whether well-grounded suspicion exists, the Pre-Trial Judge examines the indictment, the detailed outline and the supporting material only, without regard to any extraneous information or material, albeit publicly available.⁶⁹ Furthermore, as stated above,⁷⁰ the Pre-Trial Judge conducts a preliminary assessment of the supporting material during the review process, without encroaching on the prerogatives of the Trial Panel in determining the admissibility and weight of the evidence, as set out in Rules 137-139 of the Rules.⁷¹

⁶⁵ Reply, para. 5, footnote 17.

⁶⁶ Reply, para. 6.

⁶⁷ Confirmation Decision, para. 47.

⁶⁸ Confirmation Decision, para. 48.

⁶⁹ Confirmation Decision, para. 49.

⁷⁰ *See supra*, para. 29.

⁷¹ Confirmation Decision, para. 50.

37. The Pre-Trial Judge will not reconsider these findings and considers Defence submissions on the standard and scope of review of an indictment⁷² to exceed the nature and scope of the present exercise as well as the explicit directive outlined in the First Decision on Request to Amend.⁷³ Nevertheless, the Pre-Trial Judge clarifies that, in confirming charges to an indictment, a piece of evidence will not be declared (in)admissible, except in rare exceptions,⁷⁴ nor will the credibility of a witness be pronounced upon, as this can only be properly addressed at trial, where the witnesses will be called to testify and their evidence properly tested.⁷⁵ In order to avoid any pre-determination of issues or pre-adjudication regarding the probative value of the evidence, this decision will address only what is necessary and sufficient for the determination of the charges, namely whether there is sufficient evidence to support a finding of well-grounded suspicion that the Accused committed the crimes charged under the Proposed Amendments.⁷⁶ Thus, any inconsistencies, ambiguities, contradictions or other weaknesses will be considered in the context of all of the supporting material provided,⁷⁷ as well as the supporting material to the Confirmed Indictment, and only those will be discussed which would result in a charge not being supported to the relevant standard.⁷⁸

⁷² Thaçi Response, para. 8; Veseli Response, paras 5-6.

⁷³ First Decision on Request to Amend, para. 46.

⁷⁴ Confirmation Decision, para. 50.

⁷⁵ Similarly ICC, *Prosecutor v. Yekatom and Ngaïssona*, ICC-01/14-01/18-403-Corr-Red, Pre-Trial Chamber II, [Public Redacted Version of Corrected version of 'Decision on the Confirmation of Charges against Alfred Yekatom and Patrice-Edouard Ngaïssona'](#), 14 May 2020, para. 18.

⁷⁶ Similarly, ICC, *Prosecutor v. Ali Kushayb*, ICC-02/05-01/20-433-Corr, Pre-Trial Chamber II, [Corrected Version of 'Decision on the Confirmation of Charges Against Ali Abd-Al-Rahman' \('Ali Kushayb'\)](#) ("Ali Kushayb Confirmation Decision"), 9 July 2021, 23 November 2021, paras 38-39.

⁷⁷ Similarly ICC, *Prosecutor v. Callixte Mbarushimana*, ICC-01/04-01/10-514, Appeals Chamber, [Judgment on the Appeal of the Prosecutor Against the Decision of Pre-Trial Chamber I of 16 December 2011 entitled "Decision on the Confirmation of Charges"](#), 30 May 2012, paras 46-48.

⁷⁸ *Ali Kushayb* Confirmation Decision, para. 39.

38. Lastly, with respect to hearsay evidence, the Pre-Trial Judge notes that the Law and the Rules provide no limitation in relation to the type of evidence that may be considered in the course of proceedings. Specifically, there is no procedural bar to the introduction or reliance of hearsay evidence in the legal framework.⁷⁹ Rather, Rule 137 of the Rules provides that a Panel shall assess freely all evidence submitted. As Rule 137 of the Rules allows hearsay evidence to be presented at trial, where the guilt or innocence of the Accused is being determined, the Pre-Trial Judge finds that such evidence can be presented during the pre-trial phase when the less onerous threshold for confirming charges is being assessed. Consequently, the evidential weight attached to this evidence will depend on the circumstances which surround the hearsay evidence.⁸⁰

VI. PROPOSED AMENDMENTS TO THE CHARGES

39. Before examining the supporting material in relation to First Category and the Second Category of amendments and determining whether a well-grounded suspicion has been established, the Pre-Trial Judge notes that the SPO has submitted pursuant to Rule 86(3) of the Rules: (i) a corrected indictment with the proposed amendments; (ii) evidentiary material supporting the facts underpinning the charges; and (iii) a revised detailed outline demonstrating the relevance of each item of evidentiary material to each allegation.

40. With respect to the outline pertaining to the Second Category of amendment, the Pre-Trial Judge considers that, details regarding the modification of the

⁷⁹ Similarly, ICC, *Prosecutor v. Bemba et al*, ICC-01/05-01/13-2275-Red, Appeals Chamber, [Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and M. Narcisse Arido against the decision of Trial Chamber VII entitled "Judgment pursuant to Article 74 of the Statute"](#), 8 March 2018, para. 874.

⁸⁰ Similarly, ICC, *Prosecutor v. Ngudjolo*, ICC-01/04-02/12-271-Corr, Appeals Chamber, [Judgment on the Prosecutor's appeal against the decision of Trial Chamber II entitled "Judgment pursuant to article 74 of the Statute"](#), 7 April 2015, para. 226. ICTY, *Prosecutor v. Aleksovski*, Appeals Chamber, [Decision on Prosecutor's appeal on admissibility of evidence](#), 16 February 1999, para. 15.

timeframe should be provided in a manner and level of precision consistent with the other charges for which an amendment is sought. While the Pre-Trial Judge was able to properly assess the Request with the information provided, for the benefit of the Defence and for clarity of the record, a revised outline shall be provided. The Pre-Trial Judge accordingly orders the SPO to provide a revised outline for the Second Category of amendment including details of the evidence supporting the new allegations involving [REDACTED] for Counts 1 and 2-7 by Friday, 29 April 2022.⁸¹

A. CONTEXTUAL REQUIREMENTS

41. The Pre-Trial Judge recalls the findings on contextual requirements for crimes against humanity and war crimes.⁸²

42. The Veseli Defence argues that, in relation to the Second Category amendment, the present proceedings require the SPO to prove, subject to the required threshold of well-grounded suspicion that a state of armed conflict existed during the period running from the end of June-August 1999 in Kosovo between the KLA and Serbian forces.⁸³ The Veseli Defence contends that, while the Pre-Trial Judge has already answered this question in the affirmative,⁸⁴ he did so in *ex parte* proceedings without the benefit of submissions from the Parties.⁸⁵ No similar argument in relation to the crimes against humanity charges is made.

43. The SPO replies that the Veseli Defence attempts to re-litigate the existence of an armed conflict and, if entertained, would allow the Defence to end-run the

⁸¹ See F00455/A04, p. 12; F00455/CONF/RED/A04, p.12.

⁸² Confirmation Decision, paras 124-137.

⁸³ Veseli Response, para. 35.

⁸⁴ Veseli Response, para. 36, referring to Confirmation Decision, para. 137.

⁸⁵ Veseli Response, para. 36, referring to KSC-BC-2020-06, F00225, Specialist Counsel, *Preliminary Motion by the Defence of Kadri Veseli to Challenge the Indictment*, 15 March 2021, confidential, paras 40-74. A public redacted version was filed on 18 March 2021, F00225/RED2.

deliberate limits placed on challenges to the Indictment and Confirmation Decision.⁸⁶

44. It is recalled that the Pre-Trial Judge found that there is a well-grounded suspicion that, from at least March 1998 through September 1999, a widespread or systematic attack against the civilian population of Opponents⁸⁷ was unfolding in Kosovo and northern Albania within the meaning of Article 13 of the Law.⁸⁸ Equally, it is recalled that the Pre-Trial Judge found that from at least March 1998 to approximately 16 September 1999, a non-international armed conflict existed within the meaning of Article 14(2) of the Law between the Serbian forces and the KLA. The Proposed Amendments are assessed against this background.⁸⁹

45. The Pre-Trial Judge notes that the SPO does not seek to amend its pleading on the existence of the armed conflict. Accordingly, pursuant to Rule 86(7) of the Rules, the only avenue for challenging such findings is in the limited context of preliminary motions under Rule 97 of the Rules. As previously explained, challenges to an indictment under Rule 97 of the Rules may only pertain to its form and do not extend to the factual sufficiency of the findings made in the decision confirming the indictment and/or their legal qualification.⁹⁰ The Veseli Defence's attempt to raise these issues again in the context of this decision on amendments

⁸⁶ Reply, para. 12.

⁸⁷ Those perceived as opponents of the KLA included: (i) the Serbian, Roma and Ashkali populations; (ii) Catholics; (iii) civilians allegedly collaborating with Serb authorities or allegedly interacting with Serbs; (iv) Albanians affiliated to or supporting the LDK or other parties perceived as anti-KLA; (v) Albanians not having joined or not supporting the KLA; and (vi) individuals with current or former employment perceived as anti-KLA (collectively, the "Opponents"). Confirmed Indictment, para. 32; Confirmation Decision, para. 126.

⁸⁸ Confirmation Decision, para. 129.

⁸⁹ Confirmation Decision, para. 137.

⁹⁰ KSC-BC-2020-06, F00413, Pre-Trial Judge, *Decision on Defence Motions Alleging Defects in the Form of the Indictment*, 22 July 2021, confidential, para. 49. A public redacted version was filed the same day, F00413/RED.

to the Confirmed Indictment is an impermissible attempt to re-litigate these issues and circumvent the SC's legal framework.

46. The Pre-Trial Judge accordingly dismisses the Veseli Defence's arguments concerning the existence of an armed conflict.

B. FIRST CATEGORY OF AMENDMENTS

47. The SPO submits that it seeks to amend the Confirmed Indictment with the support of concrete and tangible material meeting the evidentiary standard in Rule 86(4) of the Rules. It also avers that the admissibility and weight of the evidence falls outside the scope of the review and that the Pre-Trial Judge need not resolve any competing submissions about the supporting material.⁹¹

48. The Thaçi Defence and Veseli Defence respond that the SPO has not established a well-grounded suspicion with respect to the First Category of amendments.⁹² The Thaçi Defence argues that the SPO's evidence is internally inconsistent and the Pre-Trial Judge should therefore not allow the addition of proposed paragraphs 68 and 105.⁹³

49. With regard to the arrest and detention of [REDACTED], and an unidentified Albanian man, the Thaçi Defence points to the evidence of [REDACTED] and [REDACTED], which provides that: (i) only "[REDACTED]" had been arrested and/or detained and two Serbs were spoken to and ultimately released;⁹⁴ (ii) [REDACTED] was questioned and released without any mistreatment;⁹⁵ (iii) "[REDACTED]" was not detained in Budakovë/Budakovo;⁹⁶ and (iv) they did not hear of any beatings and mistreatments of detainees during the relevant time

⁹¹ Request, paras 4-5.

⁹² Thaçi Response, paras 4, 11-33; Veseli Response, paras 18-31.

⁹³ Thaçi Response, paras 11-29.

⁹⁴ Thaçi Response, para. 16.

⁹⁵ Thaçi Response, para. 17.

⁹⁶ Thaçi Response, paras 16, 18.

period.⁹⁷ The Veseli Defence argues that [REDACTED]'s account is: (i) inconsistent and exaggerated in relation to the evidence of his mistreatment;⁹⁸ (ii) fails to mention the detention of [REDACTED] and the unidentified Albanian man in a statement shortly after the events;⁹⁹ and (iii) is openly biased towards the KLA.¹⁰⁰

50. With regard to the arrest and detention of [REDACTED], and [REDACTED], it is argued that: (i) [REDACTED] denied that the victims were arrested;¹⁰¹ (ii) the evidence of [REDACTED], [REDACTED], [REDACTED] and [REDACTED] does not indicate that [REDACTED] were mistreated in Budakovë/Budakovo;¹⁰² (iii) the victims were not transported to their ultimate destination, Brigade 123 in [REDACTED], but were rather intercepted on the outskirts of Semetishtë/Semetište;¹⁰³ (iv) the ballistics examination conducted by Serbian authorities is insufficient and must be considered against the backdrop of a concerted campaign to discredit the KLA;¹⁰⁴ and (v) allegations of torture, cruel and inhuman treatment, as well as enforced disappearance are equally insufficient considering that neither Battalion 2 nor Brigade 123 had information on the whereabouts of [REDACTED].¹⁰⁵

51. With regard to [REDACTED], the Thaçi Defence points to the fact that [REDACTED] stated that he did not hear of any beatings or mistreatment of detainees in Budakovë/Budakovo at the relevant time and described it as generally "safe".¹⁰⁶

⁹⁷ Thaçi Response, para. 19.

⁹⁸ Veseli Response, para. 20.

⁹⁹ Veseli Response, para. 21.

¹⁰⁰ Veseli Response, para. 22.

¹⁰¹ Thaçi Response, para. 24. The Pre-Trial Judge notes that there is an error in the witness code identified by the Thaçi Defence and that the relevant witness code should read [REDACTED].

¹⁰² Thaçi Response, para. 25; Veseli Response, para. 24.

¹⁰³ Veseli Response, para. 26.

¹⁰⁴ Veseli Response, paras 27-29.

¹⁰⁵ Veseli Response, para. 31.

¹⁰⁶ Thaçi Response, para. 28.

52. The SPO replies that the Defence impermissibly focuses on alleged inconsistencies in the evidence and witness bias as well as selectively reads and misrepresents the supporting material.¹⁰⁷

53. Recalling the nature and scope of review, the Pre-Trial Judge will not entertain Defence arguments regarding: (i) the alleged bias of a particular witness,¹⁰⁸ which relates to the credibility of the witness; (ii) a concerted campaign by Serbian authorities to discredit the KLA,¹⁰⁹ which is not based on supporting material currently before the Pre-Trial Judge; (iii) certain inconsistencies in [REDACTED]'s evidence,¹¹⁰ which the witness would be best placed to resolve; and (iv) the extent of the information Battalion 2 or Brigade 123 had or did not have on the whereabouts of [REDACTED], which concerns the Defence's interpretation of the evidence.¹¹¹ These arguments are best explored and tested during trial where the relevant witnesses can be confronted with these matters. Remaining Defence challenges, with respect to the First Category of amendments, are addressed in the sections that follow.

1. Counts 2 and 3: Imprisonment and Arbitrary Detention

54. With respect to the First Category of amendments, the SPO alleges that at least 12 individuals ([REDACTED], [REDACTED], [REDACTED], an unidentified Albanian man, [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]) were deprived of their liberty without due process of law in Budakovë/Budakovo and Semetishtë/Semetište, Suharekë/Suva Reka municipality, at various times from about 4 July 1998 to September 1998 and

¹⁰⁷ Reply, para. 4.

¹⁰⁸ Veseli Response, para. 22.

¹⁰⁹ Veseli Response, para. 29.

¹¹⁰ Veseli Response, paras 20-21.

¹¹¹ Veseli Response, para. 31.

[REDACTED] April 1999, constituting the crime of imprisonment as a crime against humanity under Article 13(1)(e) of the Law and arbitrary detention as a war crime under Article 14(1)(c) of the Law.¹¹²

55. The Pre-Trial Judge assesses the factual allegations, as supported by the evidentiary material, in relation to Counts 2 and 3, against the legal requirements, as set out in paragraphs 57-61 and 92-97 of the Confirmation Decision.

(a) Material Elements

56. The Pre-Trial Judge finds that the supporting material indicates that, from about 4 July 1998 to September 1998 and [REDACTED] April 1999,¹¹³ at least 12 individuals¹¹⁴ were taken into custody by KLA members¹¹⁵ and detained in locations in Budakovë/Bodakovo, which included a bunker, a barn, the basement of a house owned by [REDACTED], and a house owned by [REDACTED],¹¹⁶ and a house in Semetishtë/Semetište.¹¹⁷ The detainees were guarded.¹¹⁸ Some detainees

¹¹² KSC-BC-2020-06, F00455/A02, Specialist Prosecutor, *Annex 2 to Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)* ("Submission of Corrected Indictment"), 3 September 2021, strictly confidential and *ex parte*, para. 68, Schedule A (item 14). A confidential redacted version was filed the same day, F00455/CONF/RED/A02.

¹¹³ 078045-TR-ET Part 1, p. 14; [REDACTED]; [REDACTED]; 088941-TR-ET Part 3, pp. 5-6; 088944-TR-ET Part 3, pp. 9, 22; 078562-TR-ET Part 3, p. 4; 077605-TR-ET Part 2, pp. 14-15, Part 3, pp. 27; [REDACTED]; [REDACTED].

¹¹⁴ 078045-TR-ET, Part 1, p. 19, Part 2, pp. 9-10; [REDACTED]; 088941-TR-ET Part 3, p. 5; 078562-TR-ET Part 3, pp. 5, 21-22, 24-27; 088944-TR-ET Part 2, p. 13, Part 3, pp. 13-14; [REDACTED]; 077605-TR-ET Part 3, p. 27; [REDACTED]; [REDACTED].

¹¹⁵ 078045-TR-ET Part 1, pp. 18-19, 24; [REDACTED]; 088941-TR-ET Part 3, p. 5; 088944-TR-ET Part 3, pp. 13, 14, 18-21; [REDACTED]; 088941-TR-ET Part 3, pp. 8-9, 10-11, 13, 15-16; 078562-TR-ET Part 3, pp. 5-6, 15-16, 18-19, 30-31; 077605-TR-ET Part 3, pp. 27-31; [REDACTED]; [REDACTED]; 088048-TR-ET Part 1, pp. 12-13, Part 2, pp. 5-7, Part 3, pp. 18-19.

¹¹⁶ 078045-TR-ET Part 1, pp. 22-23, 30, 34, 36-37, Part 2, pp. 2-3; [REDACTED]; [REDACTED]; 088941-TR-ET Part 3, pp. 8-9; 078562-TR-ET Part 3, pp. 8-9, 21-22, 27; 077605-TR-ET Part 3, pp. 27, 30; [REDACTED]; [REDACTED].

¹¹⁷ [REDACTED]; 088941-TR-ET Part 3, pp. 15-14.

¹¹⁸ 078045-TR-ET Part 1, p. 24; [REDACTED]; [REDACTED]; 078562-TR-ET Part 3, pp. 18, 23; [REDACTED].

were blindfolded and/or had their hands tied.¹¹⁹ The detainees were kept in custody for varying periods of time ranging from two hours to several days or weeks.¹²⁰

57. According to the supporting material, the apprehension and detention of these individuals was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of their liberty absolutely necessary. Notably, the detainees concerned included an elderly man,¹²¹ [REDACTED],¹²² [REDACTED],¹²³ a carpenter,¹²⁴ and farmers.¹²⁵ They were held on the basis of their alleged and unspecified spying activities,¹²⁶ their perceived political affiliation to the Democratic League of Kosovo (“LDK”),¹²⁷ their Serb ethnicity¹²⁸ or their perceived affiliation or alleged collaboration with Serbs, the Serbian army or Serbian police.¹²⁹

58. The supporting material suggests that the KLA members did not inform the detainees concerned of the reason for their arrest and detention, nor did they show any documentation in this regard, or give them the opportunity to challenge the lawfulness of their detention.¹³⁰

59. As concerns the evidence of [REDACTED] and [REDACTED], the Pre-Trial Judge notes that [REDACTED] and [REDACTED] acknowledge that certain

¹¹⁹ 078045-TR-ET Part 1, pp. 24-28, 38; [REDACTED]; [REDACTED].

¹²⁰ 078045-TR-ET Part 2, pp. 11-12, 14-15; [REDACTED]; [REDACTED]; 077605-TR-ET Part 3, pp. 27, 29; [REDACTED].

¹²¹ 078045-TR-ET Part 2, p. 9.

¹²² [REDACTED].

¹²³ [REDACTED].

¹²⁴ 077605-TR-ET Part 4, p. 1.

¹²⁵ 078045-TR-ET Part 1, p. 7, 14; 088949-TR-ET Part 1, p. 6; [REDACTED].

¹²⁶ 078562-TR-ET Part 3, pp. 9, 12, 22; [REDACTED]; 077605-TR-ET Part 3, pp. 27-31.

¹²⁷ 078559-TR-ET Part 1, pp. 8-10.

¹²⁸ 078045-TR-ET Part 2, pp. 3-4.

¹²⁹ 078562-TR-ET Part 3, pp. 4, 6, 9-11, 21-23; [REDACTED]; 078045-TR-ET Part 2, pp. 10-12; 077605-TR-ET Part 3, pp. 27-31; [REDACTED]; [REDACTED].

¹³⁰ 078045-TR-ET Part 1, pp. 20, 39; [REDACTED]; [REDACTED]; [REDACTED].

victims were in KLA headquarters in Budakovë/Budakovo,¹³¹ but express a lack of knowledge¹³² or denial¹³³ of the arrest or detention of other victims. The Pre-Trial Judge considers that a witness's lack of knowledge or denial of detention is not sufficient to undermine other evidence pointing to a well-grounded suspicion regarding the arrest and detention of the relevant victims in Budakovë/Budakovo.¹³⁴

60. As concerns Defence arguments regarding [REDACTED]'s denial that [REDACTED] were arrested, the Pre-Trial Judge notes that the witness acknowledges that he, along with other KLA members, transported the victims who were in KLA custody in Budakovë/Budakovo to Semetishtë/Semetište and that they were handed over to the brigade there on the orders of battalion commander [REDACTED].¹³⁵ The witness's failure to characterise these circumstances as an arrest or detention is immaterial as the legal characterisation of the facts is in the purview of the Pre-Trial Judge and ultimately the Trial Panel when the evidence is tested at trial.¹³⁶

61. As concerns the differing accounts of [REDACTED] and [REDACTED] regarding the arrest and detention of [REDACTED], the Pre-Trial Judge notes that they differ to such an extent that it is unlikely they are speaking of the same incident.¹³⁷ [REDACTED] briefly mentions a previous incident with a rifle that may

¹³¹ 088944-TR-ET Part 3, p. 23; 078562-TR-ET Part 3, p. 24.

¹³² 088944-TR-ET Part 3, pp. 23-25; 078562-TR-ET Part 3, pp. 24-28.

¹³³ 078562-TR-ET Part 3, p.27.

¹³⁴ See *supra* paras 56-64.

¹³⁵ 089115-TR-ET Part 3, pp. 19-25.

¹³⁶ Similarly, ICC, *Prosecutor v. Bemba Gombo*, ICC-01/05-01/08-424, [Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo](#), 15 June 2009, paras 61-62, 209; *Prosecutor v. Lubanga Dyilo*, ICC-01/04-01/06-2205, [Judgment on the appeals of Mr Lubanga Dyilo and the Prosecutor against the Decision of Trial Chamber I of 14 July 2009 entitled "Decision giving notice to the parties and participants that the legal characterisation of the facts may be subject to change in accordance with Regulation 55\(2\) of the Regulations of the Court"](#), 8 December 2009, paras 93, 97.

¹³⁷ Compare 078562-TR-ET Part 3, pp. 24-27 with 078045-TR-ET Part 1, pp. 14-19, 27-35.

overlap with [REDACTED]'s account.¹³⁸ In addition, [REDACTED] indicates that he remembers the incident he is recounting well, but he is not so clear on the name of the individual concerned.¹³⁹ The Pre-Trial Judge considers that [REDACTED]'s and [REDACTED]'s accounts can be explored further at trial and do not undermine a finding of well-grounded suspicion in the face of contrary evidence.¹⁴⁰

62. The Pre-Trial Judge accordingly dismisses these Defence challenges to the supporting material.

(b) Mental Element

63. Regarding the mental element of the crimes, the intent of KLA members emerges from the deliberate manner in which they arbitrarily arrested and held the detainees at the aforementioned detention sites without affording any basic guarantees. As further indications of KLA members' intent, the Pre-Trial Judge considers that the KLA had a strategy of detaining suspected collaborators, and KLA commanders took decisions to detain or release accordingly.¹⁴¹ This assessment is made against the backdrop of the findings made in the Confirmation Decision.¹⁴²

(c) Conclusion

64. Having examined the supporting material as a whole against the legal requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion

¹³⁸ 078045-TR-ET Part 1, p. 28.

¹³⁹ 078562-TR-ET Part 3, p. 27.

¹⁴⁰ See *supra* paras 56-63.

¹⁴¹ 088944-TR-ET Part 3, pp. 9-10; 088941-TR-ET Part 3, pp. 5-6; [REDACTED].

¹⁴² Confirmation Decision, para. 230.

that imprisonment, a crime against humanity under Article 13(1)(e) of the Law, and arbitrary detention, a war crime under Article 14(1)(c) of the Law, were committed against the 12 individuals apprehended and/or detained at the detention sites in Budakovë/Budakovo and Semetishtë/Semetište at various times from about 4 July 1998 to September 1998 and [REDACTED] April 1999.

2. Counts 4 and 5: Other Inhumane Acts and Cruel Treatment

65. With respect to the First Category of amendments, the SPO alleges that other inhumane acts, a crime against humanity under Article 13(1)(j) of the Law, and cruel treatment, a war crime under Article 14(1)(c)(i) of the Law, were committed against said 12 individuals that had been apprehended and/or detained at the detention sites in Budakovë/Budakovo and Semetishtë/Semetište, Suharekë/Suva Reka municipality, at various times from about 4 July 1998 to September 1998 and [REDACTED] April 1999.¹⁴³

66. The Pre-Trial Judge assesses the factual allegations, as supported by the material, in relation to Counts 4 and 5, against the legal requirements, as set out in paragraphs 62-65 and 98-101 of the Confirmation Decision.

(a) Material Elements

67. The Pre-Trial Judge finds that the supporting material indicates that, from about 4 July 1998 to September 1998 and [REDACTED] April 1999, KLA members caused serious physical and psychological injury and suffering to several persons apprehended and/or detained at the various detention sites in

¹⁴³ Submission of Corrected Indictment, para. 105, Schedule A (item 14).

Budakovë/Budakovo and Semetishtë/Semetište, Suharekë/Suva Reka municipality.

68. The supporting material indicates that KLA members established and maintained inhumane detention conditions at the aforementioned locations. These conditions were characterised by deprivation of liberty without due process of law¹⁴⁴ coupled with inadequate provision of food, water, sanitation and hygiene, or bedding.¹⁴⁵ Some detainees were blindfolded and/or had their hands tied.¹⁴⁶

69. Furthermore, the supporting material indicates that KLA members routinely assaulted those apprehended and/or detained, both physically and psychologically. In particular:

- (a) On or around 4 July 1998, [REDACTED] were arrested by KLA members, including [REDACTED],¹⁴⁷ and taken to a house in Budakovë/Budakovo¹⁴⁸ where their hands were tied and they were blindfolded and beaten.¹⁴⁹ All three men were punched, kicked and hit with rifle butts and chains for more than an hour.¹⁵⁰ The skin on [REDACTED]'s head was "ripped" by the barrel of an automatic rifle.¹⁵¹ [REDACTED] were then taken to a bunker and interrogated for an hour "by a commander in a red beret".¹⁵² [REDACTED] was thrown down the stairs to the bunker.¹⁵³ A person [REDACTED] kicked his head from behind.¹⁵⁴ [REDACTED] was then told that they killed his father and that he

¹⁴⁴ See *supra* paras 56-64 (Counts 2-3).

¹⁴⁵ 078045-TR-ET Part 1, p. 30, Part 2, p. 12; [REDACTED]; [REDACTED]; [REDACTED].

¹⁴⁶ 078045-TR-ET Part 1, pp. 24, 28, 38; [REDACTED]; [REDACTED].

¹⁴⁷ 078045-TR-ET Part 1, pp. 16-21.

¹⁴⁸ 078045-TR-ET Part 1, pp. 19, 22-23.

¹⁴⁹ 078045-TR-ET Part 1, pp. 21, 24, 27-29.

¹⁵⁰ 078045-TR-ET Part 1, pp. 29-30.

¹⁵¹ 078045-TR-ET Part 1, p. 29.

¹⁵² 078045-TR-ET Part 1, pp. 30-32.

¹⁵³ 078045-TR-ET Part 1, p. 30.

¹⁵⁴ 078045-TR-ET Part 1, p. 31.

would probably be released the next day to bury him.¹⁵⁵ After then being moved to a barn and finally taken to the basement of a house, by [REDACTED],¹⁵⁶ the three detainees were beaten by a group a people in uniforms with fists and whatever they had in their hands for about two and a half hours.¹⁵⁷ A person with a knife threatened to gouge [REDACTED]'s eye out, but a guard pushed him out of the room.¹⁵⁸ On 5 July 1998, [REDACTED] were put in a vehicle by [REDACTED] and another person; they were told they were being taken to be shot, but a vehicle stopped at checkpoints along the way where the witness heard others say that they should not be take to be shot.¹⁵⁹ [REDACTED] were ultimately released.¹⁶⁰ [REDACTED] suffered injuries to his throat and six of his ribs were broken.¹⁶¹ [REDACTED] sustained several knife cuts on his back and suffered from psychological issues following the aforementioned events.¹⁶²

(b) Around 4 July 1998,¹⁶³ [REDACTED] were brought into the basement of the house where [REDACTED] were being held.¹⁶⁴ [REDACTED]'s face appeared to have been beaten and was covered in blood.¹⁶⁵ [REDACTED] was unable to walk and his legs and feet looked as if boiling water had been poured on them.¹⁶⁶ The two men were taken away after about two or two and a half hours.¹⁶⁷

¹⁵⁵ 078045-TR-ET Part 1, pp. 33-34.

¹⁵⁶ 078045-TR-ET Part 1, pp. 36-38; 078045-TR-ET Part 2, pp. 3-4.

¹⁵⁷ 078045-TR-ET Part 2, pp. 6-7.

¹⁵⁸ 078045-TR-ET Part 2, p. 7.

¹⁵⁹ 078045-TR-ET Part 2, pp. 14-15.

¹⁶⁰ 078045-TR-ET Part 2, p. 16.

¹⁶¹ 078045-TR-ET Part 2, p. 19.

¹⁶² 078045-TR-ET Part 2, p. 20.

¹⁶³ 078045-TR-ET Part 2, pp. 9, 11, 14.

¹⁶⁴ 078045-TR-ET Part 2, pp. 9-10.

¹⁶⁵ 078045-TR-ET Part 2, pp. 10-11.

¹⁶⁶ 078045-TR-ET Part 2, pp. 10-11.

¹⁶⁷ 078045-TR-ET Part 2, p. 11.

(c) [REDACTED],¹⁶⁸ [REDACTED]¹⁶⁹ [REDACTED].¹⁷⁰ [REDACTED].¹⁷¹
[REDACTED].¹⁷²

(d) [REDACTED].¹⁷³ [REDACTED].¹⁷⁴ [REDACTED].¹⁷⁵ [REDACTED].¹⁷⁶
[REDACTED] were transferred by KLA members to Semetishtë/Semetište into the custody of KLA member [REDACTED].¹⁷⁷ Their corpses were found on or around 23 August 1998 with arms tied, and injuries to their bodies, including gunshot wounds.¹⁷⁸ A projectile lodged in [REDACTED]'s skull was attributed to a weapon belonging to [REDACTED].¹⁷⁹

(e) On or around 17 August 1998,¹⁸⁰ [REDACTED] was detained by KLA members and kept in a room adjacent to [REDACTED].¹⁸¹ [REDACTED],¹⁸² [REDACTED].¹⁸³ [REDACTED] was transferred to Semetishtë/Semetište and into the custody of KLA member [REDACTED] along with [REDACTED].¹⁸⁴ [REDACTED].¹⁸⁵ [REDACTED].¹⁸⁶

¹⁶⁸ [REDACTED]; [REDACTED]; 088944-TR-ET Part 3, pp. 10; 088941-TR-ET Part 3, p. 5; 078562-TR-ET Part 3, p. 4.

¹⁶⁹ [REDACTED].

¹⁷⁰ [REDACTED].

¹⁷¹ [REDACTED].

¹⁷² [REDACTED].

¹⁷³ [REDACTED].

¹⁷⁴ [REDACTED].

¹⁷⁵ [REDACTED].

¹⁷⁶ [REDACTED].

¹⁷⁷ 088941-TR-ET Part 3, pp. 15-19; 089115-TR-ET Part 3, pp. 14-16, 20; 088944-TR-ET Part 3, pp. 18-21.

¹⁷⁸ [REDACTED]; [REDACTED]; SITF00032949-SITF00032968, p. 15 (SITF00032963); SITF00032906-SITF00032918, p. 1 (SITF00032906); SITF00185224-SITF00185226, p. 1 (SITF00185224).

¹⁷⁹ SITF00032949-SITF00032968, p. 15 (SITF00032963), 17 (SITF00032965); SITF00185224-SITF00185226, pp. 1-2 (SITF00185224-00185225).

¹⁸⁰ [REDACTED]; 088944-TR-ET Part 3, pp. 9-10.

¹⁸¹ [REDACTED]; 078562-TR-ET, Part 3, p.23.

¹⁸² [REDACTED].

¹⁸³ [REDACTED]; [REDACTED].

¹⁸⁴ 088941-TR-ET Part 3, pp. 14-19; 089115-TR-ET Part 3, pp. 15-16, 20; 088944-TR-ET Part 3, pp. 18-21.

¹⁸⁵ [REDACTED].

¹⁸⁶ [REDACTED].

(f) Around September 1998,¹⁸⁷ [REDACTED] was detained in the house owned by [REDACTED] in Budakovë/Budakovo and physically mistreated, “a little beaten but alright”.¹⁸⁸ [REDACTED].¹⁸⁹

(g) [REDACTED],¹⁹⁰ [REDACTED].¹⁹¹ [REDACTED].¹⁹² [REDACTED],¹⁹³
 [REDACTED].¹⁹⁴ [REDACTED].¹⁹⁵ [REDACTED].¹⁹⁶ [REDACTED].¹⁹⁷
 [REDACTED].¹⁹⁸ [REDACTED].¹⁹⁹ [REDACTED].²⁰⁰ [REDACTED].²⁰¹
 [REDACTED].²⁰² [REDACTED].²⁰³ [REDACTED].²⁰⁴

70. As regards the seriousness of the harm or injury, the supporting material indicates that the acts and omissions caused serious mental and/or physical suffering to the apprehended and/or detained persons, or constituted a serious attack on their human dignity. In particular, these individuals sustained bruises²⁰⁵ and were bleeding,²⁰⁶ had their teeth broken,²⁰⁷ lost consciousness,²⁰⁸ were seriously

¹⁸⁷ 077605-TR-ET Part 2, p. 15, Part 3, p. 1;

¹⁸⁸ 077605-TR-ET Part 3, pp. 27-31; [REDACTED].

¹⁸⁹ [REDACTED].

¹⁹⁰ [REDACTED].

¹⁹¹ [REDACTED].

¹⁹² [REDACTED]; [REDACTED].

¹⁹³ [REDACTED].

¹⁹⁴ [REDACTED].

¹⁹⁵ [REDACTED]; [REDACTED].

¹⁹⁶ [REDACTED]; [REDACTED].

¹⁹⁷ [REDACTED].

¹⁹⁸ [REDACTED].

¹⁹⁹ [REDACTED].

²⁰⁰ [REDACTED].

²⁰¹ [REDACTED].

²⁰² [REDACTED].

²⁰³ [REDACTED].

²⁰⁴ [REDACTED].

²⁰⁵ [REDACTED].

²⁰⁶ 078045-TR-ET Part 2, pp. 10-11.

²⁰⁷ [REDACTED].

²⁰⁸ [REDACTED].

wounded,²⁰⁹ sustained broken bones,²¹⁰ had to undergo treatment or surgery as a result of their injuries,²¹¹ and had psychological and/or physical conditions that continued after their release.²¹² This also demonstrates that the nature and level of gravity of the aforementioned acts and omissions are similar to other enumerated crimes against humanity.

71. As concerns Defence arguments regarding evidence of mistreatment, while certain witnesses have stated that they have not heard or have denied that the relevant victims were mistreated while in KLA custody,²¹³ the Pre-Trial Judge finds that, in light of evidence to the contrary, such denials do not undermine a finding of well-grounded suspicion.²¹⁴ The Pre-Trial Judge accordingly dismisses Defence arguments in this regard.

72. As concerns a purported medical report that indicates that [REDACTED],²¹⁵ this report is not included in the supporting material to the Proposed Amendments and the Veseli Defence has not provided the report or an appropriate citation thereto and therefore this report cannot not form part of the assessment required under Rule 86(4) of the Rules. The Pre-Trial Judge accordingly dismisses these Defence challenges.

²⁰⁹ 078045-TR-ET Part 1, p. 29, Part 2, pp. 10-11; [REDACTED]; SITF00032949-SITF00032968, p. 15 (SITF00032963); SITF00032906-SITF00032918, p. 1 (SITF00032906); SITF00185224-SITF00185226, p. 1 (SITF00185224).

²¹⁰ 078045-TR-ET Part 2, p. 19.

²¹¹ [REDACTED].

²¹² 078045-TR-ET Part 2, pp. 19-20; [REDACTED].

²¹³ 078562-TR-ET Part 3, pp. 9-12, 18; [REDACTED].

²¹⁴ See *supra* paras 67-74.

²¹⁵ Veseli Response, para. 20.

(b) Mental Element

73. The supporting material indicates the failure to ensure humane detention conditions,²¹⁶ the deliberate manner in which those apprehended and/or detained were assaulted both physically and psychologically, the types of instruments used and the brutality of the physical assaults as well as the grave injuries caused.²¹⁷ This demonstrates that at least some of the KLA members partaking in the aforementioned acts and omissions meant to cause serious mental or physical suffering or injury or to commit a serious attack upon the human dignity of the apprehended and/or detained individuals.

(c) Conclusion

74. Having examined the supporting material as a whole against the legal requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that other inhumane acts, a crime against humanity under Article 13(1)(j) of the Law, and cruel treatment, a war crime under Article 14(1)(c)(i) of the Law, were committed against the 12 individuals apprehended and/or detained at detention sites in Budakovë/Budakovo and Semetishtë/Semetište, Suharekë/Suva Reka municipality, from about 4 July 1998 to September 1998 and [REDACTED] April 1999.

3. Counts 6 and 7: Torture

75. With respect to the First Category of amendments, the SPO alleges that torture, a crime against humanity under Article 13(1)(f) of the Law, and a war crime under Article 14(1)(c)(i) of the Law, were committed against said 12 individuals that had

²¹⁶ See *supra* para. 68.

²¹⁷ See *supra* para. 30.

been apprehended and/or detained at the detention sites in Budakovë/Budakovo and Semetishtë/Semetište at various times from about 4 July 1998 to September 1998 and [REDACTED] April 1999.²¹⁸

76. The Pre-Trial Judge assesses the factual allegations, as supported by the material, in relation to Counts 6 and 7, against the legal requirements, as set out in paragraphs 66-69 and 102 of the Confirmation Decision.

(a) Material Elements

77. The Pre-Trial Judge finds that the supporting material indicates that, through the acts and omissions described in relation to Counts 4-5, certain KLA members inflicted severe pain or suffering on individuals apprehended and/or detained at the detention sites in Budakovë/Budakovo and Semetishtë/Semetište, Suharekë/Suva Reka municipality, at various times from about 4 July 1998 to September 1998 and [REDACTED] April 1999.

78. The supporting material indicates that the 12 detainees were deprived of food and/or water, sanitation facilities, or were otherwise held in inhumane detention conditions.²¹⁹ Some detainees were kept blindfolded or tied up for an extended period of time.²²⁰ The supporting material further indicates that KLA members repeatedly and/or severely beat apprehended and/or detained individuals, including with fists, rifles, chains and hoses.²²¹ All 12 detainees were punched, kicked, stabbed or burned.²²² Some of the 12 apprehended and/or detained individuals were threatened to be killed.²²³

²¹⁸ Submission of Corrected Indictment, paras 68, 105.

²¹⁹ See *supra* para. 68.

²²⁰ See *supra* para. 68.

²²¹ See *supra* para. 69.

²²² See *supra* para. 69.

²²³ See *supra* para. 69.

79. These acts and omissions resulted in severe pain and suffering for the 12 apprehended and/or detained individuals, including severe bruising, bleeding, broken bones and teeth, loss of consciousness, other severe wounds, as well as psychological and/or physical conditions that continued after the mistreatment.²²⁴

(b) Mental Element

80. The supporting material indicates the deliberate manner in which the 12 apprehended and/or detained individuals were physically assaulted as evidenced by the brutal nature of some forms of physical mistreatment, the types of objects used to carry out this mistreatment, the death threats, and the resulting severe injuries.²²⁵ This demonstrates that at least some of the KLA members, partaking in the aforementioned acts and omissions, intended to inflict upon the individuals concerned severe pain and suffering.

81. Moreover, the supporting material indicates that this infliction was done for one or more of the following purposes: to obtain information; to punish, intimidate or coerce the mistreated individual; and/or to discriminate against the mistreated individual, including on ethnic and political grounds.

82. Accordingly, most of the 12 mistreated individuals were questioned about: (i) their or their relatives' alleged collaboration with Serb authorities or their alleged friendship or interaction with Serbs;²²⁶ (ii) the activities of the Serbian military or police;²²⁷ and/or (iii) alleged crimes or other anti-KLA activities they or other individuals had allegedly carried out, such as spying.²²⁸

²²⁴ See *supra* para. 70.

²²⁵ See *supra* paras 29-30.

²²⁶ [REDACTED]; [REDACTED].

²²⁷ 078045-TR-ET Part 1, pp. 32-35.

²²⁸ 078562-TR-ET Part 3, pp. 9-10, 12, 14-15, 22; [REDACTED]; 077605-TR-ET Part 3, pp. 27-31.

83. Some of the 12 mistreated individuals were arrested or punished because of: (i) their or their relatives' alleged collaboration with Serb authorities or their alleged friendship or interaction with Serbs;²²⁹ (ii) crimes or other anti-KLA activities they or their relatives had carried out, such as spying²³⁰ and/or (iii) their alleged political affiliation to or sympathy towards the LDK.²³¹

84. Lastly, some of the 12 mistreated individuals were discriminated against on account of their or their relatives' ethnicity, and/or alleged political affiliation.²³²

(c) Conclusion

85. Having examined the supporting material as a whole against the legal requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that torture, a crime against humanity under Article 13(1)(f) of the Law and torture, a war crime under Article 14(1)(c)(i) of the Law, were committed against the 12 individuals apprehended and/or detained in Budakovë/Budakovo and Semetishtë/Semetište, Suharekë/Suva Reka municipality, at various times from about 4 July 1998 to September 1998 and [REDACTED] April 1999.

4. Counts 8 and 9: Murder

86. With respect to the First Category of amendments, the SPO alleges that, murder, a crime against humanity under Article 13(1)(a) of the Law and a war crime under Article 14(1)(c)(i) of the Law, was committed against [REDACTED], following their arrests and detention at or in Budakovë/Budakovo and

²²⁹ 078045-TR-ET Part 2, pp. 7-10; [REDACTED]; 078562-TR-ET Part 3, pp. 21-22; [REDACTED].

²³⁰ 078562-TR-ET Part 3, pp. 9, 12, 22; [REDACTED]; 077605-TR-ET Part 3, pp. 27-31; [REDACTED].

²³¹ [REDACTED].

²³² 078045-TR-ET Part 1, pp. 3-4, Part 2, pp. 8-9.

Semetishtë/Semetište, Suharekë/Suva Reka municipality, on or after 19 August 1999.²³³

87. The Pre-Trial Judge assesses the factual allegations, as supported by the material, in relation to Counts 8 and 9, against the legal requirements, as set out in paragraphs 70-71 and 103 of the Confirmation Decision.

(a) Material Elements

88. The Pre-Trial Judge finds that the supporting material indicates that KLA members killed [REDACTED] on or after 19 August 1999.

89. On or around 17 August 1998,²³⁴ [REDACTED] were arrested by KLA members at a checkpoint and detained in a house belonging to [REDACTED] in Budakovë/Budakovo.²³⁵ While detained in Budakovë/Budakovo, they were questioned by [REDACTED] about whether they were involved in spying against the KLA and serving Serbian forces.²³⁶ After questioning, [REDACTED] proposed to Battalion Commander [REDACTED] to release them or send them to the Brigade.²³⁷ Pursuant to an order by [REDACTED],²³⁸ [REDACTED],²³⁹ [REDACTED] were transferred to Brigade 123 in Semetishtë/Semetište and into the custody of KLA member [REDACTED].²⁴⁰ Their bodies were found on or around 23 August 1998 on the roadside near [REDACTED], with their arms tied

²³³ Submission of Corrected Indictment, paras 68, 105, 157, Schedule B (item 40).

²³⁴ [REDACTED]; [REDACTED]; 088944-TR-ET Part 3, pp. 10; 088941-TR-ET Part 3, pp. 8-10; 078562-TR-ET Part 3, p. 4.

²³⁵ 088944-TR-ET Part 3, p. 13; 078562-TR-ET Part 3, pp. 4-8; 088941-TR-ET Part 3, pp. 5-6, 8-10; [REDACTED]; [REDACTED].

²³⁶ 078562-TR-ET Part 3, pp. 9-10, 14-15, 18; 088941-TR-ET Part 3, p. 9.

²³⁷ 078562-TR-ET Part 3, pp. 15-16; 088941-TR-ET Part 3, pp. 9.

²³⁸ 088941-TR-ET Part 3, pp. 10-11, 13; 078562-TR-ET Part 3, pp. 18-19; 088944-TR-ET Part 3, pp. 18-21; 089115-TR-ET Part 3, pp. 18-19.

²³⁹ [REDACTED].

²⁴⁰ 088941-TR-ET Part 3, pp. 14-19; 089115-TR-ET Part 3, pp. 14-20; 088944-TR-ET Part 3, pp. 18-21.

and injuries to their bodies, including gunshot wounds.²⁴¹ A projectile lodged in [REDACTED] skull was attributed to a weapon belonging to [REDACTED].²⁴²

90. With respect to Defence challenges concerning the transfer of [REDACTED] to Semetishtë/Semetište,²⁴³ the Pre-Trial Judge notes that while the KLA members transporting the victims did not reach their ultimate destination in [REDACTED], the victims were nevertheless transferred into the custody of a KLA member in Semetishtë/Semetište where Brigade 123 had headquarters²⁴⁴ and therefore this evidence does not undermine a finding of well-grounded suspicion in relation to the crimes charged and their linkage to the KLA.²⁴⁵ The Pre-Trial Judge accordingly dismisses Defence challenges in this regard.

(b) Mental Element

91. Regarding the mental element of the crime, the supporting material indicates the deliberate manner in which [REDACTED] were detained and questioned by KLA members,²⁴⁶ as well as transferred on the orders of KLA commander [REDACTED] to Brigade 123 in Semetishtë/Semetište²⁴⁷ and into the custody of KLA member [REDACTED].²⁴⁸ In addition, confirmation of the victims' deaths²⁴⁹ and evidence of gunshot wounds emanating from the weapon of the KLA member

²⁴¹ [REDACTED]; [REDACTED]; SITF00032949-SITF00032968, p. 15 (SITF00032963); SITF00032906-SITF00032918, p. 1 (SITF00032906); SITF00185224-SITF00185226, p. 1 (SITF00185224).

²⁴² SITF00032949-SITF00032968, p. 15 (SITF00032963), 17 (SITF00032965); SITF00185224-SITF00185226, pp. 1-2 (SITF00185224-00185225).

²⁴³ Veseli Response, para. 26.

²⁴⁴ 078562-TR-ET Part 3, pp. 32-33; 088941-TR-ET Part 3, pp. 16-17, 19-20; 088944-TR-ET Part 3, pp. 19-21; 089115-TR-ET Part 3, pp. 15-19.

²⁴⁵ See *supra* paras 69, 89.

²⁴⁶ 088944-TR-ET Part 3, p. 13; 078562-TR-ET Part 3, pp. 4-8, 15-16; 088941-TR-ET Part 3, pp. 5-6, 8-10; [REDACTED]; [REDACTED].

²⁴⁷ 088941-TR-ET Part 3, pp. 10-11, 13, 15-16; 078562-TR-ET Part 3, pp. 18-19; 088944-TR-ET Part 3, pp. 18-21; 089115-TR-ET Part 3, pp. 18-19.

²⁴⁸ 088941-TR-ET Part 3, pp. 14-19; 089115-TR-ET Part 3, pp. 14-20; 088944-TR-ET Part 3, pp. 18-21.

²⁴⁹ [REDACTED]; [REDACTED]; SITF00032949-SITF00032968, p. 15 (SITF00032963); SITF00032906-SITF00032918, p. 1 (SITF00032906); SITF00185224-SITF00185226, p. 1 (SITF00185224).

[REDACTED]²⁵⁰ demonstrate that KLA members involved in the aforementioned acts meant to kill or at least wilfully cause serious injury or grievous bodily harm, which they should reasonably have known might lead to the victims' deaths.

(c) Conclusion

92. Having examined the supporting material as a whole against the legal requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that murder, as a crime against humanity under Article 13(1)(a) of the Law and a war crime under Article 14(1)(c)(i) of the Law, was committed against [REDACTED], following their arrests and detention at or in Budakovë/Budakovo and Semetishtë/Semetište, Suharekë/Suva Reka municipality, on or after 19 August 1999.

5. Count 10: Enforced Disappearance of Persons

93. With respect to the First Category of amendment, the SPO alleges that enforced disappearance as a crime against humanity under Article 13(1)(i) of the Law, was committed against [REDACTED] following their arrest and detention at or in Budakovë/Budakovo and Semetishtë/Semetište, Suharekë/Suva Reka municipality, on or around 17 August 1998.²⁵¹

94. The Pre-Trial Judge assesses the factual allegations, as supported by the material, in relation to Count 10, against the legal requirements, as set out in paragraphs 72-77 of the Confirmation Decision.

²⁵⁰ SITF00032949-SITF00032968, p. 15 (SITF00032963), 17 (SITF00032965); SITF00185224-SITF00185226, pp. 1-2 (SITF00185224-00185225).

²⁵¹ Submission of Corrected Indictment, paras 68, 105, 157, Schedule C (item 10).

(a) Material Elements

95. The Pre-Trial Judge finds that the supporting material indicates that, in Budakovë/Budakovo and Semetishtë/Semetište, KLA members caused the enforced disappearance of [REDACTED] on or around 17 August 1998.

96. On or around 17 August 1998, [REDACTED] were arrested and taken into KLA custody.²⁵² [REDACTED].²⁵³ [REDACTED].²⁵⁴ [REDACTED] made efforts to obtain information on the fate and whereabouts of [REDACTED].²⁵⁵ [REDACTED].²⁵⁶ The bodies of [REDACTED] were found on or around 23 August 1998 on the roadside near [REDACTED].²⁵⁷ [REDACTED] a plot with their names at a cemetery [REDACTED] was also found.²⁵⁸

(b) Mental Element

97. The supporting material indicates that KLA members: (i) intentionally deprived [REDACTED] of their liberty and were aware that the deprivation of liberty would be followed by a refusal to acknowledge such deprivation of liberty or to give information on the fate or whereabouts of the victims; or (ii) intentionally refused to disclose information regarding the fate or whereabouts of [REDACTED] concerned and were aware that such refusal was preceded or accompanied by that deprivation of liberty.²⁵⁹

²⁵² See *supra* paras 56-64 (Counts 2-3), 69 (Counts 4-5), 89 (Counts 8-9).

²⁵³ [REDACTED].

²⁵⁴ [REDACTED].

²⁵⁵ 078562-TR-ET Part 3, p. 27.

²⁵⁶ [REDACTED]; 078562-TR-ET Part 3, p. 27.

²⁵⁷ [REDACTED]; SITF00032949-SITF00032968, p. 15 (SITF00032963); SITF00032906-SITF00032918, p. 1 (SITF00032906); SITF00185224-SITF00185226, p. 1 (SITF00185224).

²⁵⁸ [REDACTED]; SPOE00056149-00056200, pp. 15-16 (SPOE00056163-SPOE00056165), 22 (SPOE00056170), 46 (SPOE00056194).

²⁵⁹ As regards the awareness of or intentional deprivation of liberty, *see supra* paras 56-64 (Counts 2-3), 88-92 (Counts 8-9). As regards, the awareness of or intentional refusal to acknowledge the deprivation

(c) Conclusion

98. Having examined the supporting material as a whole against the legal requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that KLA members caused the enforced disappearance, a crime against humanity under Article 13(1)(i) of the Law, of [REDACTED] following their arrest and detention at or in Budakovë/Budakovo and Semetishtë/Semetište, Suharekë/Suva Reka municipality, on or around 17 August 1998.

6. Count 1: Persecution

99. With respect to the First Category of amendment, the SPO alleges that persecution on political and/or ethnic grounds, a crime against humanity under Article 13(1)(h) of the Law, was committed against the 12 persons detained in Budakovë/Budakovo and Semetishtë/Semetište, Suharekë/Suva Reka municipality, at various times from about 4 July 1998 to September 1998 and on or around [REDACTED] April 1999.²⁶⁰

100. The Pre-Trial Judge assesses the factual allegations, as supported by the material, in relation to Count 1, against the legal requirements, as set out in paragraphs 78-83 of the Confirmation Decision.

(a) Material Elements

101. The Pre-Trial Judge finds that the supporting material indicates that, through the crimes charged under Counts 2-10 in the First Category of amendments, KLA members denied, in a gross and blatant manner, fundamental

of liberty or give information on the fate of whereabouts of the victims, *see see* 088951-TR-ET, Part 2, pp. 7, 9, 13, Part 3, p. 8.

²⁶⁰ Submission of Corrected Indictment, paras 68, 105, and 157, Schedule A (item 14), Schedule B (item 40).

rights of 12 individuals in Budakovë/Budakovo and Semetishtë/Semetište, Suharekë/Suva Reka municipality, at various times from about 4 July 1998 to September 1998 and [REDACTED] April 1999, resulting in discriminatory consequences.

102. As specified in relation to Counts 2-10 above, the supporting material indicates that KLA members committed the crimes of imprisonment/arbitrary detention,²⁶¹ other inhumane acts/cruel treatment,²⁶² torture,²⁶³ murder²⁶⁴ and enforced disappearance,²⁶⁵ constituting a gross and blatant denial of the right to life, the right not to be subjected to torture or cruel, inhumane or degrading treatment or punishment, as well as the rights to liberty and not to be subjected to arbitrary arrest or detention.²⁶⁶

103. Furthermore, the supporting material indicates that KLA members also engaged in unlawful appropriation of private property, including “a wrist-watch, 170 Deutschemarks, and 75 Yugoslav Dinars”.²⁶⁷ This act occurred in the overall context of an arbitrary arrest and detention, as well as severe mistreatment, and was undertaken against an individual who was the victim of one or more of the crimes charged under Counts 2-10. Considering the nature, context and timing,

²⁶¹ See *supra* paras 56-64 (Counts 2-3).

²⁶² See *supra* paras 67-74 (Counts 4-5).

²⁶³ See *supra* paras 77-85 (Counts 6-7).

²⁶⁴ See *supra* paras 88-92 (Counts 8-9).

²⁶⁵ See *supra* paras 95-98 (Count 10).

²⁶⁶ The right of life is protected by Article 3 of the Universal Declaration of Human Rights (GA/RES/217 A/(III) of 10 December 1948) (“UDHR”), Article 6(1) of the International Covenant on Civil and Political Rights (“ICCPR”) and by Article 2(1) of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”). The right not to be subjected to torture or cruel, inhumane or degrading treatment or punishment is protected by Article 5 of the UDHR, Article 7 of the ICCPR and Article 3 of the ECHR. The right to liberty and not to be subjected to arbitrary arrest or detention is protected by Articles 3 and 9 of the UDHR, Article 9 of the ICCPR and Article 5 of the ECHR.

²⁶⁷ [REDACTED].

this act reaches the same level of gravity as crimes under Article 13 of the Law and constitute[s] a blatant and gross denial of the right to private property.²⁶⁸

104. The supporting material further indicates that the aforementioned acts mainly targeted and primarily affected Serbs,²⁶⁹ persons suspected as having collaborated with Serb authorities²⁷⁰ or otherwise having been involved with Serb authorities,²⁷¹ or supported the LDK²⁷² and resulted therefore in actual discriminatory consequences against them.

(b) Mental Element

105. The supporting material indicates the deliberate manner in which KLA members carried out or were involved in each of the aforementioned crimes and other persecutory acts.

106. Moreover, the supporting material indicates that the aforementioned crimes and other persecutory acts were carried out with the specific intent to discriminate on ethnic and/or political grounds. In particular, the 12 individuals were targeted because of their Serb ethnicity,²⁷³ alleged collaboration²⁷⁴ or other involvement with Serbs,²⁷⁵ and/or affiliation to or sympathy towards the LDK.²⁷⁶

²⁶⁸ The right to property is protected by Article 17 of the UDHR and by Article 1 of the 1952 Protocol to the ECHR.

²⁶⁹ 078045-TR-ET Part 1, pp. 3-4.

²⁷⁰ 078562-TR-ET Part 3, pp. 4, 6, 9-11, 21-23; [REDACTED]; 078045-TR-ET Part 2, pp. 10-12; 077605-TR-ET Part 3, pp. 27-31; [REDACTED]; [REDACTED].

²⁷¹ [REDACTED]; [REDACTED].

²⁷² 078559-TR-ET Part 1, pp. 8-10.

²⁷³ 078045-TR-ET Part 1, pp. 3-4.

²⁷⁴ 078562-TR-ET Part 3, pp. 4, 6, 9-11, 21-23; [REDACTED]; 078045-TR-ET Part 2, pp. 10-12; 077605-TR-ET Part 3, pp. 27-31; [REDACTED]; [REDACTED].

²⁷⁵ [REDACTED]; [REDACTED].

²⁷⁶ [REDACTED].

(c) Conclusion

107. Having examined the supporting material as a whole against the legal requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that persecution, a crime against humanity under Article 13(1)(h) of the Law, was committed against the 12 persons detained in Budakovë/Budakovo and Semetishtë/Semetište, Suharekë/Suva Reka municipality, at various times from about 4 July 1998 to September 1998 and [REDACTED] April 1999.

7. Additional Requirements for Crimes Against Humanity and War Crimes

108. The Pre-Trial Judge recalls his findings in the Confirmation Decision regarding the additional requirements for crimes against humanity, namely: the nexus between the new incidents in Counts 1, 2, 4, 6, 8 and 10 and the widespread and systematic attack against the civilian population and the perpetrators' knowledge of the attack against the civilian population.²⁷⁷

109. The victims of the crimes alleged under the First Category of amendments fall within the category of individuals perceived as Opponents as they are considered to have collaborated or been involved with Serb authorities or supported the LDK.²⁷⁸ KLA members arrested, detained, interrogated, mistreated and/or killed the victims of the First Category of amendment at or in connection with KLA detention sites.²⁷⁹ Therefore, the incidents found under First Category of amendment were part of the attack against the civilian population and the perpetrators acted in the knowledge of the attack against the civilian population.

110. The Pre-Trial Judge further recalls his findings regarding the additional requirements for war crimes, namely: the protected status of victims under

²⁷⁷ Confirmation Decision, paras 446-447.

²⁷⁸ See *supra*, para. 104.

²⁷⁹ See *supra* paras 54-92.

Count 3, 5, 7 and 9, the nexus between these incidents and the non-international armed conflict, and the awareness of the factual circumstances establishing the armed conflict and the status of victims.²⁸⁰ Regarding the protected status of victims under the First Category of amendment KLA members exercised custody (arbitrary detention)²⁸¹ or control (cruel treatment, torture, murder)²⁸² over the victims, as soon as they fell into the hands of the KLA members. Therefore, at the time when the crimes were committed, the targeted individuals were taking no active part in the hostilities and were entitled to the protection of IHL for such time as they were under the custody or control of the KLA members.

111. As regards the nexus to the armed conflict, the alleged crimes under the First Category of amendment were committed against Opponents,²⁸³ which constituted the opposing party to the armed conflict.²⁸⁴ Therefore, the crimes charged under the First Category of amendment took place in the context of the ongoing armed conflict between the Serbian forces and the KLA.

112. Lastly, regarding the awareness of the factual circumstances establishing the armed conflict and the status of the victims, the Pre-Trial Judge recalls that KLA members were aware of the existence of the ongoing non-international armed conflict and knew that the Opponents whom they arrested, detained, killed or otherwise mistreated were taking no active part in the hostilities, as they were under the KLA custody or control.²⁸⁵

113. The Pre-Trial Judge accordingly finds that the additional requirements for crimes against humanity and war crimes have been made out with respect to the First Category of Amendment.

²⁸⁰ Confirmation Decision, paras 448-450.

²⁸¹ *See supra* paras 54-64.

²⁸² *See supra* paras 65-92.

²⁸³ *See supra* para. 109.

²⁸⁴ Confirmation Decision, para. 449.

²⁸⁵ Confirmation Decision, para. 450.

C. SECOND CATEGORY OF AMENDMENTS

114. The SPO submits that the Second Category of amendments is also supported by concrete and tangible material that meets the standard required in Rule 86(4) of the Rules.²⁸⁶

115. The Thaçi Defence responds that the evidence presented by the SPO supports a well-grounded suspicion that two victims were killed; however, it does not support a well-grounded suspicion that the victims were targeted because of their Serb ethnicity or for being associated with Serbs.²⁸⁷

116. The Veseli Defence maintains that the evidentiary threshold is not met as there is no direct evidence. It argues that the only direct evidence available alleges that [REDACTED] went voluntarily to the boarding school and was never seen again.²⁸⁸ The Veseli Defence submits that there is no evidence that: (i) [REDACTED] was abducted by KLA members; (ii) he was subjected to mistreatment or murdered in the boarding school; or (iii) the boarding school was operated by the KLA.²⁸⁹ With respect to the murder of [REDACTED], the Veseli Defence submits that: (i) there is no indication that the persons who took him away were KLA members or were acting under KLA orders; (ii) there is no indication that he was actually transferred to the boarding school; and (iii) all information concerning his whereabouts were based on hearsay.²⁹⁰

117. The Krasniqi Defence submits that the SPO has failed to establish the circumstances or cause of [REDACTED]'s death.²⁹¹ The Krasniqi Defence argues that, taken at its highest, the material relied upon by the SPO consists of evidence that [REDACTED] was abducted and that he died at some point in the three years

²⁸⁶ Request, para. 4.

²⁸⁷ Thaçi Response, paras 38, 40.

²⁸⁸ Veseli Response, para. 42.

²⁸⁹ Veseli Response, para. 42.

²⁹⁰ Veseli Response, para. 43.

²⁹¹ Krasniqi Response, paras 18-19.

after he was last seen as there is no causal link between his death and the alleged detention in July 1999.²⁹² The Krasniqi Defence avers that the same flaws invalidate the alleged killing of [REDACTED] as no nexus is established between the alleged abduction and his death.²⁹³ The Krasniqi Defence concludes that the SPO has failed to establish a well-grounded suspicion in relation to the Second Category of amendments.²⁹⁴

118. The SPO replies that the Defence selectively reads and misrepresents the supporting material underlying the Second Category of amendment.²⁹⁵

119. The Pre-Trial Judge will not directly respond to the above Defence challenges, but will take them into consideration while conducting his analysis of the supporting material in relation to the Second Category of amendments in the sections that follow.

1. Counts 2 and 3: Imprisonment and Arbitrary Detention

120. With respect to the Second Category of amendments, the SPO alleges that, in July 1999, [REDACTED] was deprived of his liberty without due process of law at a KLA headquarters located in a former boarding school and dormitory in Gjilan/Gnjilane, constituting the crime of imprisonment as a crime against humanity under Article 13(1)(e) of the Law and arbitrary detention as a war crime under Article 14(1)(c) of the Law.²⁹⁶

²⁹² Krasniqi Response, paras 19-20.

²⁹³ Krasniqi Response, para. 21.

²⁹⁴ Krasniqi Response, paras 23, 25.

²⁹⁵ Reply, para. 4.

²⁹⁶ Submission of Corrected Indictment, para. 93.

121. The Pre-Trial Judge assesses the factual allegations, as supported by the evidentiary material, in relation to Counts 2 and 3, against the legal requirements, as set out in paragraphs 57-61 and 92-97 of the Confirmation Decision.

(a) Material Elements

122. The Pre-Trial Judge finds that the supporting material indicates that [REDACTED] was taken into custody and detained in a former boarding school and dormitory in Gjilan/Gnjilane in July 1999.²⁹⁷ Given the level of organisation, the use of the dormitory in Gjilan/Gnjilane, the circumstances of the abduction, in particular that it was accomplished under the pretence of the victim needing to give a statement, the Pre-Trial Judge considers that KLA members took [REDACTED] into custody.²⁹⁸

123. According to the supporting material, the apprehension and detention of [REDACTED] was justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns made the deprivation of his liberty absolutely necessary. Notably, the detainee, [REDACTED],²⁹⁹ was at work at the time of his abduction.³⁰⁰ He was taken into custody on the basis of Serb ethnicity³⁰¹ and/or alleged collaboration or interaction with Serbs.³⁰²

124. The circumstances of the detainee's arrest and detention suggests that the KLA members did not inform the detainee concerned of the reason for his arrest and detention, nor did they show him any documentation in this regard, or give him the opportunity to challenge the lawfulness of his detention.³⁰³

²⁹⁷ 076248-TR-ET Part 1, pp. 10-11.

²⁹⁸ 082037-TR-ET Part 2, p. 2; 076248-TR-ET Part 1, pp. 8-11, Part 2, pp. 2-3, Part 3, pp. 5-6.

²⁹⁹ 076248-TR-ET Part 1, p. 3.

³⁰⁰ 076248-TR-ET Part 1, pp. 10-11.

³⁰¹ 076248-TR-ET Part 1, p. 11.

³⁰² 076248-TR-ET Part 2, pp. 5-6.

³⁰³ 076248-TR-ET Part 3, pp. 2, 5.

(b) Mental Element

125. Regarding the mental element of the crimes, the intent of KLA members emerges from the deliberate manner in which they arbitrarily arrested and held the detainee at the aforementioned detention site without affording any basic guarantees. This assessment is made against the backdrop of the findings made in the Confirmation Decision.³⁰⁴

(c) Conclusion

126. Having examined the supporting material as a whole against the legal requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that imprisonment, a crime against humanity under Article 13(1)(e) of the Law, and arbitrary detention, a war crime under Article 14(1)(c) of the Law, were committed against [REDACTED] in a former boarding school and dormitory in Gjilan/Gnjilane in July 1999.

2. Counts 4 and 5: Other Inhumane Acts and Cruel Treatment

127. With respect to the Second Category of amendments, the SPO alleges that other inhumane acts, a crime against humanity under Article 13(1)(j) of the Law, and cruel treatment, a war crime under Article 14(1)(c)(i) of the Law, were committed against [REDACTED] in a former boarding school and dormitory in Gjilan/Gnjilane, in July 1999.³⁰⁵

128. The Pre-Trial Judge assesses the factual allegations, as supported by the material, in relation to Counts 4 and 5, against the legal requirements, as set out in paragraphs 62-65 and 98-101 of the Confirmation Decision.

³⁰⁴ Confirmation Decision, para. 230.

³⁰⁵ Submission of Corrected Indictment, para. 135.

(a) Material Elements

129. The Pre-Trial Judge finds that the supporting material indicates that, in July 1999, KLA members³⁰⁶ caused serious physical and psychological injury and suffering to [REDACTED] in a former boarding school and dormitory in Gjilan/Gnjilane.

130. These acts occurred in the context of deprivation of liberty without due process of law.³⁰⁷ In particular, in July 1999,³⁰⁸ [REDACTED] was taken from his place of work to the dormitory in Gjilan/Gnjilane where he was beaten for 40 minutes to an hour.³⁰⁹ A young man in civilian clothes met [REDACTED] at his place of work and asked him to go to the dormitory under the pretence that he needed to give a statement.³¹⁰ [REDACTED] was taken by car to the dormitory.³¹¹ He was searched and his car keys and identification card were taken and his driver's license was torn apart.³¹² Once at the dormitory, three men took turns beating [REDACTED] with their bare hands and sticks, mostly on his back.³¹³ [REDACTED] was seated and his hands were tied during his interrogation.³¹⁴ During the beatings, [REDACTED] was questioned regarding certain Serbs in the military, whether he had weapons, about an Albanian man being shot close to [REDACTED], and about [REDACTED] where there was alleged to have been a

³⁰⁶ See *supra*, para. 122.

³⁰⁷ See *supra* paras 120-126 (Counts 2-3).

³⁰⁸ 076248-TR-ET Part 1, p. 5, Part 3, p. 9.

³⁰⁹ 076248-TR-ET Part 1, pp. 9, 11.

³¹⁰ 076248-TR-ET Part 1, p. 10.

³¹¹ 076248-TR-ET Part 2, p. 2.

³¹² 076248-TR-ET Part 2, p. 3.

³¹³ 076248-TR-ET Part 2, pp. 4-5.

³¹⁴ 076248-TR-ET Part 2, pp. 4-5.

Serbian command post and some Serbian forces.³¹⁵ A pistol was brandished during the questioning of [REDACTED].³¹⁶ He was told he should leave Kosovo.³¹⁷

131. As regards the seriousness of the harm or injury, the supporting material indicates that the acts caused serious mental and/or physical suffering or constituted a serious attack on human dignity. In particular, [REDACTED] sustained bruises that took about a month to heal,³¹⁸ and had psychological conditions that continued after his release.³¹⁹ This demonstrates that the nature and level of gravity of the aforementioned acts are similar to other enumerated crimes against humanity.

(b) Mental Element

132. The supporting material indicates the deliberate manner in which [REDACTED] was assaulted, both physically and psychologically, and the brutality of the physical assaults as well as the grave injuries caused. This demonstrates that at least some of the KLA members partaking in the aforementioned acts and omissions meant to cause serious mental or physical suffering or injury or to commit a serious attack upon the human dignity of the apprehended and/or detained individuals.

(c) Conclusion

133. Having examined the supporting material as a whole against the legal requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion

³¹⁵ 076248-TR-ET Part 2, pp. 4-6.

³¹⁶ 076248-TR-ET Part 2, p. 5.

³¹⁷ 076248-TR-ET Part 2, p. 7, Part 3, pp. 7-8.

³¹⁸ 076248-TR-ET Part 3, p. 9.

³¹⁹ 076248-TR-ET Part 3, p. 10.

that other inhumane acts, a crime against humanity under Article 13(1)(j) of the Law, and cruel treatment, a war crime under Article 14(1)(c)(i) of the Law, were committed against [REDACTED] in a former boarding school and dormitory in Gjilan/Gnjilane, in July 1999.

3. Counts 6 and 7: Torture

134. With respect to the Second Category of amendments, the SPO alleges that torture, a crime against humanity under Article 13(1)(f) of the Law, and a war crime under Article 14(1)(c)(i) of the Law, was committed against [REDACTED] in a former boarding school and dormitory in Gjilan/Gnjilane, in July 1999.³²⁰

135. The Pre-Trial Judge assesses the factual allegations, as supported by the material, in relation to Counts 6 and 7, against the legal requirements, as set out in paragraphs 66-69 and 102 of the Confirmation Decision.

(a) Material Elements

136. The Pre-Trial Judge finds that the supporting material indicates that, through the acts described in relation to Counts 4-5, certain KLA members inflicted severe pain or suffering against [REDACTED] in a former boarding school and dormitory in Gjilan/Gnjilane, in July 1999.

137. The supporting material further indicates that KLA members severely beat [REDACTED], including with fists and sticks.³²¹

³²⁰ Submission of Corrected Indictment, paras 135, 139.

³²¹ See *supra* para. 130.

138. These acts resulted in severe pain and suffering for [REDACTED], including severe bruising as well as psychological and/or physical conditions that continued after the mistreatment.³²²

(b) Mental Element

139. The supporting material indicates the deliberate manner in which [REDACTED] was physically assaulted as evidenced by the brutal nature of the physical mistreatment, the types of objects used to carry out this mistreatment and the resulting severe injuries.³²³ This demonstrates that at least some of the KLA members, partaking in the aforementioned acts, intended to inflict upon the individuals concerned severe pain and suffering.

140. Moreover, the supporting material indicates that this infliction was done for one or more of the following purposes: to obtain information and/or a confession; to punish, intimidate or coerce the mistreated individual; and/or to discriminate against the mistreated individual, including on ethnic and political grounds.

141. Accordingly, [REDACTED] was questioned about: (i) his alleged involvement with the Serb military;³²⁴ (ii) the activities of the Serbian military or police;³²⁵ and/or (iii) alleged crimes or other anti-KLA activities they or other individuals had allegedly carried out.³²⁶

³²² See *supra* para. 131.

³²³ See *supra* paras 130-131.

³²⁴ 076248-TR-ET Part 1, p. 8.

³²⁵ 076248-TR-ET Part 2, pp. 6-7.

³²⁶ 076248-TR-ET Part 2, pp. 6-7.

142. [REDACTED] was arrested or punished because of: (i) his alleged collaboration with Serb authorities;³²⁷ (ii) continuing his employment at [REDACTED]³²⁸ and/or (iii) alleged involvement in crimes against Albanians.³²⁹

143. Lastly, [REDACTED] was discriminated against on account of his ethnicity and/or alleged political affiliation.³³⁰

(c) Conclusion

144. Having examined the supporting material as a whole against the legal requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that torture, a crime against humanity under Article 13(1)(f) of the Law and torture, a war crime under Article 14(1)(c)(i) of the Law, were committed against [REDACTED] in a former boarding school and dormitory in Gjilan/Gnjilane, in July 1999.

4. Counts 8 and 9: Murder

145. With respect to the Second Category of amendments, the SPO alleges that, murder, a crime against humanity under Article 13(1)(a) of the Law and a war crime under Article 14(1)(c)(i) of the Law, was committed against [REDACTED], following their arrests or abductions, and at or in connection with the dormitory detention site in Gjilan/Gnjilane on [REDACTED] July 1999, respectively.³³¹

³²⁷ 076248-TR-ET Part 1, p. 8.

³²⁸ 076248-TR-ET Part 1, p. 11.

³²⁹ 076248-TR-ET Part 2, pp. 6-7.

³³⁰ 076248-TR-ET Part 1, p. 11, Part 2, pp. 5-6.

³³¹ Submission of Corrected Indictment, para. 174, Schedule B (item 8).

146. The Pre-Trial Judge assesses the factual allegations, as supported by the material, in relation to Counts 8 and 9, against the the legal requirements, as set out in paragraphs 70-71 and 103 of the Confirmation Decision.

(a) Material Elements

147. The Pre-Trial Judge finds that the supporting material indicates that in Gjilan/Gnjilane, KLA members killed [REDACTED] around or after July 1999.

148. [REDACTED].³³² On [REDACTED] July 1999, [REDACTED], along with a female neighbour and a female relative, were taken by [REDACTED] and three or four men in black uniforms,³³³ thought to be KLA members,³³⁴ to the dormitory in Gjilan/Gnjilane.³³⁵ Once across the road from the dormitory, a KLA member told the women to go back home.³³⁶ Two persons accompanied [REDACTED] to the dormitory.³³⁷ [REDACTED] was never seen again.³³⁸ [REDACTED] body was found and an autopsy was conducted on [REDACTED].³³⁹ The cause of death was determined to be multiple gunshot wounds.³⁴⁰

149. [REDACTED].³⁴¹ On [REDACTED] July 1999, a couple of young men from the neighbourhood said they were sent by the KLA to seize weapons.³⁴² [REDACTED] surrendered his weapon, after initially refusing to do so, upon advice of his neighbours and so as not to have problems with the KLA.³⁴³ [REDACTED] and his

³³² 082037-TR-ET Part 1, pp. 6-7; 078047-TR-ET Part 1, p. 16.

³³³ 082037-TR-ET Part 1, pp. 8-9, 11.

³³⁴ 082037-TR-ET Part 1, pp. 13-14, Part 2, pp. 25-26.

³³⁵ 082037-TR-ET Part 1, pp. 14, 16-19.

³³⁶ 082037-TR-ET Part 1, p. 20.

³³⁷ 082037-TR-ET Part 1, p. 21; 082037-TR-ET Part 2, pp. 5-6.

³³⁸ 082037-TR-ET Part 1, p. 21; 082037-TR-ET Part 2, p. 5.

³³⁹ SITF00030155-SITF00030184, pp. 5 (SITF00030159), 24 (SITF00030178).

³⁴⁰ SITF00030155-SITF00030184, p. 5 (SITF00030159); SITF00030135-SITF00030137, p. 1 (SITF00030135).

³⁴¹ 078047-TR-ET Part 1, pp. 6-7.

³⁴² 078047-TR-ET Part 1, pp. 8, 10, 13.

³⁴³ 078047-TR-ET Part 1, pp. 8, 10-11.

[REDACTED] were scared as they had heard that “[REDACTED]” had been taken away the night before and if [REDACTED] would be taken away his [REDACTED] would be the only Serb left in the building.³⁴⁴ The following morning, two men came to [REDACTED]’s door and asked him to come with them to the boarding school.³⁴⁵ [REDACTED] was told he would be giving a statement explaining the surrender of weapons, and when he asked to change out of his T-shirt, sweatpants and indoor slippers before leaving he was told there was no need as he would be back in a half hour.³⁴⁶ [REDACTED] was then “practically pushed” into a grey car.³⁴⁷ An hour after [REDACTED] was taken away, a neighbour went to the boarding school and confirmed that [REDACTED] was there and was being interrogated.³⁴⁸ According to [REDACTED], [REDACTED] were taken away as part of KLA member “[REDACTED]”’s revenge for the arrest of one of his relatives.³⁴⁹ [REDACTED] was never seen alive again; his body was [REDACTED] and identified on [REDACTED] and the cause of death was undetermined.³⁵⁰

150. Recalling the findings concerning hearsay evidence,³⁵¹ the Pre-Trial Judge accordingly finds that Defence arguments pointing to the fact that information concerning the whereabouts of [REDACTED] are based on hearsay,³⁵² and therefore inadmissible, are inapposite. The Pre-Trial Judge accordingly dismisses Defence arguments in this regard.

³⁴⁴ 078047-TR-ET Part 1, p. 16.

³⁴⁵ 078047-TR-ET Part 1, pp. 13-14, 18.

³⁴⁶ 078047-TR-ET Part 1, pp. 14, 19.

³⁴⁷ 078047-TR-ET Part 1, pp. 15, 20.

³⁴⁸ 078047-TR-ET Part 1, p. 20.

³⁴⁹ 078047-TR-ET Part 1, pp. 21-22.

³⁵⁰ 078047-TR-ET Part 1, p. 27; SITF00188171-00188185, pp. 3-4 (SITF00188173-00188174).

³⁵¹ *See supra*, para. 38.

³⁵² Veseli Response, para. 43.

(b) Mental Element

151. Regarding the mental element of the crime, the supporting material indicates the deliberate manner in which the individuals in KLA custody were abducted and considering the circumstances of these abductions,³⁵³ when and where they were last seen,³⁵⁴ and the confirmation of their deaths³⁵⁵ this demonstrates that KLA members involved in the aforementioned acts and omissions meant to kill or at least wilfully cause serious injury or grievous bodily harm, which they should reasonably have known might lead to the victims' deaths.

(c) Conclusion

152. Having examined the supporting material as a whole against the legal requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that murder, as a crime against humanity under Article 13(1)(a) of the Law and a war crime under Article 14(1)(c)(i) of the Law, was committed against [REDACTED] in connection with their abduction in Gjilan/Gnjilane around or after July 1999.

5. Count 1: Persecution

153. With respect to the Second Category of amendments, the SPO further alleges that persecution on political and/or ethnic grounds, a crime against humanity under Article 13(1)(h) of the Law, was committed against [REDACTED] in

³⁵³ 082037-TR-ET Part 1, pp. 8-9, 11, 13-14, 16-19, Part 2, pp. 25-26; 078047-TR-ET Part 1, pp. 6-8, 10-11, 13-16, 18-20, 21-22.

³⁵⁴ 082037-TR-ET Part 1, p. 21, Part 2, pp. 5-6; 078047-TR-ET Part 1, p. 20.

³⁵⁵ SITF00030155-SITF00030184, pp. 5 (SITF00030159), 24 (SITF00030178); SITF00030135-SITF00030137, p. 1 (SITF00030135); SITF00188171-00188185, pp. 3-4 (SITF00188173-00188174).

connection with their abduction and/or detention at the dormitory in Gjilan/Gnjilane around or after July 1999.³⁵⁶

154. The Pre-Trial Judge assesses the factual allegations, as supported by the material, in relation to Count 1, against the legal requirements, as set out in paragraphs 78-83 of the Confirmation Decision.

(a) Material Elements

155. The Pre-Trial Judge finds that the supporting material indicates that, through the crimes charged under Counts 2-9 and through other acts of equal gravity, KLA members denied, in a gross and blatant manner, fundamental rights of [REDACTED] in connection with their abduction and/or detention at the dormitory in Gjilan/Gnjilane around or after July 1999, resulting in discriminatory consequences.

156. As specified under Counts 2-9, the supporting material indicates that KLA members committed imprisonment/arbitrary detention,³⁵⁷ other inhumane acts/cruel treatment,³⁵⁸ torture,³⁵⁹ and murder,³⁶⁰ constituting a gross and blatant denial of the right to life, the right not to be subjected to torture or cruel, inhumane or degrading treatment or punishment, as well as the rights to liberty and not to be subjected to arbitrary arrest or detention.³⁶¹

³⁵⁶ Submission of Corrected Indictment, paras 59-60.

³⁵⁷ See *supra* paras 122-126 (Counts 2-3).

³⁵⁸ See *supra* paras 129-133 (Counts 4-5).

³⁵⁹ See *supra* paras 136-144 (Counts 6-7).

³⁶⁰ See *supra* paras 147-152 (Counts 8-9).

³⁶¹ The right of life is protected by Article 3 of the UDHR, Article 6(1) of the ICCPR and by Article 2(1) of the ECHR. The right not to be subjected to torture or cruel, inhumane or degrading treatment or punishment is protected by Article 5 of the UDHR, Article 7 of the ICCPR and Article 3 of the ECHR. The right to liberty and not to be subjected to arbitrary arrest or detention is protected by Articles 3 and 9 of the UDHR, Article 9 of the ICCPR and Article 5 of the ECHR.

157. Furthermore, the supporting material indicates that KLA members also engaged in the unlawful appropriation and/or destruction of private property and arbitrary searches, which involved: (i) a search of [REDACTED] person and the destruction of his driver's license³⁶² and (ii) the taking of briefcase from [REDACTED] home.³⁶³ These acts typically occurred in the overall context of the above-mentioned crimes, and therefore were undertaken against individuals who were the victims of one or more of the crimes charged under Counts 2-9. Considering their nature, context and timing, these acts reach the same level of gravity as crimes under Article 13 of the Law and constitute a blatant and gross denial of the right to private property and the prohibition of arbitrary searches.³⁶⁴

158. The supporting material further indicates that the aforementioned acts of murder targeted Serbs³⁶⁵ or persons associated with Serbs,³⁶⁶ and resulted therefore in actual discriminatory consequences against them.

159. The Pre-Trial Judge notes the evidence pointed to by the Defence that alleges that the crimes committed against the two victims were the result of an act of revenge on the part of a KLA member named "[REDACTED]".³⁶⁷ The Pre-Trial Judge notes that personal motives and the requisite intent requirements for a particular crime are not mutually exclusive.³⁶⁸ Furthermore, the Pre-Trial Judge considers that this evidence must be considered in context. While personal animosities and vendettas may have motivated certain individuals to act violently against other individuals, this fact alone cannot be considered outside the context

³⁶² 076248-TR-ET Part 2, p. 3.

³⁶³ 082037-TR-ET Part 2, pp. 24, 30.

³⁶⁴ The right to property is protected by Article 17 of the UDHR and by Article 1 of the 1952 Protocol to the ECHR. The prohibition against arbitrary searches is included in the right to privacy, protected by Article 12 of the UDHR, Article 17 of the ICCPR and Article 8 of the ECHR.

³⁶⁵ 082037-TR-ET Part 1, pp. 6-8.

³⁶⁶ 078047-TR-ET Part 1, pp. 6, 16.

³⁶⁷ 078047-TR-ET Part 1, pp. 21-22.

³⁶⁸ See ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-AR98bis.1, Appeals Chamber, [Judgement](#), 11 July 2013, para. 79; *Prosecutor v. Brđanin*, IT-99-36-A, Appeals Chamber, [Judgement](#), 3 April 2007, para. 410.

in which such events occurred. Here, there is evidence of other individuals being taken away in the same location during the same time period, never having been seen again,³⁶⁹ as well as other Serbs being forced to leave.³⁷⁰ The two victims were taken by alleged KLA members³⁷¹ to a boarding school allegedly used by the KLA to detain and interrogate individuals.³⁷² In this context, the Pre-Trial Judge does not consider that evidence of a KLA member's possible personal animosity against the victims undermines his findings that there is a well-grounded suspicion that persecution was committed and dismisses the Defence challenges in this regard.³⁷³

(b) Mental Element

160. The supporting material indicates the deliberate manner in which KLA members carried out or were involved in each of the aforementioned crimes and other persecutory acts.

161. Moreover, the supporting material indicates that the aforementioned crimes and other persecutory acts were carried out with the specific intent to discriminate on ethnic and/or political grounds. In particular, the three individuals were targeted because of their Serb ethnicity³⁷⁴ and/or alleged collaboration or interaction with Serbs.³⁷⁵

³⁶⁹ 078047-TR-ET Part 1, p. 16.

³⁷⁰ 078047-TR-ET Part 1, p. 19; 082037-TR-ET Part 1, pp. 6-8, Part 2, pp. 3-4, 11-12, 24.

³⁷¹ 078047-TR-ET Part 1, p. 17; 082037-TR-ET Part 1, p. 14, 16-18, 20.

³⁷² 078047-TR-ET Part 1, pp. 18, 20.

³⁷³ See *supra* paras 155-162.

³⁷⁴ 082037-TR-ET Part 1, pp. 6-7; 076248-TR-ET Part 1, p. 11.

³⁷⁵ 078047-TR-ET Part 1, pp. 6, 16; 076248-TR-ET Part 2, pp. 5-6.

(c) Conclusion

162. Having examined the supporting material as a whole against the legal requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that persecution, a crime against humanity under Article 13(1)(h) of the Law, was committed against [REDACTED] around or after July 1999 in Gjilan/Gnjilane.

6. Additional Requirements for Crimes Against Humanity and War Crimes

163. The Thaçi Defence and Krasniqi Defence submit that there is no evidence establishing a connection between the Second Category of amendments and the armed conflict or an alleged attack on a civilian population particularly as the evidence suggests that the acts alleged crimes were committed for personal reasons.³⁷⁶ In particular, the evidence presented fails to establish a well-grounded suspicion that there is a nexus between the incidents in question and the attack against the civilian population (as required for crimes against humanity) and the non-international armed conflict (as required for war crimes).³⁷⁷ The Thaçi Defence argues that the evidence presented suggests that the acts in question were committed pursuant to a personal vendetta unrelated to the attack or the armed conflict or the fact that the victims were Serbian or associated with Serbs.³⁷⁸

164. The SPO replies that the Defence has made a selective reading of the evidence and ignores relevant parts of the supporting material.³⁷⁹

165. The Pre-Trial Judge recalls his findings in the Confirmation Decision regarding the additional requirements for crimes against humanity, namely: the nexus to an attack against the civilian population and the perpetrators' knowledge

³⁷⁶ Thaçi Response, paras 38-39; Krasniqi Response, para. 22.

³⁷⁷ Thaçi Response, para. 38.

³⁷⁸ Thaçi Response, paras 38-40, referring to 078047-TR-ET Part 1, pp. 21-22.

³⁷⁹ Reply, para. 4, footnote 10.

of the attack against the civilian population.³⁸⁰ In particular, regarding the nexus between the new incidents in Counts 1, 2, 4, 6, and 8 and the widespread and systematic attack against the civilian population, the Pre-Trial Judge recalls that KLA members targeted particular categories of individuals, namely those falling within the definition of Opponents³⁸¹ of the KLA, as opposed to random individuals. Notably, the incidents occurred during the campaign of violence and mistreatment of civilians who were perceived, by KLA members, to be Opponents.³⁸² The victims of the crimes alleged under the Second Category of amendments as Serbs or civilians allegedly collaborating with Serbian authorities or allegedly interacting with Serbs³⁸³ fall within the category of individuals perceived as Opponents. While the victims were affiliated with the Serbian police, they were not taking active part in the hostilities at the time of their apprehension.³⁸⁴ They were targeted because of their perceived status as Opponents.³⁸⁵ The Pre-Trial Judge accordingly finds that the crimes alleged under the Second Category of amendments were part of the attack against the civilian population.

166. The Pre-Trial Judge further recalls his findings regarding the additional requirements for war crimes, namely: the protected status of victims, the nexus between these incidents and the non-international armed conflict, and the awareness of the factual circumstances establishing the armed conflict and the status of victims.³⁸⁶ In particular, the Pre-Trial Judge recalls his finding that one of the goals of the KLA was to prevent Opponents from harming the KLA itself. Arrests, detention, acts of cruel treatment and torture, and murder were often

³⁸⁰ Confirmation Decision, paras 446-447.

³⁸¹ Confirmed Indictment, para. 32; Confirmation Decision, para. 126.

³⁸² Confirmation Decision, paras 127-129.

³⁸³ See *supra* para. 161.

³⁸⁴ See *supra* paras 147-148.

³⁸⁵ See *supra* para. 161.

³⁸⁶ Confirmation Decision, paras 448-450.

executed on the basis of lists of suspected collaborators or otherwise suspicious people, who regularly included, *inter alios*, persons of Serb ethnicity or persons with suspected ties, either personal or professional, with Serbian authorities or institutions, which constituted the opposing party to the armed conflict.³⁸⁷ Similarly, the alleged crimes charged under the Second Category of amendments were committed against individuals with suspected ties, either personal or professional, with Serbian authorities or institutions, namely the Serbian police,³⁸⁸ which constituted the opposing party to the armed conflict. Therefore, the crimes charged under the Second Category of amendments (Counts 3, 5, 7 and 9) took place in the context of the ongoing armed conflict between the Serbian forces and the KLA.

167. Finally, as regards the alleged personal motivations of KLA member “[REDACTED]”, the Pre-Trial Judge considers that for the same reasons enumerated, above,³⁸⁹ the evidence of a KLA member’s possible personal animosity against the victims does not undermine his finding that there is a well-grounded suspicion that the crimes charged under the Second Category of amendments were linked to the armed conflict or an alleged attack on a civilian population.

168. The Pre-Trial Judge accordingly finds that the additional requirements for crimes against humanity and war crimes have been established with respect to the Second Category of amendments and dismisses the Defence arguments concerning the alleged lack of a link between the crimes included in the Second Category of amendments and the armed conflict or an alleged attack on a civilian population.

³⁸⁷ Confirmation Decision, para. 449.

³⁸⁸ See *supra* paras 147-162.

³⁸⁹ See *supra* paras 165-166.

D. MODES OF LIABILITY

1. Links to the Accused

169. The Thaçi Defence submits that, while there is a well-grounded suspicion that the alleged murders took place under the First Category and Second Category of amendments, there is no well-grounded suspicion that Mr Thaçi committed or participated in this crime.³⁹⁰ With respect to the First Category of amendments, the Thaçi Defence points to the supporting material which identifies KLA member [REDACTED] as an alleged perpetrator of the murders.³⁹¹ The Thaçi Defence argues, with respect to the Second Category of amendments, that there is no mention of the Accused in relation to these offences.³⁹²

170. The Veseli Defence submits that the SPO fails to establish any link between the charged events and Mr Veseli, any co-Accused, or any named JCE member via any of the charged modes of liability.³⁹³ The Veseli Defence asserts that, under such circumstances, the Pre-Trial Judge must decline to confirm the charges.³⁹⁴ With respect to the First Category of amendments, there is no evidence that would link the murders to the leadership of Battalion 2, Brigade 123, the General Staff level or Mr Veseli.³⁹⁵ The Veseli Defence further argues that, in light of the timeframe of the alleged charges in the Second Category of amendments, namely after the KLA ceased to exist, the SPO fails to link the alleged crimes with the KLA, the Zone Commander of Karadak, Mr Veseli or any alleged JCE member.³⁹⁶

³⁹⁰ Thaçi Response, paras 32, 38.

³⁹¹ Thaçi Response, para. 33.

³⁹² Thaçi Response, para. 41.

³⁹³ Veseli Response, paras 8-13.

³⁹⁴ Veseli Response, para. 8, *citing* ICC, *Prosecutor v. Mahamat Said Abdel Kani*, ICC-01/14-01/21-218-Red, Pre-Trial Chamber II, [Public redacted version of Decision on the confirmation of charges Against Mahamat Said Abdel Kani](#), 9 December 2021, para. 49.

³⁹⁵ Veseli Response, para. 30.

³⁹⁶ Veseli Response, para. 34.

171. The Krasniqi Defence submits that none of evidence relied upon the SPO in relation to the Second Category of amendments establishes that Mr Krasniqi committed or participated in the alleged crimes in any way.³⁹⁷

172. The SPO replies that the Defence submissions ignore the Confirmed Indictment, which must be read as a whole, together with the Proposed Amendments, and prior rulings of the Pre-Trial Judge.³⁹⁸

173. The Pre-Trial Judge notes that the supporting material does not provide evidence of any of the Accused participating directly in the alleged crimes encompassed within the First Category or Second Category of amendments. However, as indicated in the Confirmed Indictment, the Accused are alleged to have participated in a JCE.³⁹⁹ The Confirmed Indictment further indicates that the Accused used members of the JCE to carry out crimes committed in furtherance of the common purpose (“JCE Members and Tools”).⁴⁰⁰ These JCE Members and Tools included, *inter alios*, KLA military leaders, KLA zone commanders and other members of zone command staff, brigade and unit commanders, commanders and members of the KLA police and intelligence services, and other KLA soldiers.⁴⁰¹ Given that the alleged perpetrators of the crimes charged under the Proposed Amendments were KLA members associated with Battalion 2 of KLA Brigade 123 operating in Budakovë/Budakovo and Semetishtë/Semetište,⁴⁰² in case of the First Category of amendments, and KLA members associated with the boarding school and dormitory, which served as KLA headquarters in Gjilan/Gnjilane,⁴⁰³ in the case

³⁹⁷ Krasniqi Response, para. 22.

³⁹⁸ Reply, paras 9-11.

³⁹⁹ Confirmed Indictment, paras 32-52.

⁴⁰⁰ Confirmed Indictment, para. 35.

⁴⁰¹ Confirmed Indictment, para. 35.

⁴⁰² See *supra* paras 56-107; 088941-TR-ET, Part 1, pp. 9-11, 17, 19; Part 2, pp. 2-4, 15-16, Part 3, pp. 15-16, 20-21; 083721-TR-ET Part 2, p. 13; 078562-TR-ET Part 1, pp. 15-16, Part 2, p. 5-6, 9.

⁴⁰³ See *supra* paras 147-148; 082037-TR-ET Part 2, p. 2; 078047-TR-ET Part 1, p. 18; Confirmation Decision, paras 336-339.

of the Second Category of amendments, the Pre-Trial Judge considers that the alleged perpetrators fall within the definition of JCE Members or Tools alleged to have been used by the Accused in the Confirmed Indictment. Further, and in light of the findings in the Confirmation Decision that there is a well-grounded suspicion that the Accused committed, as members of a JCE, the crimes charged in the Confirmed Indictment,⁴⁰⁴ the Pre-Trial Judge finds that there is well-grounded suspicion that the Accused committed, as members of a the alleged JCE, the crimes encompassed with the Proposed Amendments.

174. The Pre-Trial Judge accordingly dismisses the Defence arguments regarding the insufficient link between the Accused and the crimes alleged under the First Category and Second Category of amendments.

2. Links to the Alleged Purpose of the JCE

175. The Veseli Defence argues that, with respect to the Second Category of amendments, the SPO has failed to substantiate that the alleged crimes were part of the common purpose “to gain and exercise control of Kosovo”.⁴⁰⁵ The Veseli Defence argues that it would be highly illogical to believe that any of the crimes alleged to have occurred in Gjilan/Gnjilane would have contributed towards the alleged common purpose when from 10 June 1999 the KLA had liberated Kosovo from invading Serbian forces.⁴⁰⁶ The Veseli Defence further argues that, in the present case, a JCE “to gain control of Kosovo” would reasonably only exist against a government or an entity with governmental powers.⁴⁰⁷ The Veseli

⁴⁰⁴ Confirmation Decision, paras 451-474.

⁴⁰⁵ Veseli Response, paras 38-39.

⁴⁰⁶ Veseli Response, para. 39.

⁴⁰⁷ Veseli Response, para. 40.

Defence thus asserts that the SPO has failed to substantiate that the alleged crimes were part of the common purpose of the JCE.⁴⁰⁸

176. The Krasniqi Defence argues that the evidence in relation to the Second Category of amendments positively suggests that the acts alleged were committed for personal reasons rather than as a result of any alleged common plan.⁴⁰⁹

177. The SPO replies that identities of the perpetrators and victims as well as the place, time, nature and manner of commission demonstrate that the alleged crimes were committed in furtherance of the common criminal purpose or were a reasonable foreseeable consequences thereof.⁴¹⁰

178. The Pre-Trial Judge recalls his finding that, the Accused and other JCE Members “shared a common purpose between at least March 1998 and September 1999 to gain and exercise control over all of Kosovo” by means including unlawfully intimidating, mistreating, committing violence against and removing persons who were perceived to have been Opponents.⁴¹¹ The Pre-Trial Judge further recalls that this common purpose involved the commission of the crimes of persecution, imprisonment, and arbitrary detention, other inhumane acts, cruel treatment, torture, murder and enforced disappearance.⁴¹²

179. As the crimes alleged under the First Category and Second Category of amendments have been committed in Kosovo, within the Indictment Period,⁴¹³ by alleged KLA members,⁴¹⁴ against persons perceived to be Opponents,⁴¹⁵ and in a

⁴⁰⁸ Veseli Response, para. 41.

⁴⁰⁹ Krasniqi Response, para. 22.

⁴¹⁰ Reply, para. 11.

⁴¹¹ Confirmation Decision, para. 453.

⁴¹² Confirmation Decision, para. 454.

⁴¹³ Confirmed Indictment, para. 16.

⁴¹⁴ First Category: *see supra* paras 56-63, 67-74, 77-85, 88-92, 95-98, 99-107; Second Category: *see supra* paras 148-152, 155-161.

⁴¹⁵ First Category: *compare supra* para. 106 *with* Confirmed Indictment, para. 32; Second Category: *compare supra* para. 161 *with* Confirmed Indictment, para. 32.

manner consistent with the overall objectives of the common purpose, the Pre-Trial Judge finds that there is well-grounded suspicion that the alleged crimes were part of the alleged common purpose.

180. In light of the definition given to the common purpose and to Opponents⁴¹⁶ in the Confirmed Indictment, the fact that from June 1999 the KLA pushed back Serbian forces,⁴¹⁷ does not undermine a finding of well-grounded suspicion that the crimes alleged under the Second Category of amendments were part of the common purpose, when it is precisely at the moment when the KLA enter Gjilan/Gnjilane that the supporting material indicates that crimes against persons perceived as Opponents, which include individuals and entities beyond Serb forces, in Gjilan/Gnjilane begin.⁴¹⁸ As regards the contention that a JCE “to gain control of Kosovo” would reasonably only exist against a government or an entity with governmental powers, the Pre-Trial Judge considers that such submissions are best left for litigation during trial. During the pre-trial stage of proceedings, entertaining such submissions would amount to re-litigating matters already decided upon in the Confirmation Decision and would circumvent the standard procedure for the confirmation of indictments at the SC.

181. As regards evidence that crimes charged under the Second Category of amendments were motivated by the personal animosities of an individual KLA member, the Pre-Trial Judge recalls his finding that such evidence does not negate the well-grounded suspicion that the requisite elements of the charged crimes under the Second Category of amendments have been made out.⁴¹⁹ The Pre-Trial Judge further considers that JCE Members and Tools, who harbour personal animosities, can be used by the Accused to carry out the common purpose of the

⁴¹⁶ Confirmed Indictment, para. 32.

⁴¹⁷ 082037-TR-ET Part 1, p. 7.

⁴¹⁸ 082037-TR-ET Part 1, p. 8; 076248-TR-ET Part 1, p. 5.

⁴¹⁹ *See supra*, para. 118.

JCE. There is no requirement that the non-JCE member share the *mens rea* of the JCE member.⁴²⁰ As noted above, there is well-grounded suspicion that the alleged crimes under the Second Category of amendments are encompassed within the common purpose of the alleged JCE. The existence of evidence in relation to a KLA member's alleged personal motivations does not alone negate this well-grounded suspicion.

182. In light of the foregoing, the Pre-Trial Judge dismisses the Defence challenges regarding the common purpose of the JCE.

E. OVERALL CONCLUSION

183. In light of the above, the Pre-Trial Judge confirms the Proposed Amendments.

VII. DELAYED DISCLOSURE OF WITNESSES

184. The Pre-Trial Judge recalls that he varied the delayed disclosure of the identities of three witnesses until 14 days after the rendering of this decision.⁴²¹ In light of the fact that a further appearance of the Accused is required to be held as soon as practicable, pursuant Rule 90(3) of the Rules, the Pre-Trial Judge considers it necessary for the Accused to have a lesser redacted amended indictment before their further appearance. The Pre-Trial Judge accordingly further varies the delayed disclosure of the three relevant witnesses' identities until one week from the rendering of this decision and orders the SPO to disclose their identities to the Defence by Friday, 29 April 2022.

⁴²⁰ ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-AR98bis.1, Appeals Chamber, [Judgement](#), 11 July 2013, para. 79; *Prosecutor v. Brđanin*, IT-99-36-A, Appeals Chamber, [Judgement](#), 3 April 2007, para. 410.

⁴²¹ Delayed Disclosure Decision, para. 15.

VIII. DISPOSITION

185. In light of the foregoing, the Pre-Trial Judge hereby:

- a. **CONFIRMS** the First Category of amendments and the charges against the Accused contained therein, in particular:
 - i. persecution (Count 1), imprisonment (Count 2), other inhumane acts (Count 4), torture (Count 6), murder (Count 8) and enforced disappearance of persons (Count 10), as crimes against humanity punishable under Articles 13 and 16(1)(a) of the Law; and
 - ii. arbitrary detention (Count 3), cruel treatment (Count 5), torture (Count 7) and murder (Count 9), as war crimes punishable under Articles 14(1)(c) and 16(1)(a) of the Law;
- b. **CONFIRMS** the Second Category of amendments and the charges against the Accused contained therein, in particular:
 - i. persecution (Count 1), imprisonment (Count 2), other inhumane acts (Count 4), torture (Count 6), and murder (Count 8) as crimes against humanity punishable under Articles 13 and 16(1)(a) of the Law; and
 - ii. arbitrary detention (Count 3), cruel treatment (Count 5), torture (Count 7) and murder (Count 9) as war crimes punishable under Articles 14(1)(c) and 16(1)(a) of the Law;
- c. **ORDERS** the Specialist Prosecutor to submit, by Friday, 29 April 2022, an amended indictment with the First Category and Second Category of amendments (“Amended Indictment”);
- d. **ORDERS** the SPO to file a public redacted and confidential redacted version of the Amended Indictment by Friday, 29 April 2022;
- e. **ORDERS** the SPO to disclose the identities of the Delayed Disclosure Witnesses to the Defence by Friday, 29 April 2022;

- f. **ORDERS** the SPO to provide a revised outline for the Second Category of amendment including details of the evidence supporting the new allegations involving [REDACTED] for Counts 1 and 2-7 by Friday, 29 April 2022; and
- g. **INFORMS** the Accused that further appearances will be scheduled in due course.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Friday, 22 April 2022
At The Hague, the Netherlands.