



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-06

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

Before: Trial Panel II

Judge Charles L. Smith III, Presiding Judge

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 27 July 2023

Language: English

Classification: Confidential

Third Decision on Specialist Prosecutor's Bar Table Motion

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TRIAL PANEL II (“Panel”), pursuant to Articles 21, 40(2) and (6)(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 137 and 138(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 16 December 2022, the Panel invited the Specialist Prosecutor’s Office (“SPO”) to file a bar table motion pertaining to: (i) proposed exhibits on its list of exhibits which it intends to use for any of its first 40 witnesses; and (ii) evidentiary material that the SPO considers important to the clear and effective presentation of its case at this stage (“Fourth Oral Order”).¹
2. On 8 February 2023, the Specialist Prosecutor’s Office (“SPO”) filed a request for admission of material through the bar table (“Bar Table Motion”).²
3. On 21 February 2023, the Panel, upon the request of the Defences for Hashim Thaçi (“Mr Thaçi”), Kadri Veseli (“Mr Veseli”), Rexhep Selimi (“Mr Selimi”) and Jakup Krasniqi (“Mr Krasniqi”) (“Accused” and “Defence”), extended the time limit for response to the Bar Table Motion until 21 March 2023.³
4. On 21 March 2023, the Defence responded to the Bar Table Motion (“Response”).⁴

¹ Transcript of Hearing, Panel, 16 December 2022, p. 1775, line 6 to p. 1776, line 5.

² F01268, Specialist Prosecutor, *Prosecution Application for Admission of Material through the Bar Table*, 8 February 2023, with Annexes 1-4, 6, 7, confidential, and with Annexes 5, 8.

³ F01309, Panel, *Decision on Defence Request for a Revised Bar Table Motion and a Suspension and an Extension of Time*, 21 February 2023, paras 15, 16(c).

⁴ F01387, Specialist Counsel, *Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table*, 21 March 2023, confidential, with Annexes 1-8, confidential.

5. On 31 March and 9 June 2023, the Panel issued two decisions where it partially addressed the Bar Table Motion (“Decision on Bar Table Motion” and “Second Decision on Bar Table Motion”, respectively).⁵

II. SUBMISSIONS

6. The SPO requests the admission through the bar table of items falling into six categories: (i) Kosovo Liberation Army (“KLA”) General Staff communiques, political declarations and other announcements; (ii) drafts of KLA public statements, seized from Mr Krasniqi ; (iii) published archives of KLA General Staff media agency “Radio Free Kosovo”; (iv) published archives of KLA General Staff media “Kosovapress”; (v) re-publications of “Kosovapress” material in other media; and (vi) other items that do not fit into a specific category but fall within the scope of the Panel’s Fourth Oral Order.⁶

7. The Defence responds that the Bar Table Motion is an unreasonable and prejudicial attempt to admit an enormous volume of evidence while avoiding fair scrutiny and the requirements that the documents be authenticated and verified by tendering it through the relevant witness.⁷ The Defence submits that the SPO has failed to adhere to the Panel’s direction to use a high threshold of evaluation so as to ensure that only evidence of high probative value is tendered.⁸ The Defence adds that the present approach will create a bloated trial record and undermine the fairness of proceedings by departing significantly from the guiding principle of orality, publicity and adversarial argument, which will neither expedite the trial nor facilitate the fair adjudication of the case.⁹ In addition, the

⁵ F01409, Panel, *Decision on Specialist Prosecutor’s Bar Table Motion*, 31 March 2023, confidential; F01596, Panel, *Second Decision on Specialist Prosecutor’s Bar Table Motion*, 9 June 2023, confidential.

⁶ Bar Table Motion, para. 2.

⁷ Response, para. 1.

⁸ Response, para. 3.

⁹ Response, para. 4.

Defence raises general objections to the admission through the bar table of 13 different categories of documentary evidence and raises further specific objections to a number of other items.¹⁰

III. APPLICABLE LAW

8. The applicable law regarding the present matter is set out, *inter alia*, in Articles 21 and 40(6)(h) and Rules 137 and 138(1), and has been laid out extensively in the Decision on Bar Table Motion.¹¹ The Panel will apply these standards to the present decision.

IV. DISCUSSION

A. PRELIMINARY MATTERS

9. The Panel notes that in the Decision on Bar Table Motion and the Second Decision on Bar Table Motion, the Panel prioritised those items which the SPO had identified as being linked to the first six, and the following six witnesses, respectively. This decision supplements these decisions by addressing Annex 1 to the Bar Table Motion excluding items which were seized from either Mr Krasniqi's or Mr Selimi's residences as these items will be addressed in a separate decision.

10. The Panel will not consider the admission of one document at this stage as the SPO has failed to produce a correct English version of the document.¹²

¹⁰ Response, paras 14-105; Annexes 1-6 to the Response.

¹¹ Decision on Bar Table Motion, paras 8-13.

¹² The Panel notes that the translation provided for SPOE40000794-40000794 is incorrect as the Albanian version is political declaration 8 but the English version is communique 75; *See* Annex 1 to the Bar Table Motion, item 32.

11. The Panel further notes that one document that was to be considered in the present decision has already been admitted into evidence.¹³ The request for its admission from the bar table is therefore moot.

12. The Panel also notes that seven documents are duplicates, or poorer quality versions, of other documents offered in the Bar Table Motion.¹⁴ It is not apparent to the Panel why more than one copy of the same document needs to be admitted. Accordingly, the Panel denies, at this stage, the admission of IT-03-66 P142, SPOE00209433-00209433, U000-9948-U000-9948, U000-0516-U000-0516, U000-9963-U000-9963, SITF00316652-00316655, and SITF00436539-00436539 through the bar table.¹⁵ In other instances, the Panel has admitted several versions of the same or similar documents where such documents are not duplicates, for instance, in respect of one communique that was published in two or more media outlets.

B. ANNEX 1 – KLA GENERAL STAFF COMMUNIQUES, POLITICAL DECLARATIONS AND OTHER PUBLIC STATEMENTS ON BEHALF OF THE KLA GENERAL STAFF

13. The SPO requests the admission of: (i) a book titled “The Kosovo Liberation Army: Documents and Articles” by Gafurr Elshani (“Mr Elshani”), published by “Zëri i Kosovës”, in its entirety in Albanian, and 31 excerpts from this book in

¹³ The Panel notes that IT-04-84 P00948.E/U016-2727-U016-2728-EDT (item 1V in Annex 1 to the Bar Table Motion) has been admitted as P0021/P0021_ET.

¹⁴ The Panel notes that: (i) U008-1602-U008-1636 (p. U008-1633), U000-9948-U000-9948 and U000-0516-U000-0516 are duplicates; (ii) SITF00436539-00436539 is a poorer quality version of SPOE00053667-SPOE00053667-ET (item 1T in Annex 4 to the Bar Table Motion); (iii) SPOE00209433-SPOE00209433-ET Revised 1 and SPOE00209433-00209433 are duplicates; (iv) U008-1622-U008-1622-ET.02 and U000-9963-U000-9963 are duplicates (the English ERN for U000-9963-U000-9963 in Annex 1 is U008-1622-U008-1622-ET.02); (v) IT-03-66 P142 and U016-2148-U016-2148 are duplicates (the Panel notes that there is a small difference in the English versions due to the handwritten note on the latter but consider it unnecessary to admit both); and (vi) IT-03-66 P146 and SITF00316652-00316655 are duplicates (the Panel notes that the English versions are not duplicates but consider the original Albanian version to be authoritative).

¹⁵ Annex 1 to the Bar Table Motion, items 24, 27, 32A, 32B, 51, 53B, 65.

English.¹⁶ The SPO avers that Mr Elshani, the former Director and Editor-in-Chief of “Zëri i Kosovës”, collected KLA communiques and published articles for the book and that it was compiled and published by “Zëri i Kosovës” in Prishtinë; (ii) a collection of 28 KLA public statements issued in 1997 and 1998 in different newspapers in Kosovo;¹⁷ (iii) a collection of communiques (including numbers 33-92), political statements (including numbers 8-32) and declarations from the KLA, published between 20 May 1997 and 18 August 1999; and (iv) 56 individual communiques, political declarations and other public statements.¹⁸ The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.¹⁹

14. The Defence objects to the admission through the bar table of the communiques set out in Annex 1 to the Bar Table Motion. Specifically, the Defence avers that many of the same communiques were tendered through witnesses before the International Criminal Tribunal for the former Yugoslavia (“ICTY”) where Trial Chambers are said to have accepted that: (i) these documents were written by different individuals, including zone commanders without the knowledge of the KLA General Staff; (ii) were used as means of propaganda; and

¹⁶ The Panel notes that the SPO requests the admission of 35 excerpts from Mr Elshani’s book in item 1 in Annex 1 to the Bar Table Motion but that one of these excerpts was admitted in court and three of these excerpts were admitted in the Second Decision on Bar Table Motion; *See* Annex 1 to the Bar Table Motion, items 1V, 1W, 1X and 1G2; *See supra*, para. 11; Second Decision on Bar Table Motion, paras 69-77.

¹⁷ The Panel notes that the SPO requests the admission of 30 KLA public statements in item 2 in Annex 1 to the Bar Table Motion but that two of these documents were admitted in the Second Decision on Bar Table Motion; *See* Annex 1 to the Bar Table Motion, items 2J, 2M; Second Decision on Bar Table Motion, paras 69-77.

¹⁸ The Panel notes that the SPO requests the admission of 84 items, which are KLA communiques, political declarations and other public statements, in items 4-69 in Annex 1 to the Bar Table Motion but notes that: (i) eight items are rejected above at paragraphs 10 and 12; (ii) ten items were admitted in the Second Decision on Bar Table Motion; and (iii) ten items are not addressed in the present decision as they were seized from the Accused; *See* Annex 1 to the Bar Table Motion, items 16, 27, 29A, 31, 31A, 32, 32A, 32B, 35-37, 37A, 38, 39A, 40, 43-44, 47-48, 48A, 51, 62, 63A, 65-67; *See also supra*, paras 10, 12; Second Decision on Bar Table Motion, paras 69-77, 145-153.

¹⁹ Bar Table Motion, para. 3; Annex 1 to the Bar Table Motion.

(iii) for the purpose of this campaign, their content was often exaggerated or altered.²⁰ The Defence argues that these purported findings cast significant doubt on the reliability and authenticity of these documents, which *prima facie* do not meet the test of Rule 138.²¹ In addition, the Defence submits that as some are unsigned, unstamped and sometimes undated, their authors are unknown, it is unclear on what information these documents were written and the “original” versions are not available, these documents falls short of the requirements for admissibility without a witness providing context.²² In addition, the Defence provides specific objections to many of the abovementioned items.²³

15. The Panel notes that the SPO is seeking to admit documents in their entirety in Albanian while only offering partial translations in English. For the present decision, the Panel has only assessed the admissibility of the parts of these documents which are available in English. Accordingly, the Panel denies the admission of U016-2551-U016-2818 (Item 1 in Annex 1) in its entirety from the bar table.

16. The Panel also notes that the SPO has utilised the evidence reference number (“ERN”) of the English translations when making submissions on the admissibility of individual items contained in Items 1 and 2 in Annex 1. Accordingly, the Panel has also referred to these items using the same ERNs.

1. Item 1 in Annex 1

17. The 31 excerpts in English from Mr Elshani’s book (Item 1 in Annex 1) encompass the foreword to the book²⁴ and items which have been re-published

²⁰ Response, para. 16.

²¹ Response, para. 17.

²² Response, para. 17.

²³ Annex 1 to the Response.

²⁴ IT-04-84 P00934.E, Annex 1 to the Bar Table Motion, item 1A.

from other sources, namely: (i) the political declaration of the 4th general meeting of the People's Movement for Kosovo ("LPK") published in "Zëri i Kosovës";²⁵ (ii) a press release from "Serbian Media" stating that the KLA "undertook the offense in Glogoc";²⁶ (iii) an article titled "war for freedom or...terrorism" published in "Zëri i Kosovës";²⁷ (iv) communiques 13, 18-21, 24, 26-30, 32-34, 38-41, 44, 46, originally published in "Zëri i Kosovës" in all but one instance (communique 21);²⁸ (v) a statement titled "The Protection of Kosovo is just and intact, irreversible and an obligation and honour for every citizen", published in "Zëri i Kosovës" on 1 May 1996;²⁹ (vi) a statement titled "New Actions of KLA", published in "Zëri i Kosovës" on 29 August 1996;³⁰ (vii) a statement titled "KLA is reality" signed by "Ali Ukaj", published in "Gazeta Shqiptare" on 31 January 1997;³¹ (viii) the re-publication of a report titled "KLA Claims Responsibility for Three Attacks by the "Kosovo Information Centre" on 1 August 1997;³² (ix) the re-publication of a British Broadcasting Corporation ("BBC") interview with Fehmi Agani in the "Rilindja" on 3 December 1997;³³ (x) a call to Albanians to help the Kosovo National Movement, published in "Zëri i Kosovës";³⁴ (xi) a publication titled "Glogoc: incessant endorsement by

²⁵ IT-04-84 P00933.E; Annex 1 to the Bar Table Motion, item 1B.

²⁶ ET U016-2577-U016-2578; Annex 1 to the Bar Table Motion, item 1C.

²⁷ ET U016-2579-U016-2582; Annex 1 to the Bar Table Motion, item 1D.

²⁸ U016-2583-U016-2583-ET Revised, U016-2588-U016-2589-ET Revised, U016-2603-U016-2604-ET Revised, U016-2609-U016-2609-ET Revised, U016-2619-U016-2620-ET Revised, U016-2625-U016-2625-ET Revised, ET U016-2631-U016-2631, U016-2653-U016-2654-ET Revised, U016-2666-U016-2666-ET Revised, ET U016-2667-U016-2668, ET U016-2676-U016-2676, U016-2708-U016-2708-ET Revised, U016-2710-U016-2710-ET, U016-2750-U016-2750-ET, U016-2751-U016-2752-ET, IT-04-84 P00953.E, IT-04-84bis P00147.E, U016-2781-U016-2782-ET, U016-2793-U016-2794-ET; *See* Annex 1 to the Bar Table Motion, items 1E, 1F, 1G, 1I, 1J, 1L, 1M, 1N, 1O, 1P, 1R, 1S, 1T, 1Y, 1Z, 1B2, 1E2, 1H2, 1I2. The Panel notes that communiques 36-37 and 42 were admitted in the Second Decision on Bar Table Motion; *See* Second Decision on Bar Table Motion, paras 69-77.

²⁹ ET U016-2606-A-U016-2606-B; Annex 1 to the Bar Table Motion, item 1H.

³⁰ U016-2621-U016-2621-ET Revised; Annex 1 to the Bar Table Motion, item 1K.

³¹ IT-04-84 P00946.E; Annex 1 to the Bar Table Motion, item 1Q.

³² U016-2726-U016-2726-ET Revised; Annex 1 to the Bar Table Motion, item 1U,

³³ U016-2757-U016-2757-EDT; Annex 1 to the Bar Table Motion, item 1A2.

³⁴ ET U016-2762-U016-2762; Annex 1 to the Bar Table Motion, item 1C2.

unidentified people”, published by “Kosovo Information Centre” on 27 December 1997,³⁵ and (xii) a collection of three publications, consisting of two declarations by the KLA and communique 42.³⁶

18. The Panel finds that these items are all relevant to allegations in the Amended Indictment in that they relate to one or more of the following matters: (i) the relationship between the LPK and the KLA; (ii) the context and timing at which the KLA emerged; (iii) alleged attacks on so-called “collaborators” by members of the KLA; (iv) KLA Central Staff and KLA General Staff oversight of military operations; (v) armed attacks and the existence of an armed conflict; (vi) the KLA’s, KLA Central Staff’s and KLA General Staff’s purported status as the only legitimate voice of the Kosovo Albanian people; (vii) use of communiques and political declarations by the KLA General Staff, including in respect of alleged collaborators; (viii) role, powers and authority of the KLA General Staff; and (ix) operational capabilities of the KLA.³⁷ The Panel notes that all except two of these items, are dated outside the temporal scope of the Amended Indictment³⁸ and the temporal jurisdiction of the Specialist Chamber (“SC”). The Panel finds however, that these items are relevant as events prior to the indictment period, or temporal jurisdiction of the SC, provide relevant context in relation to events within the temporal scope of the Amended Indictment.³⁹ In particular, they are

³⁵ U016-2775-U016-2775-ET; Annex 1 to the Bar Table Motion, item 1D2.

³⁶ ET U016-2778-U016-2779; Annex 1 to the Bar Table Motion, item 1F2.

³⁷ F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment (“Amended Indictment”)*, 30 September 2022, strictly confidential and *ex parte* (reclassified as confidential on 26 January 2023), paras 14-16, 20, 36.

³⁸ Amended Indictment, para. 16.

³⁹ International Criminal Tribunal for Rwanda, *Prosecutor v. Théoneste Bagosora et al.*, ICTR-98-41-T, Trial Chamber I, [Decision on Admissibility of Proposed Testimony of Witness DBY](#), 18 September 2003, para. 10; *Ferdinand Nahimana et al. v. Prosecutor*, ICTR-99-52-A, Appeals Chamber, [Judgement](#), 28 November 2007, para. 315; *Aloys Simba v. Prosecutor*, ICTR-01-76-AR72.2, Appeals Chamber, [Decision on Interlocutory Appeal Regarding Temporal Jurisdiction](#), 29 July 2004, p. 3; International Criminal Court, *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06-308, Pre-Trial Chamber II, [Decision on Admissibility of Evidence and Other Procedural Matters](#), 8 June 2014, para. 30.

evidence of patterns of conduct which are relevant to facts alleged in the Amended Indictment.

19. The Panel recalls its finding from the Second Decision on Bar Table Motion that the question of authorship of communiques, political declarations and other public statements of the KLA General Staff is to be resolved at trial.⁴⁰ This finding applies to all such documents in Annex 1 addressed in the present decision. Similarly, the purpose(s) of those communiques is a matter that will be determined at the end of trial in light of all relevant evidence. The Panel notes, however, in response to the Defence's submissions on this point that the Panel is not aware of any findings from ICTY Trial Chambers suggesting that communiques were used exclusively for propaganda purposes. Instead, in the *Limaj* case, Trial Chamber II found and accepted that "communiqués were intended partly for propaganda purposes".⁴¹

20. Turning to authenticity, the Panel notes that all items originate from a book by Mr Elshani published by "Zëri i Kosovës" in "Prishtinë".⁴² All re-publications of communiques therein were originally published in "Zëri i Kosovës", they are dated (either by reference to publication date, or dated by the KLA Central Staff/KLA General Staff), are numbered and the newspaper issue number is identified. In addition, five of the communiques re-published in this book are consistent with communiques published in "Zëri i Kosovës" addressed at paragraphs 37-50 below.⁴³

⁴⁰ Second Decision on Bar Table Motion, para. 71.

⁴¹ ICTY, *Prosecutor v. Fatmir Limaj et al.*, IT-03-66-T, Trial Chamber II, [Judgement](#), 30 November 2005, para. 216 (footnote omitted, emphasis added); *See also Prosecutor v. Ramush Haradinaj et al.*, IT-04-84-T, Trial Chamber I, [Judgement](#), 3 April 2008, paras 88 and 472 (summarising the evidence of witness Jakup Krasniqi).

⁴² *See* IT-04-84 P00934.E; Annex 1 to the Bar Table Motion, item 1A; *See also* Annex 1 to the Bar Table Motion.

⁴³ The Panel notes that the following versions published in Mr Elshani's book and "Zëri i Kosovës" are consistent: (i) items 1O and 9 are communique 28; (ii) items 1P and 10 are communique 29; (iii) items 1R and 11 are communique 30; and (iv) items 1S and 12 are communique 32; and (v) items 1T and 13 are communique 33.

21. The Panel is also satisfied that IT-04-84 P00933.E, ET U016-2577-U016-2578, ET U016-2579-U016-2582, ET U016-2606-A-U016-2606-B, U016-2621-U016-2621-ET Revised, IT-04-84 P00946.E, U016-2726-U016-2726-ET Revised, U016-2757-U016-2757-EDT, ET U016-2762-U016-2762, U016-2775-U016-2775-ET and part of ET U016-2778-U016-2779, which are not communiques, are *prima facie* authentic as they have all been re-published from “Zëri i Kosovës”, “Gazeta Shqiptare”, “Rilindja” or the “Kosovo Information Centre”, are dated, and bear various other indicia of origin. The Panel is therefore satisfied of the *prima facie* authenticity of these documents.

22. The Panel is further satisfied with the *prima facie* probative value of all re-published communiques, namely U016-2583-U016-2583-ET Revised, U016-2588-U016-2589-ET Revised, U016-2603-U016-2604-ET Revised, U016-2609-U016-2609 ET Revised, U016-2619-U016-2620-ET Revised, U016-2625-U016-2625-ET Revised, ET U016-2631-U016-2631, U016-2653-U016-2654-ET Revised, U016-2666-U016-2666-ET Revised, ET U016-2667-U016-2668, ET U016-2676-U016-2676, U016-2708-U016-2708-ET Revised, U016-2710-U016-2710-ET, U016-2750-U016-2750-ET, U016-2751-U016-2752-ET, IT-04-84 P00953.E, IT-04-84bis P00147.E, U016-2781-U016-2782-ET, U016-2793-U016-2794-ET, and part of ET U016-2778-U016-2779 as they are relevant to the facts set out in paragraph 18 above, support the content of other versions of the communiques, and/or their contents contain various indications of consistency of themes and positions.

23. The Panel is also satisfied with the *prima facie* probative value of the following items in respect of one or more of the issues outlined above and/or as these items provide apparent support for other items admitted in this part of the decision: IT-04-84 P00934.E, IT-04-84 P00933.E, U016-2621-U016-2621-ET Revised,

IT-04-84 P00946.E, U016-2726-U016-2726-ET Revised, and ET U016-2762-U016-2762.⁴⁴

24. The Panel is not satisfied with the *prima facie* authenticity and/or probative value of: (i) ET U016-2577-U016-2578 as this item only indicates that the information originates from “Serbian Media” without any further specification;⁴⁵ (ii) ET U016-2579-U016-2582, ET U016-2606-A-U016-2606-B and U016-2757-U016-2757-EDT as these items require contextualisation by the author and/or a witness capable of providing further information regarding its origin and content;⁴⁶ and (iii) U016-2775-U016-2775-ET as the information therein is described as originating from “unidentified people”.⁴⁷ The Panel accordingly denies admission of these documents via the bar table.

25. The Panel is satisfied that the probative value of the documents in paragraphs 22-23 is not outweighed by any prejudice to the Accused. The Defence will be able to challenge the content of these items via cross-examination of relevant witnesses.

26. In light of the foregoing, the Panel admits into evidence U016-2583-U016-2583-ET Revised, U016-2588-U016-2589-ET Revised, U016-2603-U016-2604-ET Revised, U016-2609-U016-2609-ET Revised, U016-2619-U016-2620-ET Revised, U016-2625-U016-2625-ET Revised, ET U016-2631-U016-2631, U016-2653-U016-2654-ET Revised, U016-2666-U016-2666-ET Revised, ET U016-2667-U016-2668, ET U016-2676-U016-2676, U016-2708-U016-2708-ET Revised, U016-2710-U016-2710-ET, U016-2750-U016-2750-ET, U016-2751-U016-2752-ET, IT-04-84 P00953.E, IT-04-84bis P00147.E, U016-2781-U016-2782-ET, U016-2793-U016-2794-ET, ET U016-2778-U016-2779, IT-04-84 P00934.E, IT-04-84 P00933.E, U016-2621-U016-2621-ET Revised, IT-04-84 P00946.E, U016-2726-U016-2726-ET Revised and

⁴⁴ Annex 1 to the Bar Table Motion, items 1A, 1B, 1K, 1Q, 1U, 1C2.

⁴⁵ Annex 1 to the Bar Table Motion, item 1C.

⁴⁶ Annex 1 to the Bar Table Motion, item 1D, 1H, 1A2.

⁴⁷ Annex 1 to the Bar Table Motion, item 1D2.

ET U016-2762-U016-2762 and denies admission of ET U016-2577-U016-2578, ET U016-2579-U016-2582, ET U016-2606-A-U016-2606-B, U016-2757-U016-2757-EDT and U016-2775-U016-2775-ET.

2. Item 2 in Annex 1

27. U008-1602-U008-1636 (Item 2 in Annex 1) encompasses: (i) two interviews with Mr Krasniqi published in "Koha Ditore";⁴⁸ (ii) re-publications, or publications, of communiqués 35, 46, 49, 53, 55, 57-58, 62, 71 in "Koha Ditore";⁴⁹ (iii) re-publications, or publications, of communiqués 40-43, 45, 64 in "Bujku";⁵⁰ (iv) an article titled "UCK Sends Memorandum to International Community" re-published in "Koha Ditore" on 17 October 1998;⁵¹ (v) statement no. 3 of the KLA Military Police Directorate and political declarations 8, 16-17, 19 of the KLA General Staff published in "Koha Ditore";⁵² (vi) an article titled "KLA arrested a group of bandits and collaborationists", published in "Bujku" on 23 November 1998;⁵³ (vii) political declaration 3, which also contains a publication about a statement by the Ministry of Finance titled "the battle for independence should also be supported financially";⁵⁴ (viii) political statement 8 published in

⁴⁸ U003-8552-U003-8690 (pp. U003-8580-U003-8585, U003-8586-U003-8590); Annex 1 to the Bar Table Motion, items 2A, 2B.

⁴⁹ U008-1607-U008-1607-ET, U003-8552-U003-8690 (pp. U003-8571-U003-8571, U003-8611-U003-8612, U003-8660-U003-8660), U008-1615-U008-1615-ET, U008-1616-U008-1616-ET, U008-1618-U008-1618-ET, U008-1620-U008-1620-ET, U008-1624-U008-1624-ET Revised; Annex 1 to the Bar Table Motion, items 2C, 2I, 2K, 2L 2N, 2O, 2P, 2T, 2X.

⁵⁰ U008-1608-U008-1608-ET Revised, U008-1609-U008-1609-ET Revised, U008-1610-U008-1610-ET, U008-1611-U008-1611-ET, U003-8552-U003-8690 (pp. U003-8566-U003-8567), U008-1628-U008-1628-ET Revised; Annex 1 to the Bar Table Motion, items 2D, 2E, 2F, 2G, 2H, 2W. The Panel notes that communiqués 47 and 54 were admitted in the Second Decision on Bar Table Motion; *See* Second Decision on Table Motion, paras 69-77.

⁵¹ U003-8552-U003-8690 (pp. U003-8623-U003-8624); Annex 1 to the Bar Table Motion, item 2Q.

⁵² U008-1622-U008-1622-ET.02, U008-1623-U008-1623-ET, U008-1627-U008-1627-ET Revised, U008-1633-U008-1633-ET; Annex 1 to the Bar Table Motion, items 2R, 2S, 2V, 2B2.

⁵³ U008-1625-U008-1625-ET; Annex 1 to the Bar table Motion, item 2U.

⁵⁴ U008-1630-U008-1630-ET Revised; Annex 1 to the Bar Table Motion, item 2Y.

“Bujku”;⁵⁵ (ix) political declaration 4 and an article titled “There is no 1st Brigade within the KLA, and it does not exist”, published in “Zëri i Kosovës”;⁵⁶ (x) a statement on release from arrest of Milovan Stanković from the KLA General Political Representative and political declaration 11 by the KLA General Staff published in “Koha Ditore” on 8 June 1998;⁵⁷ and (xi) statements by Adem Demaçi published in “Koha Ditore” on 14 October 1998.⁵⁸

28. The Panel considers that communiques with the same enumeration as a communique offered in Items 1 and 4-69 in Annex 1 published by a different news outlet are relevant to one or more of the issues outlined at paragraphs 18 and 38. As such, they have been shown to be relevant to these proceedings. Furthermore, for reasons outlined above, the Panel is prepared to admit several versions of the same communiques, even if the information contained therein becomes duplicative. The fact that the same communique is published in several media outlets around the same time, with no or marginal differences of substance, corroborates their existence and, to some extent, their origin.⁵⁹ This also provides some indication of their authenticity.

29. The Panel also finds all remaining items relevant to: (i) the degree of organisation of the KLA and the associated issue of the alleged existence of a non-international armed conflict; (ii) the attempts to establish the KLA General Staff as the only legitimate voice of the Kosovo Albanian people; and (iii) aspects of the command structure and authority of the KLA and the KLA General Staff.⁶⁰ The Panel notes that some of these items are dated outside the temporal scope of the indictment period and the temporal jurisdiction of the SC but considers,

⁵⁵ U008-1632-U008-1632-ET; Annex 1 to the Bar Table Motion, item 2A2.

⁵⁶ SPOE00209433-SPOE00209433-ET Revised 1; Annex 1 to the Bar Table Motion, item 2Z.

⁵⁷ U008-1634-U008-1634-ET; Annex 1 to the Bar Table Motion, item 2C2

⁵⁸ U008-1635-U008-1635-ET Revised; Annex 1 to the Bar Table Motion, item 2D2.

⁵⁹ *See supra and infra*, paras 17-26, 37-50.

⁶⁰ Amended Indictment, paras 18, 36-37.

nonetheless, that these items are relevant for the reasons set out above at paragraph 18.⁶¹

30. Turning to authenticity, the Panel is satisfied of the *prima facie* authenticity of these items. All items were originally published, or re-published, in “Koha Ditore”, “Bujku”, or “Zëri i Kosovës”, the SPO has provided the dates of publication and they bear all relevant markings of their origin. In respect of the publications, or re-publications, of communiques in “Koha Ditore” and “Bujku”, the Panel also notes that the communiques and political statements are generally consistent in substance with the versions published in “Zëri i Kosovës” addressed above at paragraphs 17-26, below at paragraphs 37-50, or which are already admitted into evidence.⁶²

31. With regard to *prima facie* probative value, the Panel considers that all communiques published, or re-published, in “Koha Ditore” and “Bujku” have *prima facie* probative value as they support the content of the other versions of the communiques, and their contents contain various indications of consistency of themes and positions.⁶³ Their content is potentially probative of a variety of issues relevant to this case as indicated above at paragraphs 28-29.

32. The Panel is also satisfied that statement no. 3 attributed to the KLA Military Police Directorate (U008-1622-U008-1622-ET.02), political declarations 3, 4, 8, 11,

⁶¹ See *supra*, fn. 39.

⁶² The Panel notes, *inter alia*, that the following versions published in “Koha Ditore” and “Bujku” are consistent with versions re-published in Mr Elshani’s book from Zëri i Kosovës”, or published in “Zëri i Kosovës”: (i) items 2C and 15 are communique 35; (ii) items 1B2 and 2D are communique 40; (iii) items 1E2 and 2E are communique 41; (iv) items 1G2, 2F and 21 are communique 42; (v) items 2G and 20 are communique 43; (vi) items 1H2, 2H and 22 are communique 44; (vii) items 2H and 22 are communique 45; (viii) items 1I2, 2I and 23 are communique 46; (ix) items 2K and 26 are communique 49; (x) item 2L and P00157 are communique 53; (xi) items 2N and 39 are communique 55; (xii) items 2P and 42 are communique 58; (xiii) items 2Y and 63 are political declaration 3; (xiv) item 2A2 and P00174 are political declaration 9; (xv) items 2C2 and 41 are political declaration 11; (xvi) item 2R and P00159 are political declaration 16; and (xvii) items 2S and 54 are political declaration 17.

⁶³ See *supra and infra*, fns. 62, 103.

16-17, and 19 (U008-1622-U008-1622-ET.02, U008-1623-U008-1623-ET, U008-1627-U008-1627-ET Revised, SPOE00209433-SPOE00209433-ET Revised 1, U008-1630-U008-1630-ET Revised, U008-1633-U008-1633-ET, and U008-1634-U008-1634-ET) and political statement 8 (U008-1632-U008-1632-ET) have *prima facie* probative value.⁶⁴ They are published statements on behalf of the KLA General Staff, which are relevant to establishing facts and circumstances of this case, as indicated above at paragraph 29. In addition, several of these statements support the content of other statements, which further adds to their *prima facie* probative value. For instance, the Panel notes that: (i) communique 62 (U008-1624-U008-1624-ET Revised) and political declarations 16 and 19 (U008-1622-U008-1622-ET.02 and U008-1627-U008-1627-ET Revised) refer to the KLA's commitment to "self-restraint", or a "ceasefire" initially announced in political declaration 12 addressed below at paragraphs 37-50;⁶⁵ and (ii) the statement by the KLA General Staff titled "There is no 1st Brigade within the KLA, and it does not exist" in SPOE00209433-SPOE00209433-ET Revised 1 supports the existence and content of political declaration no. 4 as it states "[t]he position of the KLA is the one expressed in the Political Declaration No. 4".⁶⁶ Lastly, the Panel is also satisfied of the *prima facie* probative value of U008-1634-U008-1634-ET.⁶⁷ The document was commented upon by SPO witness W03540. While he corroborated the general content of the document, its origin and date, he took issue with the truth and truthfulness of some of the assertions contained therein.⁶⁸ Those assertions, and their relevance to the case, will be addressed later in these proceedings as they do not bear upon the admissibility of the document. The Panel considers, however, that the item has *prima facie* probative value in relation to W03540's arrest and

⁶⁴ Annex 1 to the Bar Table Motion, items 2R, 2S, 2V, 2Y, 2Z, 2A2, 2B2, 2C2.

⁶⁵ Annex 1 to the Bar Table Motion, items 2R, 2T, 2V; *See also* Annex 1 to Bar Table Motion, item 45.

⁶⁶ Annex 1 to the Bar Table Motion, item 2Z.

⁶⁷ Annex 1 to the Bar Table Motion, item 2C2.

⁶⁸ Transcript of Hearing, 19 June 2023, p. 5077, line 20 to p. 5080, line 9,

detention, circumstances thereof, authority involved therein, and in respect of the process of release of detainees.⁶⁹

33. The Panel is not satisfied at this stage that the SPO has established the *prima facie* probative value of the following items: (i) U003-8580-U003-8585 and U003-8586-U003-8590 (included in U003-8552-U003-8690) as to admit them, at this stage, without additional context would raise issues of confrontation and unfair prejudice to the Accused;⁷⁰ (ii) U003-8623-U003-8624 (included in U003-8552-U003-8690) as it is unclear what the information therein, which primarily is of a historical nature, is based upon;⁷¹ (iii) U008-1625-U008-1625-ET as it is unclear from where the information in this item originates and it would therefore benefit from further contextualisation by a witness;⁷² and (iv) U008-1635-U008-1635-ET Revised as this item requires further contextualisation by a witness.⁷³ The Panel accordingly denies admission of these documents via the bar table at this stage of the proceedings.

34. The Panel is satisfied that the probative value of the documents in paragraphs 31-32 is not outweighed by any prejudice to the Accused. The Defence will be able to challenge the content of these items via cross-examination of relevant witnesses.

35. In light of the foregoing, the Panel admits into evidence U008-1607-U008-1607-ET, U008-1608-U008-1608-ET Revised, U008-1609-U008-1609-ET Revised, U008-1610-U008-1610-ET, U008-1611-U008-1611-ET, U003-8552-U003-8690 (pp. U003-8566-U003-8567, U003-8571-U003-8571, U003-8611-U003-8612, U003-8660-U003-8660), U008-1615-U008-1615-ET, U008-1616-U008-1616-ET, U008-1618-

⁶⁹ U008-1634-U008-1634-ET; *See also* Transcript of Hearing, 19 June 2023, p. 5078, line 10 to p. 5080, line 9.

⁷⁰ Annex 1 to the Bar Table Motion, items 2A, 2B.

⁷¹ Annex 1 to the Bar Table Motion, item 2Q.

⁷² Annex 1 to the Bar Table Motion, item 2U.

⁷³ Annex 1 to the Bar Table Motion, item 2D2.

U008-1618-ET, U008-1620-U008-1620-ET, U008-1622-U008-1622-ET.02, U008-1623-U008-1623-ET, U008-1624-U008-1624-ET Revised, U008-1627-U008-1627-ET Revised, U008-1628-U008-1628-ET Revised, U008-1630-U008-1630-ET Revised, SPOE00209433-SPOE00209433-ET Revised 1, U008-1632-U008-1632-ET, U008-1633-U008-1633-ET, and U008-1634-U008-1634-ET and denies admission of U003-8552-U003-8690 (pp. U003-8580-U003-8585, U003-8586-U003-8590 and U003-8623-U003-8624), U008-1625-U008-1625-ET and U008-1635-U008-1635-ET Revised.

3. Item 3 in Annex 1

36. U003-8552-U003-8690 (Item 3 in Annex 1) is a collection of KLA communiques and other public statements obtained from the Foreign Broadcast Information Service (“FBIS”). The Panel notes, however, that the SPO has made no submissions as to the relevance, authenticity and probative value of the items contained therein, or the collection of documents in their entirety. The Panel observes that some documents offered in this item are translated versions of documents offered elsewhere in the Bar Table Motion, which were re-published by the FBIS. The Panel notes, however, that not all documents in U003-8552-U003-8690 have been offered elsewhere in the Bar Table Motion but rather are offered for the first time in U003-8552-U003-8690. Accordingly, for such items there are no submissions for the Panel to consider to verify the conditions of admissibility of these documents. In addition, the SPO has not specified how re-publications of items, such as communiques, by the FBIS are relevant to the case. The Panel also observes that the SPO has provided specific pages of U003-8552-U003-8690 as the translations for some parts of Item 2 and some of Items 4-69 in Annex 1. The SPO has not cross-referenced any overlap between items offered in U003-8552-U003-8690 and other items in Annex 1. As a result, the SPO appears to be offering such documents from the Bar Table Motion twice. Accordingly, the Panel rejects, without prejudice, the admission of U003-8552-U003-8690, excluding those pages

admitted as translations of other items in Annex 1, from the bar table. If the SPO wishes, to make a renewed request for admission, it may do so, provided it is properly substantiated and cross-referenced with already admitted items, for the remaining parts of U003-8552-U003-8690.

4. Items 4 to 69 in Annex 1

37. The remaining items in Annex 1 to the Bar Table Motion encompass: (i) a handwritten note in Serbian to the editorial board of “Jedinstvo” sent from the F.Y.R of Macedonia;⁷⁴ (ii) communiques 18-19, 24, 28-30, 32-33, 35-36, 38-40,⁷⁵ 42-46,⁷⁶ 48-49, 51-52,⁷⁷ 55, 57-58, 61,⁷⁸ 65,⁷⁹ 66-67,⁸⁰ 68-69,⁸¹ and 70 of the KLA General Staff published in “Zëri i Kosovës” (communiques 37, 53-54, and 59-60 were admitted in the Second Decision on Bar Table Motion);⁸² (iii) communiques 62 and

⁷⁴ U000-0341-U000-0341; Annex 1 to the Bar Table Motion, item 4.

⁷⁵ The Panel observes that SPOE00209302-00209302 does not have a communique number but notes that the content is similar to U016-2760-U016-2761-EDT addressed above, which is communique 40; Annex 1 to the Bar Table Motion, items 1B2, 19.

⁷⁶ The Panel notes that SPOE40000792-SPOE40000792-ET Revised 2 also contains a statement titled “The Traps of TVSH’s (Dis)Information Cynicism”; Annex 1 to the Bar Table Motion, item 22.

⁷⁷ The Panel notes that 043801-043801 also contains an article titled “Mahmuti: “KLA has not killed any civilian to date”; Annex 1 to the Bar Table Motion, item 34.

⁷⁸ The Panel observes that 043862-043862 also contains a report from the Dukagjini Operational Zone and one information note from the Directorate of Information; Annex 1 to the Bar Table Motion, item 53.

⁷⁹ The Panel observes that SPOE40000799-40000799 also contains two information notes from the KLA General Staff; Annex 1 to the Bar Table Motion, item 57.

⁸⁰ The Panel notes that SPOE40000796-40000796 also contains one press release and one information note from the KLA Directorate of Information; Annex 1 to the Bar Table Motion, item 58A.

⁸¹ The Panel notes that SPOE00056435-SPOE00056435 also contains a statement by Shaban Sinani titled “Who will be the “untied voice” of Kosovo?”; Annex 1 to the Bar Table Motion, item 59.

⁸² 074573-074573, 074575-074575, 074579-074579, SPOE00209303-00209303, SPOE00209304-00209304, SPOE00209305-00209305, SPOE00209306-00209306, SPOE00209307-00209307, SPOE00209308-00209308, SPOE00209309-00209309, SPOE00209311-00209311, SPOE00209312-00209312, SPOE00209302-00209302, SPOE00209429-00209429, SPOE40000792-40000792, SPOE00209430-00209430, SPOE40000793-40000793, SPOE00209431-00209431, 043801-043801, 043804-043804, 043806-043806, 043862-043862, 043807-043807, SPOE40000799-40000799, SPOE40000796-40000796, SPOE00056435-SPOE00056435, SPOE00056467-SPOE00056467, SPOE00056419-SPOE00056419; Annex 1 to the Bar Table Motion, items 5-6, 8-15, 17-19, 21-23, 25-26, 34, 39, 41-42, 53, 57, 58A, 59-60, 64; *See also* Second Decision on Bar Table Motion, paras 69-77, 145-153.

64 published in “Koha Ditore” and communique 66 published in “Kosovasot”;⁸³ (iv) an article titled “Fresh Operations by the KLA”, which summarises communiques 21-23 originally published in “Zëri i Kosovës” on 25 April 1996;⁸⁴ (v) a publication titled “The speech by the KLA soldiers at the funeral ceremony of teacher Halit Gecaj in Llausha. Brothers and sisters, mothers and fathers, family members of our brother Halit Gecaj!” published in “Zëri i Kosovës” on 11 December 1997;⁸⁵ (vi) political declarations 2,⁸⁶ 3, 5-7, 11-12, 13,⁸⁷ 14, 17,⁸⁸ 20, 21, 22 (political declarations 9-10 were admitted in the Second Decision on Bar Table Motion) published in “Bujku”, “Zëri i Kosovës” and/or “Koha Ditore”;⁸⁹ (vii) publication in “Bujku” of political declaration 5, as presented by Mr Krasniqi to Albanian television;⁹⁰ (viii) articles published in Agence France Presse and BBC respectively covering political declaration 7;⁹¹ (ix) a publication in “Zëri i Kosovës” on 3 September 1998, which contains a pronouncement attributed to the KLA General Staff titled “The Serbian occupier’s lie about the purported existence of a mass grave of Serbian citizens in Kleçkë village” and an interview with Fatmir Limaj;⁹² (x) FBIS translations of communique 51, which was originally

⁸³ SPOE00199239-SPOE00199240, U000-0519-U000-0519 and U008-1668-U008-1668; Annex 1 to the Bar Table Motion, items 55-56, 58.

⁸⁴ 074577-074577; Annex 1 to the Bar Table Motion, item 7.

⁸⁵ SPOE00209301-00209301; Annex 1 to the Bar Table Motion, item 20.

⁸⁶ The Panel notes that the document is titled “communique” but that “political declaration no. 2” is handwritten on the document; Annex 1 to the Bar Table Motion, item 24A.

⁸⁷ The Panel notes that there are two versions of political declaration 13, namely 043808-043808 (published in “Zëri i Kosovës”) and U000-9943-U000-9943 (published in “Koha Ditore”); Annex 1 to the Bar Table Motion, items 45, 45A.

⁸⁸ The Panel notes that 043864-043864 also includes two information notes from the KLA General Staff Information Directorate; Annex 1 to the Bar Table Motion, item 54.

⁸⁹ U016-2148-U016-2148, 043850-043850, 043852-043852, U000-8992-U000-8992, 043806-043806, 043808-043808, U000-9943-U000-9943, 043860-043860, 043865-043865, 043864-043864, SPOE40000799-40000799, SPOE40000798-40000798, SPOE00209432-00209432, SPOE00056419-SPOE00056419; Annex 1 to the Bar Table Motion, items 24A, 28-29, 30, 41, 45, 45A, 50, 52, 54, 57, 61, 63-64; *See also* Second Decision on Bar Table Motion, paras 69-77, 145-153.

⁹⁰ SPOE00199392-00199394; Annex 1 to the Bar Table Motion, item 28A.

⁹¹ 019582-019583, 019584-019585; Annex 1 to the Bar Table Motion, items 30A, 30B.

⁹² 043855-043856; Annex 1 to the Bar Table Motion, item 33.

broadcasted on TVSH on 26 August 1998 by Mr Krasniqi, communique 59 and a communique from the KLA General Staff signed by Agim Ceku dated 18 August 1999;⁹³ (xi) a re-publication of communique 59 in “Bota e Re”;⁹⁴ (xii) Military Police Directorate Statement 3 and 4, published in “Zëri i Kosovës”, and another version of statement 4, published in “Koha Ditore”;⁹⁵ (xiii) a public statement attributed to Mr Thaçi, as the head of the Political Directorate of the KLA General Staff, titled “We invite those that lost their mind to come to their senses and move away from the divisive “government actions”, published in “Zëri i Kosovës” on 28 January 1999 (this item also contains communique 70);⁹⁶ and (xiv) communique 80 of the KLA General Staff published in Kosovapress.⁹⁷

38. The Panel is satisfied that these items are relevant as they concern: (i) the KLA’s alleged early use of armed actions, communiqués and political declarations; (ii) the existence of an armed conflict, elements (including in respect of the KLA’s organisational capabilities) and nature thereof; (iii) the relationship between the LPK and the KLA; (iv) the KLA General Staff’s alleged awareness and oversight of military operations; (v) the KLA General Staff’s alleged ability to issue operational orders to KLA forces and involvement in operational matters; (vi) the alleged policy of targeting and legitimising attacks against “collaborators”; (vii) the existence and role of the KLA Military Police Directorate; (viii) the implementation of United Nations Security Council Resolution 1199; (ix) alleged crimes committed in Drenoc; and (x) the KLA General Staff’s alleged organisation and control of the media.⁹⁸

⁹³ IT-03-66 P138, SPOE00199229-SPOE00199230, SITF00172935-00172935; Annex 1 to the Bar Table Motion, item 34A, 46, 69.

⁹⁴ U008-1667-U008-1667; Annex 1 to the Bar Table Motion, item 43A.

⁹⁵ 043857-043858, 043862-043862 and IT-03-66 P146; Annex 1 to the Bar Table Motion, items 49, 53, 53A.

⁹⁶ SPOE00056467-SPOE00056467; Annex 1 to the Bar Table Motion, item 60.

⁹⁷ SPOE00313999-00313999; Annex 1 to the Bar Table Motion, item 68.

⁹⁸ Amended Indictment, paras 18, 23, 36, 39, 149.

39. Turning to authenticity, the Panel is satisfied of the authenticity of SPOE00209303-00209303, SPOE00209304-00209304, SPOE00209305-00209305, SPOE00209306-00209306, SPOE00209307-00209307, SPOE00209308-00209308, SPOE00209309-00209309, SPOE00209311-00209311, SPOE00209312-00209312, SPOE00209302-00209302, SPOE00209429-00209429, SPOE40000792-40000792, SPOE00209430-00209430, U016-2148-U016-2148, SPOE40000793-40000793, SPOE00209431-00209431, 043850-043850, SPOE00199392-00199394, 043852-043852, 043801-043801, IT-03-66 P138, 043804-043804, 043806-043806, 043807-043807, U008-1667-U008-1667, 043808-043808, SPOE00199229-SPOE00199230, 043860-043860, 043865-043865, 043862-043862, 043864-043864, SPOE40000799-40000799, U008-1668-U008-1668, SPOE40000796-40000796, SPOE00056435-SPOE00056435, SPOE00056467-SPOE00056467, SPOE40000798-40000798, SPOE00209432-00209432, and SPOE00056419-SPOE00056419, which are communiques and political declarations of the KLA General Staff.⁹⁹ All communiques were published in “Zëri i Kosovës”, except in five instances when the communiques (communiques 55, 59, 62 and 66) were published in “Koha Ditore”, “Bote e Re” or “Kosova Sot” or re-published by FBIS from the same.¹⁰⁰ Many of these were also published in other newspapers such as “Bujku” and “Koha Ditore”.¹⁰¹ All political declarations were published “Bujku”, “Zëri i Kosovës” or “Koha Ditore” and some were published in more than one of these newspapers. All communiques and political declarations/statements, except three,¹⁰² are both dated by the KLA General Staff and have a publication date. These three items still have one of those two dates. All are numbered and bear the issue number of the newspaper.

⁹⁹ Annex 1 to the Bar Table Motion, items 9-15, 17-19, 21-23, 24A, 25-26, 28, 28A, 29, 34, 34A, 39, 41-42, 43A, 45-46, 50, 52, 53-54, 57-58, 58A, 59-61, 63-64.

¹⁰⁰ Annex 1 to the Bar Table Motion, items 39A, 43A, 46, 55, 58.

¹⁰¹ See *supra*, fn. 62.

¹⁰² The Panel notes that: (i) SPOE00209308-00209308 and SPOE00209431-00209431 are not dated by the KLA General Staff but both have a publication date; and (ii) 043865-043865 does not have a publication date but is dated by the KLA General Staff; Annex 1 to the Bar Table Motion, items 14, 26, 52.

The Panel notes that it is possible to put these statements in context within the range of communiques and statements which the SPO has put forward for admission. They contain markings of their purported origin. The contents and phrasing of several of these items are also supported by other items offered from the bar table or already admitted in evidence.¹⁰³ Lastly, the Panel observes that none of the communiques and political statements are signed, or stamped, which runs contrary to the Defence's submissions that the absence of signature undermines the documents' claim of authenticity.

40. The Panel is also satisfied of the *prima facie* authenticity of statements issued by the Military Police Directorate (043857-043858, part of 043862-043862 and IT-03-66 P146). These were published in a newspaper, purport to originate from the Military Police Directorate, are dated, and contain information pertaining to facts corroborated by other documents.

41. The Panel is also satisfied of the *prima facie* authenticity of SPOE00209301-00209301, 019582-019583, 019584-019585, and 043855-043856 as they were published in "Zëri i Kosovës", "Koha Ditore", Agence France Presse, or BBC respectively and are dated.¹⁰⁴ There is also no indication that would contradict their authenticity.

42. The Panel is not satisfied that the *prima facie* authenticity of the following documents has been established by the SPO: U000-0341-U000-0341, 074573-074573, 074575-074575, 074577-074577, 074579-074579, U000-9943-U000-9943, U000-8992-U000-8992, U000-0519-U000-0519, SPOE00199239-SPOE00199240, SITF00172935-

¹⁰³ The Panel notes that, *inter alia*, the content of the following items support each other: (i) item 1K affirms communique 21 (item 1J); (ii) communique 28 (items 1O, 9) affirms communique 27 (item 1N); (iii) communique 32 (items 1S, 13) uses similar language to communiques 28-30 (items 1O, 1P, 1R, 9-11); (iv) communique 46 (items 1I2, 23) affirms communique 45 (Items 2H, 22); (v) communiques 58, 62, 66 (items 2P, 2T, 42, 58, 58A) and political declarations 16, 18-19, 21-22 (items 2R, 2V, 52, 57, 64) affirm political declaration 12 (item 45); and (vi) political declaration 19 (item 2V) affirms political declaration 18 (item 52)

¹⁰⁴ Annex 1 to the Bar Table Motion, items 20, 30A, 30B, 33, 68.

00172935, and SPOE00313999-00313999.¹⁰⁵ First, in respect of U000-0341-U000-0341, the Panel considers that: (i) there is no indication that the document was published, as other communiques were; (ii) there is no indication as to who made the handwritten note on the document; and (iii) the document does not bear other indicia that would enable the Panel to verify its *prima facie* authenticity.¹⁰⁶ Second, in respect of 074573-074573, 074575-074575, 074577-074577, 074579-074579, U000-9943-U000-9943, U000-8992-U000-8992 and U000-0519-U000-0519, the Panel observes that the articles have been copied in such a way that none of the markings showing where and when these items were published are visible.¹⁰⁷ It is for the tendering party to satisfy the conditions of admissibility of offered documents and to put the Panel in a position to verify that those conditions have been met. Third, in respect of SITF00172935-00172935 and SPOE00199239-SPOE00199240, the Panel notes that the SPO has only provided the translations of the communiques and not the original versions.¹⁰⁸ Fourth, in respect of SPOE00313999-00313999, the Panel notes that this item does not bear the usual indicia that would enable the Panel to verify its *prima facie* authenticity. As such, the Panel is unable to verify the conditions of admissibility of these two items. The Panel accordingly denies admission of these documents via the bar table.

43. With respect to *prima facie* probative value, the Panel is satisfied that the SPO has established the *prima facie* probative value of the communiques and political declarations discussed above. The Panel notes that the communiques and political statements were published on behalf of the KLA Central Staff, or KLA General Staff, and could be relevant to establishing facts and circumstances regarding this case, as indicated in paragraphs 38. Many of the communiques and political

¹⁰⁵ Annex 1 to the Bar Table Motion, items 4-8, 30, 45A, 55-56, 68-69.

¹⁰⁶ Annex 1 to the Bar Table Motion, item 4.

¹⁰⁷ Annex 1 to the Bar Table Motion, items 5-8, 30, 45A, 56.

¹⁰⁸ Annex 1 to the Bar Table Motion, items 55, 69.

statements were published widely in several different newspapers.¹⁰⁹ Their authorship or content was not disputed by the KLA during the relevant period. In addition, the Panel observes that many of the communiques or political statements support each other.¹¹⁰ As held in the Second Decision on Bar Table Motion, the fact that one of the purposes of the communiques was of a propagandist, or exaggerated, nature does not render them inadmissible.¹¹¹ Nor does it suggest that they served no other purpose(s). The Panel will determine, on the basis of all of the evidence, what purpose or purposes these items were intended to serve and what use was made of them.

44. The Panel is also satisfied of the *prima facie* probative value of all other publications contained in the same documents, except the two documents contained in 043801-043801 and SPOE00056435-SPOE00056435 (addressed at paragraph 47), as they are relevant to one or more of the issues outlined above and/or as these items provide apparent support for other items admitted in this part of the decision.¹¹²

45. The Panel is also satisfied that U008-1667-U008-1667 and SPOE00199229-SPOE00199230, which are re-publications of communique 59,¹¹³ and SPOE00199392-00199394 and IT-03-66 P138 which are translations of political declaration 5 and communique 51 presented by Mr Krasniqi on Albanian Television,¹¹⁴ have *prima facie* probative value to what extent these documents were distributed in various media and provide evidence of potential relevance to

¹⁰⁹ See *supra*, fn. 62.

¹¹⁰ See *supra*, fn. 103.

¹¹¹ Second Decision on Bar Table Motion, para. 75.

¹¹² Annex 1 to the Bar Table, items 22, 53-54, 57, 58A, 60.

¹¹³ Annex 1 to the Bar Table Motion, items 43A, 46.

¹¹⁴ Annex 1 to the Bar Table Motion, items 28A, 34A.

establishing facts and circumstances material to this case.¹¹⁵ Their content is also corroborated in various respects by other such documents.

46. The Panel is similarly satisfied of the *prima facie* probative value of statements issued by the KLA Military Police Directorate (043857-043858, part of 043862-043862 and IT-03-66 P146)¹¹⁶ as they were published on behalf of the KLA Military Police Directorate and are probative of facts and circumstances relevant to this case. Furthermore, contrary to the apparent position of the Defence, they do provide evidence suggesting that the Military Police Directorate existed at the relevant time, rather than sustaining a suggestion of forgery or lack of authenticity.

47. While the Panel considers that the communiques and political declarations have *prima facie* probative value, the Panel is not satisfied of the *prima facie* probative value of certain documents contained in the same items offered by the SPO, namely: (i) the statement of Mahmuti titled “KLA has not killed any civilian to date” in 043801-043801;¹¹⁷ and (ii) the statement by Shaban Sinani in SPOE00056435-SPOE00056435.¹¹⁸ Specifically, the Panel considers that it is unclear who they are, what roles, if any, they had in the KLA and what their motives were to make these statements and whether the records accurately reflect their accounts. The Panel accordingly denies admission of these parts of these two documents via the bar table.

48. The Panel is not satisfied of the *prima facie* probative value of: (i) SPOE00209301-00209301 as the item, at this stage, require further

¹¹⁵ The Panel notes that: (i) U008-1667-U008-1667 and SPOE00199229-SPOE00199230 (items 43A and 46 in Annex 1) are re-publications of P00159; (ii) SPOE00199392-00199394 (item 28A in Annex 1) is a translation and re-publication of 043850-043850 (item 28 in Annex 1); and (iii) IT-03-66 P138 (item 34A in Annex 1) is a translation and re-publication of communique 51 which is also contained in 043801-043801 (item 34 in Annex 1).

¹¹⁶ Annex 1 to the Bar Table Motion, items 49, 53, 53A.

¹¹⁷ Annex 1 to the Bar Table Motion, item 34.

¹¹⁸ Annex 1 to the Bar Table Motion, item 59.

contextualisation by a witness;¹¹⁹ (ii) 019582-019583 and 019584-019585 as these documents have limited probative value without political declaration 7, which is not admitted;¹²⁰ and (iii) 043855-043856 as the item, at this stage, require further contextualisation by a witness.¹²¹ The Panel accordingly denies admission of these documents via the bar table.

49. The Panel is satisfied that the probative value of the documents in paragraphs 43-46 is not outweighed by any prejudice to the Accused. The Defence will be able to challenge the content of these items via cross-examination of relevant witnesses.

50. In light of the foregoing, the Panel admits into evidence SPOE00209303-00209303, SPOE00209304-00209304, SPOE00209305-00209305, SPOE00209306-00209306, SPOE00209307-00209307, SPOE00209308-00209308, SPOE00209309-00209309, SPOE00209311-00209311, SPOE00209312-00209312, SPOE00209302-00209302, SPOE00209429-00209429, SPOE40000792-40000792, SPOE00209430-00209430, U016-2148-U016-2148, SPOE40000793-40000793, SPOE00209431-00209431, 043850-043850, SPOE00199392-00199394, 043852-043852, communiques 51-52 contained in 043801-043801, IT-03-66 P138, 043804-043804, 043806-043806, 043807-043807, U008-1667-U008-1667, 043808-043808, SPOE00199229-SPOE00199230, 043857-043858, 043860-043860, 043865-043865, 043862-043862, IT-03-66 P146, 043864-043864, SPOE40000799-40000799, U008-1668-U008-1668, SPOE40000796-40000796, communique 69 contained in SPOE00056435-SPOE00056435, SPOE00056467-SPOE00056467, SPOE40000798-40000798, SPOE00209432-00209432, and SPOE00056419-SPOE00056419 and denies admission of U000-0341-U000-0341, 074573-074573, 074575-074575, 074577-074577, 074579-074579, SPOE00209301-00209301, U000-8992-U000-8992, 019582-019583,

¹¹⁹ Annex 1 to the Bar Table Motion, item 20.

¹²⁰ Annex 1 to the Bar Table Motion, items 30A, 30B.

¹²¹ Annex 1 to the Bar Table Motion, item 33.

019584-019585, 043855-043856, the statement of Mr Mahmuti contained in 043801-043801, U000-9943-U000-9943, SPOE00199239-SPOE00199240, U000-0519-U000-0519, the statement of Mr Sinani contained in SPOE00056435-SPOE00056435, SPOE00313999-00313999 and SITF00172935-00172935 from the bar table.

C. ASSESSMENT OF WEIGHT OF ADMITTED DOCUMENTS

51. The Panel notes that all proposed items that it has found to be admissible in the present decision meet the requirements for admission under Rule 138(1). Admission is not the same, however, as deciding what weight, if any, the Panel will give to that evidence. Nor is a *prima facie* determination of probative value by the Panel the same as the assessment of the probative value of the evidence that the Panel will perform at the end of the trial. In accordance with Rule 139(2), the Panel is required to assess each piece of evidence in light of the entire body of evidence admitted before it at trial, and to carry out a holistic evaluation and weighing of all the evidence taken as a whole to establish whether or not the facts at issue have been established. Accordingly, while the Panel has found items admissible in the present decision, it will ultimately assess what weight to be attributed to these items in light of the entire body of evidence before it at trial.

D. EXTENSION OF TIME LIMIT FOR CERTIFICATION TO APPEAL

52. The Panel notes that, in accordance with Rule 77(1), when a Party seeks to appeal a decision for which an appeal does not lie as of right, that Party shall request certification from the Panel that rendered the impugned decision within seven (7) days thereof. In light of the summer judicial recess, the Panel considers it appropriate to vary, pursuant to Rule 9(5)(a), the time limit for requesting certification to appeal the present decision. Accordingly, any such request(s) shall be filed by **Monday, 21**

August 2023, 4:00 p.m. Any related responses and replies shall follow the time limits set out in Rule 76.

VI. DISPOSITION

53. For the foregoing reasons, the Panel hereby:

- a) **GRANTS** in part the Bar Table Motion in respect of documents in Annex 1;
- b) **ADMITS** into evidence the following items: U016-2583-U016-2583-ET Revised, U016-2588-U016-2589-ET Revised, U016-2603-U016-2604-ET Revised, U016-2609-U016-2609-ET Revised, U016-2619-U016-2620-ET Revised, U016-2625-U016-2625-ET Revised, ET U016-2631-U016-2631, U016-2653-U016-2654-ET Revised, U016-2666-U016-2666-ET Revised, ET U016-2667-U016-2668, ET U016-2676-U016-2676, U016-2708-U016-2708-ET Revised, U016-2710-U016-2710-ET, U016-2750-U016-2750-ET, U016-2751-U016-2752-ET, IT-04-84 P00953.E, IT-04-84bis P00147.E, U016-2781-U016-2782-ET, U016-2793-U016-2794-ET, ET U016-2778-U016-2779, IT-04-84 P00934.E, IT-04-84 P00933.E, U016-2621-U016-2621-ET Revised, IT-04-84 P00946.E, U016-2726-U016-2726-ET Revised, ET U016-2762-U016-2762, U008-1607-U008-1607-ET, U008-1608-U008-1608-ET Revised, U008-1609-U008-1609-ET Revised, U008-1610-U008-1610-ET, U008-1611-U008-1611-ET, U003-8552-U003-8690 (pp. U003-8566-U003-8567, U003-8571-U003-8571, U003-8611-U003-8612, U003-8660-U003-8660), U008-1615-U008-1615-ET, U008-1616-U008-1616-ET, U008-1618-U008-1618-ET, U008-1620-U008-1620-ET, U008-1622-U008-1622-ET.02, U008-1623-U008-1623-ET, U008-1624-U008-1624-ET Revised, U008-1627-U008-1627-ET Revised, U008-1628-U008-1628-ET Revised, U008-1630-U008-1630-ET Revised, SPOE00209433-SPOE00209433-

- ET Revised 1, U008-1632-U008-1632-ET, U008-1633-U008-1633-ET, U008-1634-U008-1634-ET, SPOE00209303-00209303, SPOE00209304-00209304, SPOE00209305-00209305, SPOE00209306-00209306, SPOE00209307-00209307, SPOE00209308-00209308, SPOE00209309-00209309, SPOE00209311-00209311, SPOE00209312-00209312, SPOE00209302-00209302, SPOE00209429-00209429, SPOE40000792-40000792, SPOE00209430-00209430, U016-2148-U016-2148, SPOE40000793-40000793, SPOE00209431-00209431, 043850-043850, SPOE00199392-00199394, 043852-043852, communiques 51-52 contained in 043801-043801, IT-03-66 P138, 043804-043804, 043806-043806, 043807-043807, U008-1667-U008-1667, 043808-043808, SPOE00199229-SPOE00199230, 043857-043858, 043860-043860, 043865-043865, 043862-043862, IT-03-66 P146, 043864-043864, SPOE40000799-40000799, U008-1668-U008-1668, SPOE40000796-40000796, communique 69 contained in SPOE00056435-SPOE00056435, SPOE00056467-SPOE00056467, SPOE40000798-40000798, SPOE00209432-00209432, and SPOE00056419-SPOE00056419;
- c) **DIRECTS** the Registrar to assign exhibit numbers to the aforementioned items, including to any translations;
- d) **DENIES** without prejudice the admission of the following items into evidence from the bar table: SPOE40000794-40000794, IT-03-66 P142, SPOE00209433-00209433, U000-9948-U000-9948, U000-0516-U000-0516, U000-9963-U000-9963, SITF00316652-00316655, SITF00436539-00436539, ET U016-2577-U016-2578, ET U016-2579-U016-2582, ET U016-2606-A-U016-2606-B, U016-2757-U016-2757-EDT, U016-2775-U016-2775-ET, U003-8552-U003-8690 (pp. U003-8580-U003-8585, U003-8586-U003-8590 and U003-8623-U003-8624), U008-1625-U008-1625-ET, U008-1635-U008-1635-ET Revised, U003-8552-U003-8690 (excluding those pages admitted as translations of other items in Annex 1), U000-0341-U000-0341, 074573-

074573, 074575-074575, 074577-074577, 074579-074579, SPOE00209301-00209301, U000-8992-U000-8992, 019582-019583, 019584-019585, 043855-043856, the statement of Mr Mahmuti contained in 043801-043801, U000-9943-U000-9943, SPOE00199239-SPOE00199240, U000-0519-U000-0519, the statement of Mr Sinani contained in SPOE00056435-SPOE00056435, SPOE00313999-00313999 and SITF00172935-00172935;

- e) **ORDERS** the SPO to prepare and file an exhibit containing the cover page of U016-2551-U016-2818 (Item 1 in Annex 1) and all pages admitted from this item by no later than **Friday, 18 August 2023, 4:00 p.m.**;
- f) **ORDERS** the SPO to file any application seeking to maintain the confidential nature of any of the admitted material no later than **Friday, 18 August 2023, 4:00 p.m.** Any response thereto shall be filed no later than **Friday, 25 August 2023, 4:00 p.m.** No reply will be entertained; and
- g) **VARIES** the time limit for any request(s) for certification to appeal the present decision and **ORDERS** that any such request(s) shall be filed by **Monday, 21 August 2023, 4:00 p.m.**



Judge Charles L. Smith, III
Presiding Judge

Dated this Thursday, 27 July 2023

At The Hague, the Netherlands.