



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: 8 August 2023

Language: English

Classification: Confidential

Fourth 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 identified in its exhibit list that 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 for response to the Bar Table Motion to 21 March 2023.³

4. On 21 March 2023, the Defence responded to the Bar Table Motion (“Response”).⁴

5. On 31 March, 9 June and 27 July 2023, the Panel issued decisions in which it partially addressed the Bar Table Motion (“Decision on Bar Table Motion”,

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.

“Second Decision on Bar Table Motion” and “Third Decision on Bar Table Motion”).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 (“GS”) 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” (“RFK”); (iv) published archives of KLA General Staff media agency “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 a large volume of evidence while avoiding fair scrutiny and the requirements that the documents be authenticated and verified by tendering them through relevant witnesses.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

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 and *ex parte* (reclassified as confidential on 22 June 2023); F01705, Panel, *Third Decision on Specialist Prosecutor’s Bar Table Motion*, 27 July 2023, confidential.

⁶ Bar Table Motion, para. 2.

⁷ Response, para. 1.

⁸ Response, para. 3.

expediate the trial nor facilitate the fair adjudication of the case.⁹ In addition, the Defence raises general objections to the admission through the bar table of thirteen (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, in particular, in Article 40(6)(h) and Rule 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, the Second Decision on Bar Table Motion and the Third Decision on Bar Table Motion, it prioritised those items which the SPO has identified as linked to the first six

⁹ Response, para. 4.

¹⁰ Response, paras 14-105; *See generally*, F01387/A01, Specialist Counsel, *Annex 1 to Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table*, 21 March 2023, confidential; F01387/A02, Specialist Counsel, *Annex 2 to Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table*, 21 March 2023, confidential; F01387/A03, Specialist Counsel, *Annex 3 to Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table* (“Annex 3 to the Response”), 21 March 2023, confidential; F01387/A04, Specialist Counsel, *Annex 4 to Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table* (“Annex 4 to the Response”), 21 March 2023, confidential; F01387/A05, Specialist Counsel, *Annex 5 to Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table* (“Annex 5 to the Response”), 21 March 2023, confidential; F01387/A06, Specialist Counsel, *Annex 6 to Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table*, 21 March 2023, confidential.

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

witnesses,¹² the following six witnesses¹³ and the items contained in Annex 1 of the Bar Table Motion.¹⁴ This decision supplements those decisions by specifically addressing the items contained in Annex 3,¹⁵ Annex 4¹⁶ and Annex 5¹⁷ of the Bar Table Motion.

10. The Panel further notes that it has already admitted one item listed in Annex 3¹⁸ and five items listed in Annex 4¹⁹ in the Panel's Second Decision on Bar Table Motion.²⁰ The consideration of these items is therefore moot. In the Second Decision on Bar Table Motion, the Panel also deferred consideration of two items,²¹ which will be in the context of the present decision.

11. The Panel notes that the SPO is seeking to admit documents in their entirety in Albanian while only offering partial translations in English.²² For the present decision, the Panel has only assessed the admissibility of the parts of these documents that are available in English. Accordingly, the Panel denies the admission of 007789-008966, SPOE00053504-00054088, SPOE00054089-00054655, SPOE00054656-00055197 and SPOE00055198-00055677 as submitted in their

¹² Decision on Bar Table Motion.

¹³ Second Decision on Bar Table Motion.

¹⁴ Third Decision on Bar Table Motion.

¹⁵ F01268/03, Specialist Prosecutor, *Annex 3 to Prosecution Application for Admission of Material through the Bar Table*, 8 February 2023, confidential.

¹⁶ F01268/04, Specialist Prosecutor, *Annex 4 to Prosecution Application for Admission of Material through the Bar Table ("Annex 4 to the Bar Table Motion")*, 8 February 2023, confidential.

¹⁷ F01268/05, Specialist Prosecutor, *Annex 5 to Prosecution Application for Admission of Material through the Bar Table ("Annex 5 to the Bar Table Motion")*, 8 February 2023.

¹⁸ 007948-007949-ET; *See* Annex 3 to the Bar Table Motion, item 1T.

¹⁹ SPOE00054318-SPOE00054320-ET, SPOE00054513-SPOE00054514-ET, SPOE00054519-SPOE00054522-ET, SPOE00054878-SPOE00054879-ET, SPOE00054898-SPOE00054902-ET; *See* Annex 4 to the Bar Table Motion, items 2H, 2M, 2O, 3G, 3I.

²⁰ Second Decision on Bar Table Motion, para. 180(b).

²¹ Second Decision on Bar Table Motion, para. 180(e); SPOE00053729-SPOE00053730-ET; *See* Annex 4 to the Bar Table Motion, item 1A2; SPOE00053796-SPOE00053797-ET; *See* Annex 4 to the Bar Table Motion, item 1I2.

²² 007789-008966, SPOE00053504-00054088, SPOE00054089-00054655, SPOE00054656-00055197 and SPOE00055198-00055677; *See* Annex 3 to the Bar Table Motion, item 1 and Annex 4 to the Bar Table Motion items 1, 2, 3, 4.

entirety. The one exception to this ruling is the photographs located on pages 008172-008185 of 007789-008966, which will be addressed separately below.

B. PROPOSED EVIDENCE

1. Annexes 3 and 4 – Published Materials of Alleged General Staff Media Agencies RFK and Kosovapress.

12. The SPO submits that the items contained in Annex 3 are radio broadcasts originally issued by RFK between 4 January 1999 and 21 June 1999, which have been collected and memorialised in print.²³ Annex 3 also contains a proposed exhibit comprised of a series of photographs, which will be addressed independently below.²⁴ According to the SPO, Annex 4 consists of public archives of Kosovapress, compiled in a four-volume book entitled “State Informative Agency Kosovapress: The War Archive”.²⁵ The SPO further contends that these items are material and admissible because RFK and Kosovapress were the KLA General Staff’s press agencies, and by extension the statements and opinions broadcast or published therein were those of the KLA during the charged period.²⁶ The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.²⁷

13. The Defence responds that Annexes 3 and 4 contain hearsay, the admission of which would be unfairly prejudicial because the Defence will be unable to challenge the circumstances in which the statements were made or to cast doubt on their reliability.²⁸ The Defence also asserts that these documents do not contain

²³ Bar Table Motion, para 20.

²⁴ 008172-008185-ET; *See* Annex 3 to the Bar Table Motion, item 1H2.

²⁵ Bar Table Motion, para. 25.

²⁶ Bar Table Motion, para. 23.

²⁷ Bar Table Motion, paras 3, 21-23.

²⁸ Response, para. 59.

sufficient indicators of authenticity²⁹ and fail to prove or disprove an issue relevant to the case, thereby lacking relevance or probative value.³⁰ Finally, the Defence alleges that the content of the statements contained in Annexes 3 and 4 are unreliable because these out-of-court statements were not given for the purposes of legal proceedings; instead, their intended purpose may have been to boost morale, garner international support, reassure the civilian population, or for self-promotion.³¹

14. Admission of the proposed exhibits requires demonstration of *prima facie* authenticity and probative value. Regarding press reports, newspaper articles and interviews offered through the bar table, demonstration of such a standard will generally require that the item provides the date of the article, the name of the newspaper, and/or the name of the author (if an article or press release is attributed) to establish sufficient indicia of reliability and authenticity.³² Such indicia could also be apparent from other elements, including the actual content of the document. The fact that the prosecution is unable to identify the authors of such reports does not on its own renders such an item inadmissible.³³

²⁹ Annex 3 to the Response, item 1; Annex 4 to the Response, item 1.

³⁰ Annex 3 to the Response, item 1; Annex 4 to the Response, item 1.

³¹ Response, para. 60.

³² KSC-BC-2020-07, F00334, Trial Panel II, *Decision on the Prosecution Request for Admission of Items Through the Bar Table*, 29 September 2021, paras 31-35, 39-41; International Criminal Tribunal for the former Yugoslavia (“ICTY”), *Prosecutor v. Ratko Mladić*, IT-09-92-T, Trial Chamber I, [Decision on Defence’s Fifth Motion for the Admission of Documents from the Bar Table](#), 30 May 2016, paras 13-15; *Prosecutor v. Ratko Mladić*, IT-09-92-T, Trial Chamber I, [Decision on Prosecution Motion for Admission of Documents from the Bar Table \(Military and Residual Documents\)](#), 13 February 2014, para. 16.

³³ International Criminal Court (“ICC”), *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08-2721, Trial Chamber III, [Decision on the Admission into Evidence of Items Deferred in the Chamber’s Decision on the Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64\(9\) of the Rome Statute” \(ICC-01/05-01/08-2299\)](#), 27 June 2013, para. 25.

15. Annex 3 contains 77 excerpts in English originating from the three-volume book of RFK Archives principally consisting of transcripts of broadcasts transmitted by RFK between 4 January and 21 June 1999.³⁴

16. Annex 4 contains 140 excerpts in English originating from the four-volume book of Kosovapress war archives principally consisting of articles published by Kosovapress between 4 January and 28 February 1999.³⁵

17. The material encompassed in these excerpts contain: (i) forewords and commentary;³⁶ (ii) GS communiques;³⁷ and GS political decrees;³⁸ (iii) Provisional Government of Kosovo (“PGoK”) decrees;³⁹ (iv) statements of KLA and PGoK

³⁴ See Annex 3 to the Bar Table Motion.

³⁵ See Annex 4 to the Bar Table Motion.

³⁶ 007790-007799-ET (“RFK Archives Foreword”), SPOE00053559-SPOE00053559-ET, SPOE00054158-SPOE00054160-ET, SPOE00054694-SPOE00054694-ET; See Annex 3 to the Bar Table Motion, item 1A and Annex 4 to the Bar Table Motion, items 1A, 2D, 3A SPOE00053559-SPOE00053559-ET, SPOE00054158-SPOE00054160-ET, SPOE00054694-SPOE00054694-ET.

³⁷ See e.g. Annex 3 to the Bar Table Motion: GS communique 70, item 1M (007887-007887-ET), GS communique 71, item 1Q (007897-007899-ET), GS communique 72, item 1X (007999-008000-ET) (marked as communique 32 pursuant to typographical error), GS communique 73, item 1C2 (008082-008083-ET), GS communique 74, item 1F2 (008108-008111-ET), and GS communique 77, item 1Q2 (008390-008392-ET); See e.g. Annex 4: GS communique 68, item 1B (SPOE00053560-SPOE00053560-ET Revised), GS communique 69, item 1I (SPOE00053593-SPOE00053594-ET Revised), GS communique 70, item 1V (SPOE00053709-SPOE00053710-ET Revised), GS communique 71, item 1B2 (SPOE00053732-SPOE00053733-ET), GS communique 72, item 1M2 (SPOE00053852-SPOE00053853-ET Revised), GS communique 73, item 1Q2 (SPOE00053946-SPOE00053947-ET Revised), GS communique 74, item 1T2 (SPOE00053974-SPOE00053977-ET Revised), GS communique 75, item 1A3 (SPOE00054064-SPOE00054065-ET Revised), GS communique 77, item 2I (SPOE00054361-SPOE00054361-ET).

³⁸ See e.g. Annex 3: GS political decree 29, item 1U (007990-007991-ET), GS political decree 30, item 1V (007993-007994-ET) and GS political decree 34, item 1U2 (008467-008469-ET Revised); See e.g. Annex 4: GS political decree 23, item 1R (SPOE00053653-SPOE00053654-ET), GS political decree 25, item 1H2 (SPOE00053790-SPOE00053791-ET), GS political decree 32, item 1Z2 (SPOE00054049-SPOE00054050-ET), and GS political decree 34, item 2L (SPOE00054507-SPOE00054508-ET).

³⁹ See e.g. Annex 3: PGoK decree 81, item 1A3 (008551-008552-ET) PGoK decrees 83-85, item 1C3 (008557-008560-ET, Admitted P00113-ET); See e.g. Annex 4: PGoK decree 81, item 3H (SPOE00054880-SPOE00054881-ET), PGoK decrees 83-86, item 3I (SPOE00054898-SPOE00054902-ET), PGoK Decree 87, item 3O (SPOE00054965-SPOE00054966-ET).

representatives;⁴⁰ (v) operational zones (“OZ”) reports and communiques;⁴¹ (vi) accounts of activities and the organisational structure in various OZs;⁴² (vii) institutional policies issued to the public;⁴³ (viii) news reports on military operations,⁴⁴ detentions,⁴⁵ or other more general developments associated with the conflict and/or the KLA;⁴⁶ (ix) statements attributed to the Accused;⁴⁷ (x) lists of source-material and bibliographies⁴⁸ (collectively “Written Materials”); and (xi) a photo gallery.⁴⁹

(a) Written Materials:

⁴⁰ See e.g. 007836-007836-ET, 008088-088092-ET, 008295-008296-ET, 008912-008913-ET, SPOE00053662-SPOE00053665-ET, SPOE00053753-SPOE00053755-ET, SPOE00053771-SPOE00053774-ET, SPOE00054593-SPOE00054594-ET; See Annex 3 to the Bar Table Motion, items 1G, 1D2, 1M2, 1U3 and Annex 4 to the Bar Table Motion, items 1S, 1D2, 1F2, 2R.

⁴¹ See e.g. 007820-007820-ET, 007880-007881-ET, 007883-007883-ET, 007990-007991-ET, 008015-008016-ET, SPOE00053562-SPOE00053563-ET, SPOE00053729-SPOE00053730-ET, SPOE00053796-SPOE00053797-ET, SPOE00054513-SPOE00054514-ET; See Annex 3 to the Bar Table Motion, items 1E, 1J, 1K, 1U, 1Y and Annex 4 to the Bar Table Motion, items 1C, 1A2, 1I2, 2M.

⁴² See e.g. 007945-007945-ET, 008088-088092-ET, 008405-008407-ET, 008679-008679-ET, 008918-008919-ET, SPOE00053600-SPOE00053602-ET, SPOE00053611-SPOE00053613-ET, SPOE00053667-SPOE00053667-ET, SPOE00053790-SPOE00053791-ET, SPOE00053837-SPOE00053837-ET; See Annex 3 to the Bar Table Motion, items 1S, 1D2, 1S2, 1G3, 1W3 and Annex 4 to the Bar Table Motion, items 1K, 1O, 1T, 1H2, 1K2.

⁴³ See e.g. 007897-007899-ET, 007948-007949-ET (Admitted P00115-ET), SPOE00053608-SPOE00053609-ET, SPOE00053732-SPOE00053733-ET, SPOE00053796-SPOE00053797-ET; See Annex 3 to the Bar Table Motion, items 1Q, 1T (Admitted P00115-ET) and Annex 4 to the Bar Table Motion, items 1N, 1B2, 1I2.

⁴⁴ See e.g. 007813-007813-ET, 007820-007820-ET, 007883-007883-ET, 007887-007887-ET, SPOE00053578-SPOE00053578-ET, SPOE00053593-SPOE00053594-ET Revised, SPOE00053709-SPOE00053710-ET Revised; See Annex 3 to the Bar Table Motion, items 1D, 1E, 1K, 1M and Annex 4 to the Bar Table Motion, items 1F, 1I, 1V.

⁴⁵ See e.g. 007860-007861-ET, 007909-007909-ET, SPOE00053604-SPOE00053604-ET, SPOE00053611-SPOE00053613-ET, SPOE00053667-SPOE00053667-ET; See Annex 3 to the Bar Table Motion, items 1H, 1R and Annex 4 to the Bar Table Motion, items 1L, 1O, 1T.

⁴⁶ See e.g. 007797-007798-ET, 007806-007807-ET, 007813-007813-ET, 007829-007829-ET, 008931-008935-ET, SPOE00053574-SPOE00053575-ET, SPOE00053591-SPOE00053591-ET, SPOE00054019-SPOE00054019-ET; See Annex 3 to the Bar Table Motion, items 1B, 1C, 1D, 1F, 1Y3 and Annex 4 to the Bar Table Motion, items 1E, 1G, 1Y2.

⁴⁷ See *infra* fns. 92-95.

⁴⁸ See SPOE00054086-SPOE00054086-ET, SPOE00055194-SPOE00055194-ET, SPOE00055674-SPOE00055674-ET; See Annex 4 to the Bar Table Motion, items 1B3, 3C2, 4L2.

⁴⁹ 007789-008966, pp. 008172-008185, 008172-008185-ET; See Annex 3 to the Bar Table Motion, items 1, 1H2.

18. Regarding relevance, the SPO intends to use the materials in Annexes 3 and 4 *inter alia* in relation to the following matters relevant to the Indictment: (i) KLA GS command and control; (ii) GS monitoring and oversight of OZs; (iii) the level of GS organisation; (iv) the existence of an armed conflict; and (v) GS alleged policy of targeting alleged collaborators and perceived opponents.⁵⁰ The SPO also intends to rely upon items of the proposed evidence to support specific charges including those regarding events that allegedly occurred in and around: Llapashticë/Lapaštica between November 1998 and March 1999;⁵¹ Kleçkë/Klečka between November 1998 and June 1999;⁵² Bare and Bajgorë/Bajgora between August 1998 and mid-September 1998;⁵³ and Kukës between May and June 1999.⁵⁴ The purported relevance of this material is also reflected in the SPO's Pre-Trial Brief. The SPO cites several items from Annex 3 in the SPO Pre-Trial Brief as support for its assertions,⁵⁵ while highlighting the nexus between members of the KLA GS, RFK, and Kosovapress and how the GS used these entities to disseminate its messaging.⁵⁶

19. The material in Annexes 3 and 4 is relevant to allegations in the SPO's Pre-Trial Brief and the Indictment as it goes to: (i) the KLA GS's official position on various issues and events, (ii) KLA GS's command and control, their monitoring

⁵⁰ See Bar Table Motion, paras 23, 26.

⁵¹ F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Indictment"), 30 September 2022, strictly confidential and *ex parte* (reclassified as confidential on 26 January 2023), paras 71-73, 107-108, (a public redacted version was filed the same day, F00999/A03). See also 007813-007813-ET, 007860-007861-ET; See Annex 3 to the Bar Table Motion, items 1D, 1H.

⁵² Indictment, paras 78-79, 115-116, 161-165; 007909-007909-ET, 008088-088092-ET; See Annex 3 to the Bar Table Motion, items 1R, 1D2.

⁵³ Indictment, paras 70, 106, 156; 008015-008016-ET; See Annex 3 to the Bar Table Motion, item 1Y.

⁵⁴ Indictment, paras 82, 119-120, 167; 008758-008758-ET, 008768-008769-ET; See Annex 3 to the Bar Table Motion, items 1M3, 1N3.

⁵⁵ F00709/A02, Specialist Prosecutor, *Annex 2 to Prosecution Submission of Corrected Pre-Trial Brief and Related Request* ("SPO Pre-Trial Brief"), 24 February 2022, confidential, (a lesser redacted confidential version was filed on 15 February 2023, F01296/A01), paras 59, 65, 111.

⁵⁶ See SPO Pre-Trial Brief, paras 58, 66, 107.

and oversight of OZs, (iii) their level of organisation, and (iv) specific criminal acts which allegedly occurred in various OZs.⁵⁷

20. With regard to *prima facie* authenticity of RFK archives, the Panel notes that Annex 3 contains the front cover of the volumes including the colour KLA insignia, surrounded by “Radio-Kosova e Lire” and “94.2 FM” – presumably the band and station from which RFK broadcasted.⁵⁸ The publisher, location and year of publication are provided as Radio Free Kosovo, Prishtinë/Pristina, 2009 on the first page.⁵⁹ The following page identifies the editor, Nezir Myrtaj, three members of the editorial team and gives credit for the title pages and page-settings.⁶⁰ All of these circumstances indicate that these volumes are authentic, published works. The inside of the back cover for each volume provides assigned ISBN numbers,⁶¹ further indicating that these volumes are professionally published materials. The radio broadcasts themselves are broken-down by date and provided in chronological order.⁶²

21. In Annex 4, Kosovapress archives provide similar indications of being an authentic and professionally-published series of volumes. The front and back cover display the colour emblem of the KLA.⁶³ The publisher, “Instituti i Historise”, and its insignia are prominently displayed.⁶⁴ On the back cover, the ISBN of 978-9951-409-47-6 and a corresponding bar-code are provided.⁶⁵ The location and year of publication, Prishtinë/Pristina, 2016, are provided on the

⁵⁷ See generally Annex 3 and Annex 4 to the Bar Table Motion; See also Bar Table Motion, paras 23-26.

⁵⁸ 007789-008966, p. 007789; See Annex 3 to the Bar Table Motion, item 1.

⁵⁹ 007789-008966, p. 007790; See Annex 3 to the Bar Table Motion, item 1.

⁶⁰ 007789-008966, p. 007791; See Annex 3 to the Bar Table Motion, item 1.

⁶¹ 007789-008966, pp. 008205(providing ISBNs 978-9951-418-08-9 and 978-9951-418-09-6 for Volume I); 008609 (providing ISBNs 978-9951-418-08-9 and 978-9951-418-10-2 for Volume II); and 008966 (providing ISBNs 978-9951-418-08-9 and 978-9951-418-11-9 for Volume III); See Annex 3 to the Bar Table Motion, item 1.

⁶² See generally 007789-008966; See Annex 3 to the Bar Table Motion, item 1.

⁶³ SPOE00053504-00054088, p. SPOE00053504; See Annex 4 to the Bar Table Motion, item 1.

⁶⁴ SPOE00053504-00054088, p. SPOE00053504; See Annex 4 to the Bar Table Motion, item 1.

⁶⁵ SPOE00053504-00054088, p. SPOE00053504; See Annex 4 to the Bar Table Motion, item 1.

cover-page.⁶⁶ Berat Luzha is identified as having prepared the material for publication.⁶⁷ Sabit Sylja is listed as editor-in-chief, Sabile Keçmezi-Basha and Hamit Kaba are listed as reviewers, Teuta Shala-Peli is listed as the technical editor, and Mrika Limani is listed as the English translator.⁶⁸ A foreword is provided by Rexhep Qosja, and Sabile Kecmezi-Basha and Hamit Kaba.⁶⁹ The volumes also provide lists of source-material and bibliographies.⁷⁰ These attributions are consistent with an authentic, published work.

22. Those involved in the publication of these volumes also further their authenticity. Rexhep Qosja was identified by Mr Thaçi himself as one of his advisors during the charged period.⁷¹ The three book volumes which comprise Annex 3 are edited by Nezir Myrtaj, who is also attributed in the first volume's foreword, written in July 2009.⁷² A captioned photograph of Nezir Myrtaj is provided in the book and identifies him as one of RFK's original editors.⁷³ In his foreword, Nezir Myrtaj notes that (i) the creation of RFK and Kosovapress was based upon a decision by the General Staff of the KLA; (ii) these entities became the most reliable chroniclers of the actions of the KLA and the materials provided make up the authentic archive of the spoken, written, and broadcasted words of the KLA; (iii) their content included communiques issued by the KLA General Staff; (iv) the news broadcasting editorial team approached its reporting in a critical way, verifying the accuracy of their content, and clarifying reports when

⁶⁶ SPOE00053504-00054088, p. SPOE00053506; *See* Annex 4 to the Bar Table Motion, item 1.

⁶⁷ SPOE00053504-00054088, p. SPOE00053506; *See* Annex 4 to the Bar Table Motion, item 1.

⁶⁸ SPOE00053504-00054088, p. SPOE00053508; *See* Annex 4 to the Bar Table Motion, item 1.

⁶⁹ SPOE00053504-00054088, p. SPOE00053545; *See* Annex 4 to the Bar Table Motion, item 1.

⁷⁰ SPOE00054086-SPOE00054086-ET, SPOE00055194-SPOE00055194-ET, SPOE00055674-SPOE00055674-ET; *See* Annex 4 to the Bar Table Motion, items 1B3, 3C2, 4L2.

⁷¹ SPOE00055434-SPOE00055436-ET; *See* Annex 4 to the Bar Table Motion, item 4T.

⁷² RFK Archives Foreword, p. 007794; *See* Annex 3 to the Bar Table Motion, item 1A.

⁷³ 007789-008966, p. 008176; *See* Annex 3 to the Bar Table Motion, item 1.

necessary; and (v) the Prime Minister's Office facilitated the publication of these volumes in 2009.⁷⁴ As noted by the SPO, the Prime Minister in 2009 was Mr Thaçi.⁷⁵

23. Kosovapress archives were compiled and edited by Berat Luzha.⁷⁶ In SPOE00055393-SPOE00055394-ET,⁷⁷ Berat Luzha is identified and interviewed as head of Kosovapress. This role would require his general awareness of messaging and dissemination of information via RFK and Kosovapress. In the foreword, Mr Luzha notes that RFK and Kosovapress were strong instruments of the KLA, and that members of the KLA General Headquarters were instrumental in their success.⁷⁸ Also in the foreword, historians Sabile Keçmezi-Basha and Hamit Kaba note that the contents of the Kosovapress book provide a historical record of what actually occurred, differentiating the alleged false Serbian narrative from the "truth" and "reality" reflected in Kosovapress materials.⁷⁹ The identification and involvement of these individuals, and their personal knowledge adds credibility to the notion that the content of these volumes mirrors that which was originally issued.

24. The Panel is therefore satisfied that the entries provided in RFK archives and Kosovapress archives are *prima facie* authentic based upon their physical presentation, their content, and the involvement of individuals that one may reasonably conclude had personal knowledge of the workings of RFK and Kosovapress.

25. The SPO's assertions regarding probative value rest upon the suggestion of a connection between, on the one hand, RFK and Kosovapress and, on the other, the

⁷⁴ RFK Archives Foreword, p. 007794.

⁷⁵ See SPO discussion of authenticity of 007789-008966 under Annex 3 to the Bar Table Motion, item 1.

⁷⁶ SPOE00053504-00054088, p. SPOE00053506; See Annex 4 to the Bar Table Motion, item 1.

⁷⁷ See Annex 4 to the Bar Table Motion, item 4L.

⁷⁸ SPOE00053504-00054088, pp. SPOE00052556-SPOE00053558; See Annex 4 to the Bar Table Motion, item 1.

⁷⁹ SPOE00053504-00054088, pp. SPOE00053551-SPOE00053552; See Annex 4 to the Bar Table Motion, item 1.

KLA GS.⁸⁰ The SPO asserts that the KLA used these media agencies to disseminate official KLA positions and policies, including through reports, communiques, and announcements. The SPO suggests that these items accurately reflect the GS's knowledge, structure, and policies because the statements contained therein originated from, or were endorsed by, the KLA.⁸¹

26. While the existence and nature of a relationship between the KLA and RFK and Kosovapress are findings of fact ultimately to be determined at the end of the case in light of all relevant evidence,⁸² the Panel will consider whether a *prima facie* showing has been made regarding the connection between the KLA and RFK and Kosovapress for the purpose of assessing the relevance and probative value of the items in Annex 3 and Annex 4.

27. Communique no 62 of the KLA General Staff, published on 15 November 1998 in "Koha Ditore", provides general information regarding the ongoing re-structuring of the KLA.⁸³ Among other things, it records and reiterates the KLA GS's general displeasure with media coverage of its activities.⁸⁴ This appears to have provided the background to, as well as one of the justifications for, the KLA General Staff's decision to create and set up its own media outlets to propagate its own views and policies. The fact that RFK and Kosovapress were

⁸⁰ Bar Table Motion, paras 23, 26; *See generally* "Relevance/Probative Value" column of Annex 3 to the Bar Table, item 1, and Annex 4 to the Bar Table, item 1.

⁸¹ *Ibid.*

⁸² *See e.g.* Second Decision on Specialist Prosecutor's Bar Table Motion, paras 172, 178; ICTY, *Prosecutor v. Vojislav Šešelj*, IT-03-67-T, Trial Chamber III, [Decision on Prosecution's Second Motion for Admission of Evidence from the Bar Table and for an Amendment to the 65 ter Exhibit List](#), 23 December 2010, para. 19.

⁸³ U008-1624-U008-1624-ET Revised; *See* Annex 1 to Bar Table Motion, item 2T; *See* Third Decision on Bar Table Motion, para. 53(b) (admitting communique 62 into evidence).

⁸⁴ U008-1624-U008-1624-ET Revised, p. 2 (providing "[t]he KLA General Staff reproaches Pristina satellite TV and other media outlets abroad and in the country and asks them not to distort our calls for unity of our action 'The country is in danger – homeland calling', as stated in the political Statement no. 18. Such manipulations are not only in violation of democratic principles and journalism ethics, but also reprehensible acts."); *See* Annex 1 to Bar Table Motion, item 2T.

created by the KLA in response to these issues is corroborated in RFK's own initial broadcast and Archives.⁸⁵

28. In communique no 68, published in "Zëri i Kosovës" (The Voice of Kosovo) on 7 January 1999, and addressed to the media, the KLA General Staff officially announced the creation of these media outlets and articulated their specific justifications for their inception.⁸⁶ RFK archives for May/June (1999) explicitly point to the alignment of the views of the KLA/PGoK and those expressed by RFK.⁸⁷

29. Based upon the foregoing, the Panel is satisfied that a *prima facie* showing of an institutional and material connection between these entities and the KLA GS has been sufficiently demonstrated to establish the relevance and *prima facie* probative value of these items. Accordingly, the items provided in Annexes 3 and 4 have *prima facie* probative value regarding the matters addressed in the Panel's

⁸⁵ See RFK Archives Foreword, p. 007798.

⁸⁶ SPOE00053560-SPOE00053560-ET Revised; See Annex 4 to the Bar Table Motion, item 1B. See also RFK Archives Foreword, p. 007792.

⁸⁷ 008725-008726-ET; See Annex 3 to the Bar Table Motion, item 1K3 providing:

Note (RKL) /Radio Kosova e lirë - Radio Free Kosovo/: The editorial concept of Radio "Free Kosovo", is strongly oriented to the unreserved support of our liberation war against the barbaric Serbian enemy. It rigorously adheres to the line of the war that the Kosovo Liberation Army has designated for some time, which war - regardless of how unequal it is - has made the liberation voice be heard and taken much more seriously than the voice of Kosovo's pacifist political parties that have been around for years.

The criticisms that "Free Kosovo" directs at certain political clans are made having the support of the KLA GS, the Government of Prime Minister Hashim THAÇI, and the Government of Albania. All the machinations that conflict with this constellation of the aligned national forces will remain in the sights of our criticism, of our bolstered opposition; because two realities, two governments, or two armies and other hypocritical finagling like this will not be accepted for the fate and future of the people of Kosovo.

Being in the service of the army and of our beleaguered people, we will not make any compromise whatsoever with Belgrade, nor with people who support Kosovo's future in the creation of understanding and trust in the remnant of Yugoslavia.

findings on relevance.⁸⁸ The contents of Annexes 3 and 4 also provide insight into the KLA's use of propaganda, messaging, and communiques.⁸⁹

30. In addition, their probative value is enhanced when the substantive content of items in Annex 3 is compared with corresponding items in Annex 4.⁹⁰ The Panel notes in this regard that the content of items from Annex 3 corroborate items on the same or similar dates in Annex 4 to a significant extent, and vice versa. The choices of content and subject matter are generally consistent, as is the language used to express opinions on the chosen subjects. Such consistency can also be observed when specific items from Annexes 3 and 4 are compared to items published in other periodicals, such as "Zëri i Kosovës".⁹¹

31. Annexes 3 and 4 contain newspaper and broadcast reports of the Accused's alleged interviews,⁹² signed decrees,⁹³ statements,⁹⁴ and their fulfilment of specific

⁸⁸ See *supra* paras 18-19.

⁸⁹ See also Second Bar Table Decision, para. 37.

⁹⁰ *Ibid.*

⁹¹ Compare e.g. SPOE00053560-SPOE00053560-ET Revised (Annex 4 to the Bar Table Motion, item 1B) with SPOE00056419-SPOE00056419 (Annex 1 to the Bar Table Motion, item 64); SPOE00053662-SPOE00053665-ET (Annex 4 to the Bar Table Motion, item 1S) with SPOE00056467-SPOE00056467 (Annex 1 to the Bar Table Motion, item 60); See also SPOE00053683-SPOE00053684-ET (Annex 4 to the Bar Table Motion, item 1U) (a Kosovapress report noting that its articles are now on the internet and they are also often published in the newspaper "Zëri i Kosovës").

⁹² **Mr Thaçi:** 008740-008745-ET, SPOE00053962-SPOE00053964-ET, SPOE00053982-SPOE00053986-ET, SPOE00055085-SPOE00055085-ET, SPOE00055116-SPOE00055118-ET, SPOE00055431-SPOE00055433-ET; See Annex 3 to the Bar Table Motion, item 1L3 and Annex 4 to the Bar Table Motion, items 1S2, 1U2, 3X, 3Z, 4S.

Mr Krasniqi: 008718-008720-ET, SPOE00053568-SPOE00053569-ET, SPOE00053625-SPOE00053627-ET, SPOE00053783-SPOE00053785-ET, SPOE00053982-SPOE00053986-ET, SPOE00054139-SPOE00054144-ET, SPOE00055290-SPOE00055292-ET; See Annex 3 to the Bar Table Motion, item 1J3 and Annex 4 to the Bar Table Motion, items 1D, 1Q, 1G2, 1U2, 2B, 4E.

⁹³ **Mr Thaçi:** 008557-008560-ET, 008644-008644-ET (Admitted P00113-ET), SPOE00054880-SPOE00054881-ET, SPOE00054898-SPOE00054902-ET, SPOE00054901-SPOE00054901-ET, SPOE00054965-SPOE00054966-ET; See Annex 3 to the Bar Table Motion, items 1C3 (Admitted P00113-ET), 1D3 and Annex 4 to the Bar Table Motion, items 3H, 3I, 3J, 3O.

Mr Krasniqi: SPOE00055043-SPOE00055044-ET; See Annex 4 to the Bar Table Motion, item 3T.

⁹⁴ **Mr Thaçi:** 008656-008656-ET, 008758-008758-ET, 008768-008769-ET, 008819-008820-ET, SPOE00053662-SPOE00053665-ET, SPOE00054019-SPOE00054019-ET, SPOE00054541-SPOE00054541-ET, SPOE00054557-SPOE00054558-ET, SPOE00054919-SPOE00054919-ET, SPOE00055029-SPOE00055030-ET; SPOE00055067-SPOE00055070-ET, SPOE00055085-SPOE00055085-ET,

roles and actions taken as part of the KLA and/or PGoK.⁹⁵ The Defence objects to media articles that attribute statements to the KLA or any of the Accused⁹⁶ because they contain hearsay, and because the Defence is allegedly unable to confront the statements and their circumstances in order to cast doubt on their reliability.⁹⁷

SPOE00055305-SPOE00055306-ET, SPOE00055319-SPOE00055319-ET, SPOE00055636-SPOE00055636-ET; *See* Annex 3 to the Bar Table Motion, items 1E3, 1M3, 1N3, 1O3 and Annex 4 to the Bar Table Motion, items 1S, 1Y2, 2P, 2Q, 3L, 3R, 3U, 3X, 4F, 4G, 4K2.

Mr Selimi: SPOE00055626-SPOE00055627-ET; *See* Annex 4 to Bar Table Motion, item 4I2.

Mr Krasniqi: 007893-007894-ET, 008701-008702-ET, SPOE00053796-SPOE00053797-ET, SPOE00055265-SPOE00055266-ET; *See* Annex 3 to the Bar Table Motion, items 1P, 1H3 and Annex 4 to the Bar Table Motion, items 1I2, 4B.

⁹⁵ **Mr Thaçi:** 008374-008374-ET, 008402-008402-ET, 008467-008469-ET Revised, 008555-008555-ET, 008667-008669-ET, 008758-008758-ET, 008768-008769-ET, SPOE00054134-SPOE00054134-ET, SPOE00054245-SPOE00054246-ET, SPOE00054377-SPOE00054377-ET, SPOE00054507-SPOE00054508-ET, SPOE00055071-SPOE00055071-ET, SPOE00055145-SPOE00055145-ET, SPOE00055323-SPOE00055325-ET SPOE00055349-SPOE00055350-ET, SPOE00055385-SPOE00055385-ET, SPOE00055418-SPOE00055418-ET, SPOE00055420-SPOE00055421-ET, SPOE00055427-SPOE00055427-ET, SPOE00055428-SPOE00055429-ET, SPOE00055434-SPOE00055436-ET, SPOE00055470-SPOE00055471-ET, SPOE00055479-SPOE00055480-ET, SPOE00055488-SPOE00055489-ET, SPOE00055516-SPOE00055517-ET; *See* Annex 3 to the Bar Table Motion, items 1P2, 1R2, 1U2, 1B3, 1F3, 1M3, 1N3 and Annex 4 to the Bar Table Motion, items 2A, 2G, 2J, 2L, 3V, 3A2, 4H, 4I, 4K, 4O, 4P, 4Q, 4R, 4T, 4V, 4W, 4X, 4Y.

Mr Veseli: 008667-008669-ET, SPOE00055071-SPOE00055071-ET, SPOE00055145-SPOE00055145-ET; *See* Annex 3 to the Bar Table Motion, item 1F3 and Annex 4 to the Bar Table Motion, items 3V, 3A2.

Mr Selimi: 008667-008669-ET, SPOE00055071-SPOE00055071-ET, SPOE00055145-SPOE00055145-ET; *See* Annex 3 to the Bar Table Motion, item 1F3 and Annex 4 to the Bar Table Motion, items 3V, 3A2.

Mr Krasniqi: 007797-007798-ET, 007829-007829-ET, 007888-007889-ET, 008236-008237-ET, 008264-008264-ET, 008374-008374-ET, 008402-008402-ET, 008495-008495-ET, SPOE00053742-SPOE00053743-ET, SPOE00054134-SPOE00054134-ET, SPOE00054377-SPOE00054377-ET, SPOE00055282-SPOE00055282-ET; *See* Annex 3 to the Bar Table Motion, items 1B, 1F, 1N, 1J2, 1K2, 1P2, 1R2, 1Y2 and Annex 4 to Bar Table Motion, items 1C2, 2A, 2J, 4D.

⁹⁶ Response, paras 59-60.

⁹⁷ Response para. 59.

32. The Panel notes and reiterates that while there is no procedural bar to the admission of hearsay evidence,⁹⁸ the Panel cannot admit hearsay evidence in a manner which would unfairly interfere with the rights of the Accused.⁹⁹

33. In assessing whether the probative value of any of these items is outweighed by their prejudicial effect, the Panel recalls its Second Bar Table Decision, in which it held that the alleged propagandist, or exaggerated nature of communiques would not render them inadmissible.¹⁰⁰ The Panel notes that while the individual items are not credited to specific individuals, and contain some hearsay information, the Panel can address these issues by assigning the appropriate weight to such items and disregard those claims or assertions that are insufficiently substantiated at the time of final deliberations. The Panel will determine, on the basis of all of the evidence before it, what purpose or purposes these items were intended to serve and served.

34. The SPO submits that many of these items, at a minimum, will be used to establish that the Accused held positions of authority within the KLA.¹⁰¹ Accordingly, the SPO intends to rely upon these items, at least in part, to establish facts and circumstances relevant to establishing the Accused's criminal responsibility for the crimes charged. The Panel has accounted for this when deciding to admit these documents. The fact that a document contains evidence of the 'acts and conduct' of the Accused does not, however, constitute an independent ground of exclusion of a proposed exhibit. The Panel has also

⁹⁸ KSC-BC-2020-07, F00611/RED, Trial Panel II, *Public Redacted Version of the Trial Judgment* ("Gucati & Haradinaj Trial Judgment"), 18 May 2022, para. 24 (citing ICC, *Prosecutor v. Mathieu Ngudjolo Chui*, ICC-01/04-02/12A, 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; ICC, *Prosecutor v. Jean-Pierre Bemba Gombo et al.*, ICC-01/05-01/13A, Appeals Chamber, [Public Redacted Judgment on the Appeals of Mr Jean-Pierre Bemba Gombo, et al. against the Decision of Trial Chamber VII entitled "Judgment Pursuant to Article 74 of the Statute"](#), 8 March 2018, para. 874).

⁹⁹ Gucati & Haradinaj Trial Judgment, para. 25.

¹⁰⁰ Second Bar Table Decision, para. 75.

¹⁰¹ See generally, Annexes 3 and 4 to the Bar Table Motion, "Relevance/Probative Value" section of items listed in fns. 92-95.

accounted for the fact that the Defence will be able to test the content of these documents through witnesses yet to be called by the SPO. Furthermore, where the ability of the Defence to challenge the content of certain documents (or authorship thereof) has been limited, the Panel would duly account for it when assessing what weight and probative value, if any, to attribute to those items. The Panel would also account, as the case may be, for the presence or absence of a named author, which might further affect the weight, if any, that the Panel might be prepared to give a particular exhibit. The Panel is, therefore, satisfied that the probative value of the items is not outweighed by their prejudicial effect.

(b) Photo Gallery

35. The SPO seeks admission of 25 photographs and their respective captions spanning 14 pages of Annex 3.¹⁰² The SPO submits that these photographs are relevant and probative of the existence of an armed conflict, to communications, and to KLA command and control.¹⁰³

36. The Defence incorporates their formerly articulated objections to the book in general, and did not articulate specific objections regarding these items.¹⁰⁴

37. Relevance must be determined based upon the content and context of the photo.¹⁰⁵ While several photos show men and women armed and in fatigues, little else, such as the location can be gleaned from the photographs. Similarly, Mr Thaçi and Mr Krasniqi appear in a few dark photos apparently taken in a house, but again context is missing and purported relevance cannot be verified. The one exception to this is the photo of Nezir Myrtaj, in which he appears to be writing in front of radio equipment, the caption of which identifies him as the editor of the

¹⁰² 007789-008966, pp. 008172-008185, 008172-008185-ET; *See* Annex 3 to the Bar Table Motion, items 1, 1H2.

¹⁰³ 008172-008185-ET; *See* Annex 3 to the Bar Table Motion, item 1H2.

¹⁰⁴ *Ibid.*

¹⁰⁵ ICC, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/04-01/07-2635, Trial Chamber II, [Decision on the Prosecutor's Bar Table Motions](#), 17 December 2010, para. 24(d).

radio station at the time.¹⁰⁶ Nezir Myrtaj is listed as the editor of the volumes contained in Annex 3.¹⁰⁷ He also penned the foreword to the volumes.¹⁰⁸ The Panel therefore finds that this photograph is relevant.

38. In relation to *prima facie* authenticity, the circumstances articulated above regarding the general authenticity of Annex 3 still apply.¹⁰⁹ The Panel therefore finds that this photograph is *prima facie* authentic. The photo has probative value as to Nezir Myrtaj's role as editor of the volumes contained in Annex 3. The Panel further finds that the photo's probative value is not outweighed by its prejudicial effect.

39. Based upon these circumstances, the SPO should prepare document displaying only the picture of Nezir Myrtaj located on page 008176 of 007789-008966, as well as the English translation of the photograph's caption, as provided on page 008176-ET of 008172-008185-ET.

(c) Conclusion

40. The Panel therefore finds all of the items comprised of written materials in Annex 3 and Annex 4 are admissible, with the exception of those items already admitted, as referenced in paragraph 10,¹¹⁰ and those items offered in their entirety in Albanian, as referenced in paragraph 11.¹¹¹ With regard to the photographs contained in Annex 3, the Panel finds that the single photograph of Nezir Myrtaj

¹⁰⁶ 007789-008966, p. 008176; *See* Annex 3 to the Bar Table Motion, item 1.

¹⁰⁷ RFK Archives Foreword, p. 007791; *See* Annex 3 to the Bar Table Motion, item 1A.

¹⁰⁸ RFK Archives Foreword, pp. 007792-007796; *See* Annex 3 to the Bar Table Motion, item 1A.

¹⁰⁹ *See supra*, paras 20-28.

¹¹⁰ 007948-007949-ET, SPOE00054318-SPOE00054320-ET, SPOE00054513-SPOE00054514-ET, SPOE00054519-SPOE00054522-ET, SPOE00054878-SPOE00054879-ET, SPOE00054898-SPOE00054902-ET; *See* Annex 3 to the Bar Table Motion, item 1T and Annex 4 to the Bar Table Motion, items 2H, 2M, 2O, 3G, 3I.

¹¹¹ 007789-008966, SPOE00053504-00054088, SPOE00054089-00054655, SPOE00054656-00055197 and SPOE00055198-00055677; *See* Annex 3 to the Bar Table Motion, item 1 and Annex 4 to the Bar Table Motion items 1, 2, 3, 4.

is admissible. The Panel finds the remaining photographs inadmissible from the bar table.

2. Annex 5 – Re-Publication of Kosovapress Materials in other Media.

41. The SPO asserts that the items contained in Annex 5 are 20 Kosovapress news articles that were obtained by the British Broadcasting Corporation’s (“BBC”) monitoring service and republished internationally.¹¹² The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.¹¹³

42. The Defence submits that unfair prejudice may be created if the statements present in these publications are not properly attributed.¹¹⁴ The Defence also argues that the documents: (i) are not sufficiently connected to the elements of the charges or modes of liability in the case;¹¹⁵ (ii) fail to prove or disprove an issue relevant to the case;¹¹⁶ and (iii) are overly prejudicial.¹¹⁷ Finally, the Defence asserts that a handful of these documents are of central importance to the SPO’s case and should therefore be admitted via direct testimony.¹¹⁸

43. With regard to the relevance of the documents in Annex 5, the Panel considers that the contents of these articles relate to issues concerning: (i) the Accused’s positions of authority, (ii) their involvement in various aspects of government functions, (iii) their political stances and policies, (iv) the hierarchical relationship between the GS and OZ commanders, and (v) the existence of an armed conflict.¹¹⁹

¹¹² Bar Table Motion, para. 27.

¹¹³ Bar Table Motion, para. 3.

¹¹⁴ Response, para. 59.

¹¹⁵ See generally Annex 5 to the Response.

¹¹⁶ See generally Annex 5 to the Response.

¹¹⁷ See generally Annex 5 to the Response.

¹¹⁸ 020411-020412, 020413-020413, 020644-020645, 020676-020679, 020694-020695, 020754-020755, 020760-020761, 020823-020825; See Annex 5 to the Response, items 10, 11, 12, 14, 15, 16, 17, 19.

¹¹⁹ Bar Table Motion, para. 28; See generally Annex 5 of Bar Table Motion.

As these matters relate to circumstances and elements of alleged crimes charged by the SPO in the Indictment,¹²⁰ the Panel finds that the articles are relevant.

44. With regard to the *prima facie* authenticity of the documents in Annex 5 to the Request, each item holds the BBC logo, the original title, the publication date, as well as the source, its original language and its original source date of publication. In addition, 18 of the 19 items¹²¹ provide the original source as Kosovapress,¹²² the exception being 019602-019603, which apparently first appeared in “Koha Ditore”.

45. With regard to the authenticity of 019602-019603,¹²³ which seems to have first appeared in “Koha Ditore”, the Panel notes that 019602-019603 is consistent with other articles published in “Zëri i Kosovës”¹²⁴ and Kosovapress.¹²⁵ Both the article in “Zëri i Kosovës” and the one in Kosovapress, published within a few days of the “Koha Ditore” article, discuss allegations against Bujar Bukoshi and include an appeal to ethnic Albanians to distance themselves from Bujar Bukoshi’s government. In doing so, the “Koha Ditore”, “Zëri i Kosovës” and Kosovapress articles use the same or very similar language. Based upon these similarities and the indicators of authenticity, the Panel is satisfied that 019602-019603 is *prima facie* authentic.

46. With regard to the 18 other items originating from Kosovapress, the Panel recalls its finding in paragraphs 21 through 23 regarding the authenticity of articles originating from Kosovapress.¹²⁶ Not only do the documents in Annex 5

¹²⁰ Indictment, paras 17-20, 32-57.

¹²¹ N.B. while the items in Annex 5 are numbered between 1 and 20, number 18 has been left out, so Annex 5 contains 19 items, despite the item number usage up through and including 20.

¹²² 019645-019645, 019664-019664, 019741-019741, 019764-019765, 021111-021111, 019779-019780, 019784-019785, 019786-019788, 020411-020412, 020413-020413, 020644-020645, 020657-020657, 020676-020679, 020694-020695, 020754-020755, 020760-020761, 020823-020825, 020881-020882); See Annex 5 to the Bar Table Motion, items 2-17, 19, 20.

¹²³ See Annex 5 of Bar Table Motion, item 1.

¹²⁴ SPOE00056467-SPOE00056467-ET; See Annex 1 to Bar Table Motion, item 60.

¹²⁵ SPOE00053504-00054088, pp. SPOE00053662-00053664; See Annex 4 to Bar Table Motion, item 1.

¹²⁶ See *supra*, fns. 63-79.

reflect the same sourcing and overlapping content as other admitted documents, but they also contain all the hallmarks of legitimate BBC publication materials. Based upon the foregoing, the Panel is satisfied that the articles in Annex 5 are *prima facie* authentic.

47. The Panel also finds that documents in Annex 5 are probative of those matters identified above in the context of relevance.¹²⁷ The Panel notes that while individual items are not credited to specific individuals, and contain hearsay in some instances, the Panel can address these issues by assigning the appropriate weight, if any, to such items and disregard those claims or assertions that are insufficiently substantiated at the time of final deliberations. The Panel will determine, on the basis of all of the evidence before it, what purpose or purposes these items were intended to serve. The Panel is satisfied that the Accused will not suffer any unfair prejudice by admitting these items.

48. The Defence specifically objects to media articles that attribute statements to the KLA or the Accused because the Defence is unable to confront such statements and the circumstances in which they were made and because their admission from the bar table precludes adequate assessments of reliability.¹²⁸ As with Annexes 3 and 4, Annex 5 contains newspaper reports of the Accused's alleged interviews,¹²⁹ signed decrees,¹³⁰ statements,¹³¹ and their fulfilment of specific roles and actions taken as part of the KLA and/or PGoK.¹³² The analysis and the approach endorsed

¹²⁷ See *supra*, para. 43.

¹²⁸ Response, paras 59-60.

¹²⁹ **Mr Thaçi**: 019786-019788; See Annex 5 to the Bar Table Motion, item 9.

¹³⁰ **Mr Thaçi**: 020411-020412; See Annex 5 to the Bar Table Motion, item 10.

¹³¹ **Mr Thaçi**: 019602-019603, 019664-019664, 019779-019780, 019784-019785, 020644-020645, 020657-020657, 020694-020695, 020823-020825; See Annex 5 to the Bar Table Motion, items 1, 3, 7, 8, 12, 13, 15, 19.

Mr Krasniqi: 019764-019765; See Annex 5 to the Bar Table Motion, item 5.

¹³²**Mr Thaçi**: 019741-019741, 020676-020679, 020881-020882; See Annex 5 to the Bar Table Motion, items 4, 14, 20.

Mr Veseli: 019741-019741; See Annex 5 to the Bar Table Motion, item 4.

Mr Selimi: 019741-019741, 020881-020882; See Annex 5 to the Bar Table Motion, items 4, 20.

by the Panel above shall equally apply to those items in Annex 5.¹³³ The Panel is therefore satisfied that the prejudicial effect of this proposed evidence in Annex 5 does not outweigh its probative value.

(a) Conclusion:

49. Based upon the foregoing, the Panel finds all items contained within Annex 5 to be admissible.

VI. DISPOSITION

50. For the foregoing reasons, the Panel hereby:

- a) **GRANTS** in part the Bar Table Motion with respect to Annex 3 and Annex 4;
- b) **GRANTS** the Bar Table Motion with respect to Annex 5;
- c) **ADMITS** into evidence: 007790-007799-ET, 007797-007798-ET, 007806-007807-ET, 007813-007813-ET, 007820-007820-ET, 007829-007829-ET, 007836-007836-ET, 007860-007861-ET, 007873-007874-ET, 007880-007881-ET, 007883-007883-ET, 007884-007885-ET, 007887-007887-ET, 007888-007889-ET, 007891-007892-ET, 007893-007894-ET, 007897-007899-ET, 007909-007909-ET, 007945-007945-ET, 007990-007991-ET, 007993-007994-ET, 007996-007997-ET, 007999-008000-ET, 008015-008016-ET, 008034-008034-ET, 008064-008064-ET, 008075-008076-ET, 008082-008083-ET, 008088-008092-ET, 008098-008099-ET, 008108-008111-ET, 008168-008169-ET, the caption on page 008176-ET of 008172-008185-ET pertaining to the photograph of Nezir Myrtaj, the photograph of Nezir Myrtaj located in 007789-008966 on page 008176, 008227-008228-ET, 008236-008237-ET, 008264-008264-ET, 008279-008280-ET, 008295-008296-ET, 008344-008345-

Mr Krasniqi: 020881-020882; *See* Annex 5 to the Bar Table Motion, item 20.

¹³³ *See supra*, paras 32-34.

ET, 008348-008351-ET, 008374-008374-ET, 008390-008392-ET, 008402-008402-ET, 008405-008407-ET, 008458-008464-ET, 008467-008469-ET Revised, 008471-008471-ET, 008481-008481-ET, 008488-008488-ET, 008495-008495-ET, 008532-008534-ET, 008551-008552-ET, 008555-008555-ET, 008656-008656-ET, 008667-008669-ET, 008679-008679-ET, 008701-008702-ET, 008707-008707-ET, 008718-008720-ET, 008725-008726-ET, 008740-008745-ET, 008758-008758-ET, 008768-008769-ET, 008819-008820-ET, 008850-008850-ET, 008865-008865-ET, 008874-008877-ET, 008891-008897-ET, 008902-008911-ET, 008912-008913-ET, 008915-008917-ET, 008918-008919-ET, 008927-008927-ET, 008931-008935-ET, SPOE00053559-SPOE00053559-ET, SPOE00053560-SPOE00053560-ET Revised, SPOE00053562-SPOE00053563-ET, SPOE00053568-SPOE00053569-ET, SPOE00053574-SPOE00053575-ET, SPOE00053578-SPOE00053578-ET, SPOE00053591-SPOE00053591-ET, SPOE00053592-SPOE00053592-ET, SPOE00053593-SPOE00053594-ET Revised, SPOE00053596-SPOE00053597-ET, SPOE00053600-SPOE00053602-ET, SPOE00053604-SPOE00053604-ET, SPOE00053605-SPOE00053605-ET, SPOE00053608-SPOE00053609-ET, SPOE00053611-SPOE00053613-ET, SPOE00053617-SPOE00053617-ET, SPOE00053625-SPOE00053627-ET, SPOE00053653-SPOE00053654-ET, SPOE00053662-SPOE00053665-ET, SPOE00053667-SPOE00053667-ET, SPOE00053683-SPOE00053684-ET, SPOE00053709-SPOE00053710-ET Revised, SPOE00053714-SPOE00053714-ET, SPOE00053716-SPOE00053716-ET, SPOE00053721-SPOE00053721-ET, SPOE00053723-SPOE00053725-ET, SPOE00053729-SPOE00053730-ET, SPOE00053732-SPOE00053733-ET, SPOE00053742-SPOE00053743-ET, SPOE00053753-SPOE00053755-ET, SPOE00053768-SPOE00053768-ET, SPOE00053771-SPOE00053774-ET, SPOE00053783-SPOE00053785-ET, SPOE00053790-SPOE00053791-ET, SPOE00053796-SPOE00053797-ET, SPOE00053812-SPOE00053813-ET, SPOE00053837-SPOE00053837-ET,

SPOE00053849-SPOE00053851-ET, SPOE00053852-SPOE00053853-ET
Revised, SPOE00053856-SPOE00053857-ET, SPOE00053861-
SPOE00053861-ET, SPOE00053929-SPOE00053931-ET, SPOE00053946-
SPOE00053947-ET Revised, SPOE00053947-SPOE00053949-ET,
SPOE00053962-SPOE00053964-ET, SPOE00053974-SPOE00053977-ET
Revised, SPOE00053982-SPOE00053986-ET, SPOE00053997-
SPOE00053998-ET, SPOE00054012-SPOE00054013-ET, SPOE00054015-
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SPOE00054050-ET, SPOE00054064-SPOE00054065-ET Revised,
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SPOE00054361-SPOE00054361-ET, SPOE00054377-SPOE00054377-ET,
SPOE00054441-SPOE00054442-ET Revised, SPOE00054507-
SPOE00054508-ET, SPOE00054517-SPOE00054518-ET, SPOE00054541-
SPOE00054541-ET, SPOE00054557-SPOE00054558-ET, SPOE00054593-
SPOE00054594-ET, SPOE00054618-SPOE00054619-ET, SPOE00054694-
SPOE00054694-ET, SPOE00054715-SPOE00054715-ET, SPOE00054756-
SPOE00054756-ET Revised, SPOE00054803-SPOE00054803-ET,
SPOE00054825-SPOE00054826-ET, SPOE00054829-SPOE00054829-ET,
SPOE00054880-SPOE00054881-ET, SPOE00054901-SPOE00054901-ET,
SPOE00054910-SPOE00054912-ET, SPOE00054919-SPOE00054919-ET,
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SPOE00055090-SPOE00055092-ET, SPOE00055116-SPOE00055118-ET,
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SPOE00055620-ET, SPOE00055624-SPOE00055625-ET, SPOE00055626-
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SPOE00055636-ET, SPOE00055674-SPOE00055674-ET, 019602-019603,
019645-019645, 019664-019664, 019741-019741, 019764-019765, 021111-
021111, 019779-019780, 019784-019785, 019786-019788, 020411-020412,
020413-020413, 020644-020645, 020657-020657, 020676-020679, 020694-
020695, 020754-020755, 020760-020761, 020823-020825, 020881-020882;

- d) **DIRECTS** the Registrar to assign exhibit numbers to the admitted items;
- e) **DENIES** admission of those photographs located on pages 008172-008185

in 007789-008966, with the exception of the photograph of Nezir Myrtaj located on page 008176, admitted above;

- f) **ORDERS** the SPO to prepare and file an exhibit of the photograph of Nezir Myrtaj and the corresponding caption, as directed in paragraph 39, by no later than **Wednesday, 30 August 2023, 4:00 p.m.**; and
- g) **ORDERS** the SPO to file any application seeking to maintain the confidential nature of any of the admitted material no later than **Wednesday, 30 August 2023, 4:00 p.m.** Any response thereto shall be filed no later than **Wednesday, 6 September 2023, 4:00 p.m.** No reply will be entertained.



Judge Charles L. Smith, III
Presiding Judge

Dated this Tuesday, 8 August 2023

At The Hague, the Netherlands.