



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA 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 Guénaël Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Fidelma Donlon

**Date:** 9 November 2023

**Language:** English

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**Decision on Prosecution Motion for Admission of Accused's Statements**

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**Specialist Prosecutor**  
Kimberly P. West

**Counsel for Victims**  
Simon Laws

**Counsel for Hashim Thaçi**  
Gregory Kehoe

**Counsel for Kadri Veseli**  
Ben Emmerson

**Counsel for Rexhep Selimi**  
Geoffrey Roberts

**Counsel for Jakup Krasniqi**  
Venkateswari Alagendra

## Table of Contents

I.	PROCEDURAL BACKGROUND .....	5
II.	SUBMISSIONS.....	6
III.	APPLICABLE LAW .....	9
IV.	DISCUSSION .....	13
A.	SPO Interviews .....	15
1.	Compliance of the SPO Interviews with the Accused with the Law and the Rules pursuant to Rule 138(2) .....	15
(a)	January 2020 SPO Interview with Mr Thaçi.....	15
i.	Submissions .....	15
ii.	Determination by the Panel .....	16
(b)	July 2020 SPO Interview with Mr Thaçi .....	19
i.	Submissions .....	19
ii.	Determination by the Panel .....	20
(c)	November 2019 SPO Interview with Mr Selimi .....	22
i.	Submissions .....	22
ii.	Determination by the Panel .....	24
(d)	February 2020 SPO Interview with Mr Selimi .....	27
i.	Submissions .....	27
ii.	Determination by the Panel .....	28
(e)	Conclusion .....	29
2.	Admissibility of the SPO Interviews with the Accused and Associated Exhibits pursuant to Rule 138(1).....	30
(a)	January 2020 SPO Interview with Mr Thaçi.....	31
i.	Submissions .....	31
ii.	Determination by the Panel .....	32
(b)	July 2020 SPO Interview with Mr Thaçi .....	34
i.	Submissions .....	34
ii.	Determination by the Panel .....	35

(c)	November 2019 SPO Interview with Mr Selimi .....	38
i.	Submissions .....	38
ii.	Determination by the Panel .....	38
(d)	February 2020 SPO Interview with Mr Selimi .....	41
i.	Submissions .....	41
ii.	Determination by the Panel .....	41
(e)	Conclusion .....	44
B.	Other Suspect Interviews .....	44
1.	Compliance of the Other Suspect Interviews with the Accused with the Standards of International Human Rights Law pursuant to Rule 138(2) .....	44
(a)	May 2016 SPRK Interview with Mr Thaçi .....	44
i.	Submissions .....	44
ii.	Determination by the Panel .....	45
(b)	December 2013 SPRK Interview with Mr Krasniqi .....	46
i.	Submissions .....	46
ii.	Determination by the Panel .....	47
(c)	Conclusion .....	49
2.	Admissibility of the Other Suspect Interviews with the Accused and Associated Exhibits pursuant to Rule 138(1) .....	49
(a)	May 2016 SPRK Interview with Mr Thaçi .....	50
i.	Submissions .....	50
ii.	Determination by the Panel .....	50
(b)	December 2013 SPRK Interview with Mr Krasniqi .....	51
i.	Submissions .....	51
ii.	Determination by the Panel .....	52
(c)	Conclusion .....	54
C.	Witness Statements and Testimony of the Accused .....	55
1.	Thaçi Witness Statements .....	56
(a)	Submissions .....	56
(b)	Determination by the Panel .....	57

i.	Thaçi November 2011 SPRK Witness Statement .....	57
ii.	Thaçi July 2018 SPRK Witness Statement .....	59
iii.	Thaçi May 2004 ICTY Witness Statement .....	61
(c)	Conclusion .....	63
2.	Selimi Witness Statements and Testimony .....	64
(a)	Submissions .....	64
(b)	Determination by the Panel.....	65
i.	Selimi September 2011 SPRK Witness Statement.....	65
ii.	Selimi June 2013 SPRK Witness Statement.....	67
iii.	Selimi October 2016 SPRK Witness Statement.....	69
iv.	Selimi May 2018 SPRK Witness Statement.....	71
v.	Selimi January 2018 SPRK Trial Testimony.....	73
vi.	Selimi April 2004 ICTY Witness Statement .....	74
vii.	Selimi May 2005 ICTY Trial Testimony .....	76
(c)	Conclusion .....	81
3.	Veseli Witness Statements and Testimony.....	82
(a)	Submissions .....	82
(b)	Determination by the Panel.....	83
i.	Veseli 2010/2011 SPRK Witness Statement.....	83
ii.	Veseli September 2011 SPRK Witness Statement .....	84
iii.	Veseli July 2018 SPRK Witness Statement .....	86
iv.	Veseli June 2012 EULEX Trial Testimony .....	87
v.	Veseli November 2003 UNMIK Witness Statement.....	88
(c)	Conclusion .....	90
4.	Krasniqi Witness Statements and Testimony .....	90
(a)	Submissions .....	90
(b)	Determination by the Panel.....	93
i.	Krasniqi June 2018 SPRK Witness Statement.....	93
ii.	Krasniqi February 2018 SPRK Trial Testimony .....	95

- iii. Krasniqi May 2007 ICTY Witness Statement..... 97
- iv. Krasniqi February 2005 ICTY Trial Testimony ..... 101
- v. Krasniqi May 2007 ICTY Trial Testimony ..... 105
- (c) Conclusion ..... 108
- D. Admissibility of the Accused’s Statements Against co-Accused ..... 108
  - 1. Submissions ..... 108
  - 2. Determination by the Panel ..... 111
- V. CLASSIFICATION ..... 114
- VI. DISPOSITION ..... 115

**TRIAL PANEL II** (“Panel”), pursuant to Articles 21, 37-38, and 40(2) and (6)(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 42-44, and 137-138 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 8 March 2023, the Specialist Prosecutor’s Office (“SPO”) filed a request to admit into evidence the records of interviews and prior testimony of Hashim Thaçi (“Mr Thaçi”), Kadri Veseli (“Mr Veseli”), Rexhep Selimi (“Mr Selimi”) and Jakup Krasniqi (“Mr Krasniqi”) (collectively “Accused”) (“Request”).<sup>1</sup>

2. On 24 April 2023, following two successive extensions of time,<sup>2</sup> the Defences for Mr Thaçi (“Thaçi Defence”), Mr Veseli (“Veseli Defence”), Mr Selimi (“Selimi Defence”) and Mr Krasniqi (“Krasniqi Defence”) filed responses to the Request (“Thaçi Response”, “Veseli Response”, “Selimi Response” and “Krasniqi Response” respectively and “Responses” collectively).<sup>3</sup>

3. On 8 May 2023, following an extension of time,<sup>4</sup> the SPO replied to the Responses (“Reply to the Thaçi Response”, “Reply to the Veseli Response”, “Reply

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<sup>1</sup> F01351, Specialist Prosecutor, *Prosecution Motion for Admission of Accused’s Statements*, 8 March 2023, with Annex 1.

<sup>2</sup> F01378, Panel, *Decision on Thaçi, Selimi and Krasniqi Defence Request for an Extension of Time for Response to ‘Prosecution Motion for Admission of Accused’s Statements’*, 16 March 2023, paras 7, 8(b); Transcript of Hearing, 17 April 2023, p. 2955, line 17 to p. 2957, line 4.

<sup>3</sup> F01473, Specialist Counsel, *Selimi Defence Response to SPO Motion for Admission of Accused’s Statements*, 24 April 2023, confidential; F01474, Specialist Counsel, *Thaçi Response to ‘Prosecution Motion for Admission of Accused’s Statements’*, 24 April 2023, confidential; F01475, Specialist Counsel, *Krasniqi Defence Response to Prosecution Motion for Admission of Accused’s Statements*, 24 April 2023, confidential; F01476, Specialist Counsel, *Veseli Defence Response to Prosecution Motion for Admission of Accused’s Statements*, 24 April 2023, confidential.

<sup>4</sup> F01486, Panel, *Decision on SPO Request for Extension of Time to Reply to Defence Responses to Motion for the Admission of Accused’s Statements*, 28 April 2023, paras 11-12.

to the Selimi Response” and “Reply to the Krasniqi Response” respectively and “Replies” collectively).<sup>5</sup>

4. On 17 May 2023, the SPO filed a supplement to its Request (“Supplement”),<sup>6</sup> requesting the Panel to admit into evidence the translations listed in Annex 1 to the Supplement, in addition to the materials previously identified in Annex 1 to the Request.<sup>7</sup>

## II. SUBMISSIONS

5. The SPO seeks admission into evidence of the records of interviews and prior testimony of the Accused (“Statements”) and any procedural documents or associated exhibits (“Associated Exhibits”). The Statements are comprised of three categories of records: (i) records of SPO interviews with Mr Thaçi and Mr Selimi (“SPO Interviews”); (ii) others records of interviews with Mr Thaçi and Mr Krasniqi as suspects (“Other Suspect Interviews”); and (iii) records of interviews and testimony of the Accused as witnesses taken by investigators other than the SPO (“Witness Statements and Testimony”).<sup>8</sup> The SPO submits that the Statements: (i) complied with, as applicable, the legal framework of the Specialist Chambers (“SC”) and international human rights standards;<sup>9</sup> and (ii) are relevant,

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<sup>5</sup> F01509, Specialist Prosecutor, *Prosecution Reply to Krasniqi Response to ‘Prosecution Motion for Admission of Accused’s Statements’*, 8 May 2023, confidential (a public redacted version was filed on 11 July 2023, F01509/RED); F01510, Specialist Prosecutor, *Prosecution Reply to Selimi Response to ‘Prosecution Motion for Admission of Accused’s Statements’*, 8 May 2023, confidential; F01511, Specialist Prosecutor, *Prosecution Reply to Thaçi Response to ‘Prosecution Motion for Admission of Accused’s Statements’*, 8 May 2023, confidential; F01512, Specialist Prosecutor, *Prosecution Reply to Veseli Response to ‘Prosecution Motion for Admission of Accused’s Statements’*, 8 May 2023, confidential.

<sup>6</sup> F01533, Specialist Prosecutor, *Prosecution Supplemental Request in Relation to F01351*, 17 May 2023, with Annex 1.

<sup>7</sup> Supplement, para. 2.

<sup>8</sup> Request, para. 1; Annex 1 to the Request, pp. 2-12.

<sup>9</sup> Request, para. 2.

authentic and have probative value which is not outweighed by any prejudice to the Accused.<sup>10</sup>

6. The Selimi Defence objects to the admission into evidence of: (i) the two SPO Interviews with Mr Selimi; and (ii) the Witness Statements and Testimony with Mr Selimi and Associated Exhibits.<sup>11</sup> The Selimi Defence submits that, if any of the Statements of the Accused are considered admissible by the Panel, the use of such Statements should be limited and the Statements: (i) should only be admitted against the person who provided the statement or gave the interview and not against his co-Accused; and, in any event (ii) may not be admitted for evidence in relation to the acts or conduct of the co-Accused, or as evidence of any critical element of the SPO's case, unless corroborated.<sup>12</sup>

7. The Thaçi Defence objects to the admission into evidence of the two SPO Interviews with Mr Thaçi<sup>13</sup> and the admission of the investigator's note of Mr Thaçi's interview given to the International Criminal Tribunal for the former Yugoslavia ("ICTY") as a witness in May 2004.<sup>14</sup> The Thaçi Defence does not object to the admission of the Special Prosecution Office of the Republic of Kosovo ("SPRK") suspect interview and witness statements.<sup>15</sup> The Thaçi Defence challenges the use of out-of-court statements of a co-Accused as evidence of any critical element of the SPO's case unless corroborated, or as evidence of the acts or conduct of Mr Thaçi.<sup>16</sup>

8. The Krasniqi Defence objects to the admission of all prior statements given by Mr Krasniqi as the prejudicial effect of admitting this evidence, some of which was

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<sup>10</sup> Request, paras 2, 90.

<sup>11</sup> Selimi Response, paras 2-3.

<sup>12</sup> Selimi Response, paras 59, 84.

<sup>13</sup> Thaçi Response, paras 9, 25.

<sup>14</sup> Thaçi Response, para. 31.

<sup>15</sup> Thaçi Response, para. 34.

<sup>16</sup> Thaçi Response, paras 35-36.



obtained in violation of Mr Krasniqi's rights, outweighs any probative value.<sup>17</sup> The Krasniqi Defence also opposes the admission of the co-Accused's prior statements insofar as the SPO intends to rely upon their evidence against Mr Krasniqi as he has a right to confront the evidence against him.<sup>18</sup> Lastly, the Krasniqi Defence opposes the admission of any Associated Exhibits to these prior statements.<sup>19</sup>

9. The Veseli Defence does not oppose the admission of prior statements attributable to Mr Veseli. The Veseli Defence, nevertheless, submits that, if the co-Accused's statements are admitted, the Panel should limit the purpose for which they are admitted so that they cannot be used against the co-Accused.<sup>20</sup> Alternatively, the Veseli Defence avers that certain portions of the co-Accused's statements should be excluded because their prejudicial impact outweighs their probative value.<sup>21</sup> Lastly, the Veseli Defence challenges the admissibility of certain exhibits associated with the co-Accused's statements.<sup>22</sup>

10. The SPO replies that all Statements and Associated Exhibits are admissible as: (i) the SPO fulfilled the applicable obligations for the SPO Interviews, including the Accused being sufficiently informed of the charges against them;<sup>23</sup> (ii) the Accused were afforded the rights of suspects during the Other Suspect Interviews;<sup>24</sup> (iii) contrary to the Defence's submissions, the Accused were not entitled to the rights of suspects during the Witness Statements and Testimony, and their rights were accordingly respected;<sup>25</sup> and (iv) all Associated Exhibits are admissible as the Defence has failed to substantiate adequate reasons as to why they should not be admitted, and as they form an "inseparable and indispensable"

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<sup>17</sup> Krasniqi Response, para. 2.

<sup>18</sup> Krasniqi Response, para. 3.

<sup>19</sup> Krasniqi Response, paras 4, 75.

<sup>20</sup> Veseli Response, para. 3.

<sup>21</sup> Veseli Response, para. 4.

<sup>22</sup> Veseli Response, para. 5.

<sup>23</sup> Reply to the Thaçi Response, para. 8; Reply to the Selimi Response, paras 2-17.

<sup>24</sup> Reply to the Krasniqi Response, para. 13.

<sup>25</sup> Reply to the Krasniqi Response, para. 3; Reply to the Selimi Response, paras 13-17.

part of the records.<sup>26</sup> Lastly, the SPO avers that the Statements are admissible without limitations, including against the co-Accused.<sup>27</sup>

### III. APPLICABLE LAW

11. Pursuant to Article 37(1), admissibility of evidence collected in criminal proceedings or investigations within the subject matter jurisdiction of the Specialist Chambers prior to its establishment by any national or international law enforcement or criminal investigation authority or agency including the Kosovo State Prosecutor, any police authority in Kosovo, the ICTY, the European Union Rule of Law Mission in Kosovo (“EULEX”) or by the Special Investigative Task Force (“SITF”) shall be decided by the assigned panels pursuant to international standards on the collection of evidence and Article 22 of the Constitution.

12. Pursuant to Article 37(3)(a), transcripts of testimony of witnesses given before the ICTY and records of depositions of witnesses made before the ICTY in accordance with Rule 71 of the ICTY Rules of Procedure and Evidence may be admissible before the Specialist Chambers provided that the testimony or deposition is relevant to a fact at issue in the proceedings before the Specialist Chambers. Similarly, pursuant to Article 37(3)(b), transcripts of testimony of witnesses given before a Kosovo court may be admissible before the Specialist Chambers.

13. Pursuant to Article 38(3) and Rules 42-44, if questioned, a suspect shall not be compelled to incriminate himself or herself or to confess guilt. Nor shall he or she be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman and degrading treatment or punishment. He or she shall

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<sup>26</sup> Reply to the Thaçi Response, para. 9; Reply to the Krasniqi Response, para. 15; Reply to the Veseli Response, para. 6.

<sup>27</sup> Reply to the Thaçi Response, para. 10, pp. 5-6; Reply to the Krasniqi Response, para. 14; Reply to the Veseli Response, paras 2-3; Reply to the Selimi Response, para. 10, pp. 6-7.

have the following rights of which he or she shall be informed prior to questioning, in a language he or she speaks and understands:

- a. The right to be informed that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Specialist Chambers;
- b. The right to remain silent, without such silence being considered in the determination of guilt or innocence, and to be cautioned that any statement he or she makes shall be recorded and may be used in evidence;
- c. The right to be assisted by Specialist Counsel of his or her own choosing and to be questioned in the presence of Specialist Counsel, including the right to have legal assistance provided by the Specialist Chambers without payment by him or her where he or she does not have sufficient means to pay for it;
- d. The right to have the free assistance of an interpreter if he or she cannot understand or speak the language used for questioning.

14. Pursuant to Rule 140(4), a conviction may not be based solely or to a decisive extent on the statement of a witness whom the Defence had no opportunity to examine.<sup>28</sup>

15. The Panel also recalls that: (i) pursuant to Article 40(6)(h), the Panel may rule on the admissibility of evidence prior to, or during trial; and (ii) pursuant to Rule 138(1), unless challenged or *proprio motu* excluded, evidence submitted to the

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<sup>28</sup> F01603, Panel, *Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155* ("Rule 155 Decision"), 14 June 2023, confidential, para. 18, and references cited therein (a public redacted version was issued on 8 September 2023, F01603/RED).

Panel shall be admitted if it is relevant, authentic, has probative value and its probative value is not outweighed by its prejudicial effect.<sup>29</sup>

16. The Panel observes that the Law and the Rules do not expressly regulate the issue of admissibility of an Accused's statements, in general, and in relation to co-Accused, in particular. Admission of this category of items is subject to the general rules and principles regarding the admission of evidence before this jurisdiction. International criminal tribunals have determined that there is no general prohibition on the admission in evidence of a record of interview or a statement of an accused if it was obtained voluntarily, in compliance with the relevant legal framework, and it is relevant and has probative value.<sup>30</sup> The question of the admissibility of an accused's statement or record of interview in respect of co-defendants is addressed below.<sup>31</sup>

17. The Panel further notes that, in accordance with standards of international human rights law, a person "charged with an offence", such as a suspect questioned about his alleged involvement in acts constituting a criminal offence, can claim the protection of Article 6 of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention").<sup>32</sup> More specifically, the person: (i) is entitled to be informed of the nature and cause of the accusations against him promptly, in a language which

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<sup>29</sup> F01409, Panel, *Decision on Specialist Prosecutor's Bar Table Motion* ("First Bar Table Motion Decision"), 31 March 2023, confidential, paras 8-13, and references in footnotes 11-29.

<sup>30</sup> See e.g. ICTY, *Prosecutor v. Halilović*, IT-01-48-T, Trial Chamber I(A), Decision on Motion for Exclusion of Statement of Accused ("[Halilović Trial Decision](#)"), 8 July 2005, para. 18, and references cited therein.

<sup>31</sup> See below Section IV.D.

<sup>32</sup> KSC-BC-2020-04, Trial Panel I, F00364, *Decision Concerning Prior Statements Given by Pjetër Shala*, 6 December 2022, confidential, para. 24 (a corrected version was filed confidentially on 8 December 2022, F00364/COR; a public redacted version was filed on 26 January 2023, F00364/COR/RED); European Court of Human Rights ("ECtHR"), *Aleksandr Zaichenko v. Russia*, Application no. 39660/02, [Judgment](#), 18 February 2010, paras 41-43. See also United Nations General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, U.N.T.S., Vol. 999, p. 171, Article 14.

she or he understands (Article 6(3)(a) of the European Convention);<sup>33</sup> (ii) has the right to be notified of the privilege against self-incrimination and the right to remain silent; and (iii) should be granted access to legal assistance from the moment there is a criminal charge against him or her (Article 6(3)(c) of the European Convention).

18. The right to legal assistance is not absolute but is a fundamental feature of a fair trial. A person may waive the right to counsel but cannot renounce his or her entitlement to a fair trial. However, any waiver of a right must be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance. Given that the right to counsel constitutes a fundamental guarantee of a fair trial, the waiver must be voluntary, and must constitute a knowing and intelligent relinquishment of that right.<sup>34</sup> This means that the suspect renouncing this right must be aware of his or her rights, including his or her right of access to a lawyer.<sup>35</sup> A suspect may be said to have implicitly, through his conduct, waived his or her right to counsel, if it is shown that he or she could reasonably have foreseen what the consequences of his or her conduct would be.<sup>36</sup>

19. Furthermore, pursuant to Article 6(3)(e) of the European Convention, a person who does not understand or speak the language used in the proceedings has the right to have the free assistance of an interpreter where proceedings are conducted in a language other than his or her own.<sup>37</sup>

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<sup>33</sup> This article does not impose any specific formal requirement as to the manner in which the accused is to be informed of the nature and cause of the accusation against him; see ECtHR, *Giosakis v. Greece* (no. 3), Application no. 5689/08, [Judgment](#), 3 May 2011, para. 29.

<sup>34</sup> ECtHR, *Simeonovi v. Bulgaria*, Application no. 21980/04, Judgment ("[Simeonovi Judgment](#)"), 12 May 2017, para. 115; *Pishchalnikov v. Russia*, Application no. 7025/04, Judgment ("[Pishchalnikov Judgment](#)"), 24 September 2009, para. 77.

<sup>35</sup> ECtHR, [Simeonovi Judgment](#), para. 119; *Ibrahim and Others v. the United Kingdom*, Application nos. 50541/08 and 3 others, Judgment [GC] ("[Ibrahim and Others Judgment](#)"), 13 September 2016, paras 272-273.

<sup>36</sup> ECtHR, [Simeonovi Judgment](#), para. 115; [Pishchalnikov Judgment](#), para. 77.

<sup>37</sup> ECtHR, *Baytar v. Turkey*, Application no. 45440/04, [Judgment](#), 14 October 2014, para. 49; *Hermi v. Italy*, Application no. 18114/02, [Judgment \[GC\]](#), 18 October 2006, paras 69-70; *Kamasinski v. Austria*, Application no. 9783/82, [Judgment](#), 19 December 1989, para. 74.

#### IV. DISCUSSION

20. The Panel notes that: (i) the four SPO Interviews at issue were conducted as suspect interviews by the SPO under the Law and the Rules;<sup>38</sup> (ii) the two Other Suspect Interviews were conducted as suspect interviews by investigators at the SPRK under the Criminal Procedure Code of the Republic of Kosovo (“KCPC”);<sup>39</sup> and (iii) the remaining Witness Statements and Testimony were conducted with the Accused as witnesses by the SPRK, the ICTY, the United Nation Mission in Kosovo (“UNMIK”) and before the Gjakova Basic Court and the Supreme Court of Kosovo.<sup>40</sup>

21. The Panel will assess whether: (i) the SPO Interviews, the Other Suspect Interviews and the Witness Statements and Testimony were obtained in compliance with the SC legal framework and/or with the standards of international human rights law, pursuant to Rule 138(2); (ii) the cumulative criteria set forth in Rule 138(1) for the admission of evidence are met with respect to the SPO Interviews, Other Suspect Interviews and Witness Statements and Testimony, and Associated Exhibits; and (iii) any limitations apply to their use against the co-Accused.

22. The Panel notes that certain Associated Exhibits include items that are apparent duplicates of: (i) items (or translation thereof) tendered as part of other Associated Exhibits;<sup>41</sup> or (ii) items (or translation thereof) previously tendered and

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<sup>38</sup> Request, paras 4-21; Annex to the Request, pp. 2-3.

<sup>39</sup> Request, paras 22-29; Annex to the Request, pp. 3-4.

<sup>40</sup> Request, paras 30-89; Annex to the Request, pp. 4-12.

<sup>41</sup> See e.g. 071794-071839, pp. 071820-071821, 071834 and IT-04-84 P00328, pp. U016-2148, U016-2152 and IT-03-66 P49, pp. 8, 12-13 and U003-8552-U003-8690, pp. U003-8573-U003-8574; U003-8577-U003-8578; 076565-076705, pp. 076588-076596 and 074440-074458A, pp. 074440-074443, 074447; IT-04-84 P00328, pp. U016-2102-U016-2143, U016-2149-U016-2186 and U003-8552-U003-8690, pp. U003-8552-U003-8590, U003-8623-U003-8624 and IT-03-66 P49, pp. 1-4, 11-13, 19, 28; IT-03-66 P49, pp. 1-5, 9-11, 17-20, 25, 27-28 and U003-8552-U003-8690, pp. U003-8580-U003-8590, U003-8554, U003-8561-U003-8562, U003-8566-

which the Panel has already ruled upon.<sup>42</sup> Admitting duplicates of the same document is generally undesirable as this does not add meaningfully to the evidential record of proceedings. However, the Panel is mindful that not admitting duplicative documents tied to a statement would result in the dispersion of material associated to a statement. The Panel is also mindful that items (or translations thereof) whose admission have been previously denied can be admitted if the Panel is now satisfied that the requirements under Rule 138(1) are met. The Panel will therefore assess whether the Associated Exhibits form an indispensable and inseparable part of the relevant Statements and meet the requirements under Rule 138(1), and, where satisfied that they do, will admit them into evidence, including where an associated exhibit is a duplicate of an already admitted item.

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U003-8567, U003-8571, U003-8575, U003-8611-U003-8612, U003-8619-U003-8620, U003-8623-U003-8624, U003-8630, U003-8646-U003-8647, U003-8660.

<sup>42</sup> See e.g. 071794-071839, pp. 071817-071819 (admitted as P00269), 071820-071821, 071834 (admitted as P00270), 071836 (admitted as P00292), 071837 (admitted as P00544), 071839 (admitted as 1D00029); 076565-076705, pp. 076565-076566 (admitted as P00158), 076580-076587 (admitted as P00112 and P00113), 076588-076591 (admitted as P00159), 076592-076595 (admitted as P00161); 074440-074458A, pp. 074440-074441 (admitted as P00159), 074448-074449 (admitted as P00300), 074450, 074451, 074453 (admitted as P00189), 074455 (admitted as P00158); IT-04-84 P00328, pp. U016-2148-U016-2148 (admitted as P00286), U016-2150-U016-2152 (admitted as P00155 and P00270, p. U008-1614), U016-2133-U016-2134 (admitted as P00271, pp. U003-8566-U003-8567), U016-2142 (admitted as P00271, p. U003-8571); IT-03-66 P49, pp. 5-11 (admitted as P00270, pp. U008-1607-U008-1613), 12 (admitted as P00155 and P00270, p. U008-1614), 13-14 (admitted as P00270, pp. U008-1615-U008-1616), 15 (admitted as P00156 and P00270, p. U008-1617), 16-22 (admitted as P00270, pp. U008-1618-U008-1624), 25-30 (admitted as P00270, pp. U008-1627-U008-1632), 31 (admitted as P00256 and P00270, p. U008-1633), 32 (admitted as P00270, p. U008-1634); IT-03-66 P138 (admitted as P00293); U003-8552-U003-8690, pp. U003-8566-U003-8567; U003-8571-U003-8571; U003-8611-U003-8612; U003-8660-U003-8660 (admitted as P00271); IT-03-66 P248 (rejected); 071764-071839, p. 071835 (rejected as U000-8992-U000-8992); 076565-076705, pp. 076605-076612 (rejected as part of 007789-008966), 076642 (rejected as SPOE00128571-00128954, p. 00128571), 076705 (rejected as 058755-058755); 074440-074458A, pp. 074457-074458A (rejected as U008-1602-U008-1636, pp. U008-1605-U008-1606); IT-03-66 P49, pp. 19, 23, 33 (rejected as U008-1602-U008-1636, pp. U008-1621, U008-1625, U008-1635); U003-8552-U003-8690, pp. U003-8552-U003-8565, U003-8568-U003-8570, U003-8572-U003-8610, U003-8613-U003-8659, U003-8661-U003-8690 (rejected).

## A. SPO INTERVIEWS

### 1. Compliance of the SPO Interviews with the Accused with the Law and the Rules pursuant to Rule 138(2)

#### (a) January 2020 SPO Interview with Mr Thaçi<sup>43</sup>

##### i. Submissions

23. The SPO submits that: (i) the January 2020 SPO Interview with Mr Thaçi was collected by the SPO in the course of its investigation pursuant to, and in compliance with, the Law and Rules;<sup>44</sup> and (ii) Mr Thaçi's rights were respected insofar as Mr Thaçi was informed that there was a criminal investigation and that there were grounds to believe that he had been involved in the commission of a crime within the SC's jurisdiction, that he had a right to remain silent, the right to the assistance of an interpreter free of charge and the right to have an attorney present.<sup>45</sup> The SPO avers that Mr Thaçi confirmed his understanding of these rights and intelligently waived his right to silence and to have an attorney present during questioning.<sup>46</sup>

24. The Thaçi Defence objects to the admission of the January 2020 SPO Interview and its related exhibits pursuant to Rule 138(2).<sup>47</sup> Specifically, the Thaçi Defence submits that Mr Thaçi was not sufficiently put on notice by the SPO of the charges he could potentially face before the SC before deciding to waive his rights and, therefore, he could not make a fully informed choice to waive his right to silence and to counsel and this breached his rights.<sup>48</sup> The Thaçi Defence argues that the rights of a suspect to be informed of the charges against him is intrinsically linked to his ability to make an informed and voluntary choice to waive the right to

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<sup>43</sup> 071840-TR-ET Parts 1-9.

<sup>44</sup> Request, paras 2, 4.

<sup>45</sup> Request, paras 5-7.

<sup>46</sup> Request, para. 7.

<sup>47</sup> Thaçi Response, para. 9.

<sup>48</sup> Thaçi Response, para. 9.



counsel and silence.<sup>49</sup> As Mr Thaçi was not informed in any detail about the charges against him, but was only informed very generally about the case against him, he could not make a fully informed choice to waive his right to counsel and this is a breach of his rights and a basis for the exclusion of his interview.<sup>50</sup> The Thaçi Defence avers that the advanced stage of the investigation at which this interview took place is of particular relevance, as the SPO should have informed Mr Thaçi in much more detail about the charges against him.<sup>51</sup>

25. In reply, the SPO reiterates its arguments that Mr Thaçi was informed that he was suspected of committing crimes within the jurisdiction of the KSC, and that he had a right to counsel and to remain silent.<sup>52</sup> In addition, the SPO replies that Mr Thaçi was sufficiently informed of the charges against him as, at the time, no indictment has been filed and, as held by the Court of Appeals, “there is no general or standard requirement to notify a suspect of the time, location, and specific conduct he or she is suspected of.”<sup>53</sup>

ii. Determination by the Panel

26. The Panel notes that, during the January 2020 Interview, Mr Thaçi was informed by the SPO that: (i) it was investigating allegations of serious international and transboundary crimes in Kosovo and parts of the Republic of Albania between 1998 and 2000; and (ii) there were grounds to believe that he had been involved in the commission of a crime within the jurisdiction of the SC.<sup>54</sup> Contrary to the Thaçi Defence’s arguments,<sup>55</sup> the Panel notes that there is no

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<sup>49</sup> Thaçi Response, para 15.

<sup>50</sup> Thaçi Response, para. 18.

<sup>51</sup> Thaçi Response, paras 19-22.

<sup>52</sup> Reply to the Thaçi Response, para. 4.

<sup>53</sup> Reply to the Thaçi Response, paras 5-7 referring to KSC-BC-2020-04, IA006-F00007, Court of Appeals, *Decision on Shala’s Appeal against Decision Concerning Prior Statements (“Shala Appeal Decision”)*, 5 May 2023, para. 42.

<sup>54</sup> 071840-TR-ET Part 1, p. 2, lines 10-12, 15-19.

<sup>55</sup> Thaçi Response, para. 9.

formal specific requirement in the Law, or the Rules, or before the ECHR, as to the manner in which an accused is to be informed about the nature and cause of the accusation against him.<sup>56</sup> There is no general or standard requirement to notify a suspect of the time, location, and specific conduct he or she is suspected of.<sup>57</sup> The Panel notes that the Court of Appeals found that “the level of detail expected to be provided during a suspect interview, especially at an early stage of investigations into a situation, is generally not as high as the one expected to be provided when the person interviewed has been charged following the issuance of an indictment against him or her.”<sup>58</sup>

27. In addition, the Panel observes that during the interview Mr Thaçi was asked about specific incidents, which provided him with further information about the SPO’s investigation. The Panel considers that, given that the case was still in the investigatory stage as an indictment had yet to be submitted for confirmation,<sup>59</sup> it was sufficient to inform Mr Thaçi in general terms of the nature and cause of the suspicions or allegations against him for him to make an informed decision about the waiver of his rights.<sup>60</sup> The Panel further notes that Mr Thaçi did not complain at the time of the interview of having too little information regarding the crimes of which he was suspected.

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<sup>56</sup> *Shala* Appeal Decision, para. 42. See also above para. 17, footnote 33.

<sup>57</sup> *Shala* Appeal Decision, para. 42. See also ECtHR, [Ibrahim and Others Judgment](#), para. 253; *Penev v. Bulgaria*, Application no. 20494/04, Judgment (“[Penev Judgment](#)”), 7 January 2010, paras 33; *Mattoccia v. Italy*, Application no. 23969/94, Judgment (“[Mattoccia Judgment](#)”), 25 July 2000, paras 59-60; *Imbrioscia v. Switzerland*, Application no. 13972/88, Judgment (“[Imbrioscia Judgment](#)”), 24 November 1993, para. 38.

<sup>58</sup> *Shala* Appeal Decision, para. 43.

<sup>59</sup> F00026, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, strictly confidential and *ex parte*, paras 1-14. A confidential redacted version was issued on 19 November 2020, F00026/CONF/RED. A public redacted version was issued on 30 November 2020, F00026/RED.

<sup>60</sup> See ECtHR, [Ibrahim and Others Judgment](#), para. 253; [Penev Judgment](#), para. 33; [Mattoccia Judgment](#), para. 60; [Imbrioscia Judgment](#), para. 38.

28. As to his rights, the Panel observes that Mr Thaçi was informed that: (i) the interview was being recorded;<sup>61</sup> (ii) he had the right to remain silent;<sup>62</sup> (iii) he had the right to be assisted by a lawyer;<sup>63</sup> (iv) that any statement made could be used as evidence against him before the SC;<sup>64</sup> and (v) he had the right to an interpreter.<sup>65</sup> In addition, he was provided with a written record of his rights and obligations.<sup>66</sup>

29. During the interview, Mr Thaçi: (i) confirmed that his wish was to attend the interview without a lawyer and that if he considered it necessary he would use his right to have a lawyer present;<sup>67</sup> (ii) confirmed that he understood his rights;<sup>68</sup> (iii) was assisted by an interpreter;<sup>69</sup> (iv) confirmed that the statement was given voluntarily,<sup>70</sup> that he was not threatened or forced to attend the interview<sup>71</sup> and not given any promises, guarantees or incentives to give evidence;<sup>72</sup> (v) noted that the interview was “an unnecessary hurry,” but otherwise had no objections to the manner in which the interview was conducted.<sup>73</sup> In addition, the interview was recorded and subsequently transcribed, including by providing the Accused, at the next interview, with the opportunity to clarify, supplement or amend anything he said during the interview.<sup>74</sup>

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<sup>61</sup> 071840-TR-ET Part 1, p. 1, lines 7-10, p. 2, lines 23-25.

<sup>62</sup> 071840-TR-ET Part 1, p. 2, lines 20-22.

<sup>63</sup> 071840-TR-ET Part 1, p. 3, lines 6-7.

<sup>64</sup> 071840-TR-ET Part 1, p. 2, lines 15-16.

<sup>65</sup> 071840-TR-ET Part 1, p. 3, lines 13-16.

<sup>66</sup> 071793-071793-ET.

<sup>67</sup> 071840-TR-ET Part 1, p. 3, lines 8-12.

<sup>68</sup> 071840-TR-ET Part 1, p. 3, lines 18-20.

<sup>69</sup> 071840-TR-ET Part 1, p. 3, lines 15-16.

<sup>70</sup> 071840-TR-ET Part 9, p. 7, lines 8-10.

<sup>71</sup> 071840-TR-ET Part 9, p. 7, lines 11-12.

<sup>72</sup> 071840-TR-ET Part 9, p. 7, lines 14-16.

<sup>73</sup> 071840-TR-ET Part 9, p. 7, lines 17-19.

<sup>74</sup> 076563-TR-ET Part 2, p. 2, line 21 to p. 22, line 16.

30. The Panel finds that Mr Thaçi was fully informed of his rights as a suspect, and the waiver of his right to access a lawyer was given voluntarily and in an unequivocal, knowing and intelligent manner.<sup>75</sup>

31. In light of the above, the Panel finds that there was no violation of Mr Thaçi's rights under the Law and the Rules.

(b) July 2020 SPO Interview with Mr Thaçi<sup>76</sup>

i. Submissions

32. The SPO submits that: (i) the July 2020 SPO Interview with Mr Thaçi was collected by the SPO in the course of its investigation pursuant to, and in compliance with, the Law and Rules;<sup>77</sup> and (ii) as happened during the January 2020 SPO Interview, Mr Thaçi's rights were respected during the July 2020 SPO Interview.<sup>78</sup> In addition, the SPO avers that, during this interview: (i) Mr Thaçi's legal representative was present during questioning via video-link; (ii) his legal representative was provided with a copy of Mr Thaçi's rights in written form; (iii) Mr Thaçi was given the opportunity to clarify, supplement or amend his answers, where necessary; and (iv) Mr Thaçi confirmed that there had been no threats or force used to pressure him into answering the questions.<sup>79</sup>

33. The Thaçi Defence objects to the admission of the July 2020 SPO Interview repeating the arguments advanced for the January 2020 SPO Interview.<sup>80</sup> In addition, the Thaçi Defence avers that, at this stage, there were even less reasons to not inform Mr Thaçi about the case against him in sufficient details as the SPO

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<sup>75</sup> See ECtHR, [Ibrahim and Others Judgment](#), para. 272.

<sup>76</sup> 076563-TR-ET Parts 1-21.

<sup>77</sup> Request, paras 2, 4.

<sup>78</sup> See *above* para. 23. See also Request, paras 9-12.

<sup>79</sup> Request, paras 9-12.

<sup>80</sup> See *above* para. 24. See also Thaçi Response, paras 25-27, 29.

had already filed the indictment for confirmation and issued a press release regarding the same.<sup>81</sup>

34. The SPO repeats its reply in respect of the January 2020 SPO Interview.<sup>82</sup> In addition, the SPO replies that, at the time of the July 2020 SPO Interview, Mr Thaçi and his counsel were both aware of the subject matters which had been addressed during the January 2020 SPO Interview and that an indictment had been submitted against Mr Thaçi, but Mr Thaçi's counsel did not request further information, which was open to him to do.<sup>83</sup>

ii. Determination by the Panel

35. The Panel notes that on 24 June 2020, the SPO issued a press statement confirming that it had "filed a ten-count Indictment with the Kosovo Specialist Chambers (KSC) for the Court's consideration, charging" Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi with a range of crimes against humanity and war crimes. The indictment was filed confidentially and *ex parte* pursuant to Rule 86(2). It had not yet been confirmed nor been made public by the time of the July 2020 SPO Interview of Mr Thaçi. During the July 2020 SPO Interview, Mr Thaçi was again informed by the SPO that there were grounds to believe that he had been involved in the commission of a crime within the jurisdiction of the SC.<sup>84</sup> The Panel recalls its finding above about the January 2020 SPO Interview, which is equally applicable to this statement.<sup>85</sup> It is the Panel's position that the SPO's filing an indictment for confirmation, confidentially and *ex parte* in accordance with Rule 86(2), did not entitle Mr Thaçi to receive notice of all the information and allegations contained therein. As noted above, the information to

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<sup>81</sup> Thaçi Response, para. 28.

<sup>82</sup> See *above* para. 25. See also Reply to the Thaçi Response, paras 4-7.

<sup>83</sup> Reply to the Thaçi Response, paras 7-8.

<sup>84</sup> 076563-TR-ET Part 1, p. 2, lines 21-23.

<sup>85</sup> See *above*, para 26.

be given to a suspect for the purpose of conducting a suspect interview is only intended to ensure that the suspect can exercise his or her rights, in particular his or her right to silence and against self-incrimination, in an effective manner and decide in an informed manner whether to waive any of his rights. Moreover, during the July 2020 SPO Interview, Mr Thaçi and his counsel were again provided with further details about the specific incidents that the SPO was investigating and in relation to which Mr Thaçi was being interviewed.<sup>86</sup> The Panel notes that neither Mr Thaçi, nor his counsel, sought to obtain additional information from the SPO regarding the suspicions against Mr Thaçi as was open to them to do had they considered this necessary to the fair and effective exercise of Mr Thaçi's rights. The Panel considers that, given that the indictment had not yet been confirmed and the case was still being investigated and Mr Thaçi's counsel was present during the interview, it was sufficient for the SPO to inform Mr Thaçi in general terms of the nature and cause of the suspicions or allegations against him in order for him to make an informed decision about the waiver of his right to remain silent.<sup>87</sup>

36. As to his rights, the Panel observes that Mr Thaçi was informed that: (i) the interview was being recorded;<sup>88</sup> (ii) he had the right to remain silent;<sup>89</sup> (iii) he had the right to be assisted by a lawyer and, if he could not afford one, one would be provided free of charge;<sup>90</sup> (iv) any statement made could be used as evidence against him before the SC;<sup>91</sup> and (v) he had the right to an interpreter.<sup>92</sup>

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<sup>86</sup> 076563-TR-ET Part 13, p. 7, lines 20-25 to p. 8, lines 1-9 ; 076563-TR-ET Part 16, p. 9, lines 18-19; 076563-TR-ET Part 17, pp. 2, 5-6.

<sup>87</sup> See ECtHR, [Ibrahim and Others Judgment](#), para. 253; [Penev Judgment](#), para. 33; [Mattoccia Judgment](#), para. 60; [Imbrioscia Judgment](#), para. 38. See also ECtHR, [Ibrahim and Others Judgment](#), para. 272.

<sup>88</sup> 076563-TR-ET Part 1, p. 1, lines 7-10, p. 3, lines 2-3.

<sup>89</sup> 076563-TR-ET Part 1, p. 2, line 24 to p. 3, line 1.

<sup>90</sup> 076563-TR-ET Part 1, p. 3, lines 4-5.

<sup>91</sup> 076563-TR-ET Part 1, p. 2, lines 14-15.

<sup>92</sup> 076563-TR-ET Part 1, p. 3, lines 14-16.

37. During the interview, Mr Thaçi: (i) was represented by a lawyer via video-link;<sup>93</sup> (ii) confirmed that he understood his rights;<sup>94</sup> (iii) was assisted by an interpreter;<sup>95</sup> (iv) confirmed that the statement was given voluntarily,<sup>96</sup> that he was not threatened or forced to attend the interview<sup>97</sup> and not given any promises, guarantees or incentives to give evidence;<sup>98</sup> and (v) other than the objections made by his lawyer, had no objections to the manner in which the interview was conducted.<sup>99</sup> In addition, the interview was recorded and subsequently transcribed, and Mr Thaçi was given the opportunity to clarify, supplement or amend anything he said during the interview.<sup>100</sup>

38. The Panel finds that Mr Thaçi was fully informed of his rights as a suspect, and was represented by counsel during the interview. The Panel also notes that neither Mr Thaçi, nor his Counsel, raised any issue or objection regarding the earlier January 2020 SPO Interview.

39. In light of the above, the Panel finds that there was no violation of Mr Thaçi's rights under the Law and the Rules.

(c) November 2019 SPO Interview with Mr Selimi<sup>101</sup>

i. Submissions

40. The SPO submits that: (i) the November 2019 SPO Interview with Mr Selimi was conducted by the SPO in the course of its investigation pursuant to, and in compliance with, the Law and Rules;<sup>102</sup> and (ii) Mr Selimi's rights were respected

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<sup>93</sup> 076563-TR-ET Part 1, p. 1, lines 14-15, p. 3, lines 6-8.

<sup>94</sup> 076563-TR-ET Part 1, p. 3, lines 17-19.

<sup>95</sup> 076563-TR-ET Part 1, p. 1, lines 17-19.

<sup>96</sup> 076563-TR-ET Part 21, p. 24, lines 12-14.

<sup>97</sup> 076563-TR-ET Part 21, p. 24, lines 15-17.

<sup>98</sup> 076563-TR-ET Part 21, p. 24, lines 18-20.

<sup>99</sup> 076563-TR-ET Part 21, p. 24, lines 21-24.

<sup>100</sup> 076563-TR-ET Part 21, p. 23, line 21 to p. 24, line 8.

<sup>101</sup> 068933-TR-ET Parts 1-14.

<sup>102</sup> Request, paras 2, 4.

during the November 2019 SPO Interview insofar as Mr Selimi was informed that there was a criminal investigation and that there were grounds to believe that he had been involved in the commission of a crime within the SC's jurisdiction, that he had a right to remain silent, the right to the assistance of an interpreter free of charge and the right to have a legal representative present.<sup>103</sup> The SPO avers that Mr Selimi confirmed his understanding of these rights and intelligently and voluntarily waived his right to silence and to have a legal representative present.<sup>104</sup>

41. The Selimi Defence opposes the admission into evidence of the November 2019 SPO Interview, as it avers that it was conducted in violation of Mr Selimi's rights, namely: (i) without properly informing Mr Selimi of his status as a suspect under Rule 43; and (ii) in violation of Mr Selimi's rights to counsel, to remain silent and to be informed of the consequences of giving such an interview as well as his right to revoke such an interview.<sup>105</sup> Specifically, the Selimi Defence submits that the SPO failed to notify Mr Selimi that he was regarded as a suspect as opposed to a witness, notably: (i) referring to Mr Selimi as a "witness" at the outset and throughout the interview;<sup>106</sup> (ii) while reading Mr Selimi his rights again referring to him as a "witness";<sup>107</sup> (iii) at no point notifying Mr Selimi that he was a "suspect" within the meaning of Rule 2 and the subject of a criminal investigation and/or the allegations against him.<sup>108</sup> As Mr Selimi was not fully aware of his status as a "suspect", he equally did not voluntarily and intelligently waive his rights to counsel and silence during the interview.<sup>109</sup> The Selimi Defence also argues that, if the Panel considers that the waiver was unequivocal, the SPO has failed to demonstrate that he was properly informed of the consequences of

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<sup>103</sup> Request, paras 14-16.

<sup>104</sup> Request, para. 16.

<sup>105</sup> Selimi Response, para. 2.

<sup>106</sup> Selimi Response, paras 14, 19-20.

<sup>107</sup> Selimi Response, paras 14, 19.

<sup>108</sup> Selimi Response, paras 15, 17-18, 22.

<sup>109</sup> Selimi Response, paras 26, 30, 37, 45-46.



waiving his rights as required by Rule 43(3)<sup>110</sup> and failed to inform him of his right to revoke the waiver at any point during the interview as required by Rule 43(4).<sup>111</sup> Lastly, the Selimi Defence submits that Mr Selimi did not voluntarily and intelligently waive his right to silence as he at no point confirmed that he waived his right to silence; rather the SPO assumed that he had done so.<sup>112</sup>

42. The SPO replies that the Selimi Defence's arguments lack merit arguing that: (i) the Selimi Defence attempts to manufacture error by claiming that there was a failure to inform Mr Selimi that he was a "suspect", as defined in Rule 2, when no such requirement exists;<sup>113</sup> (ii) Mr Selimi's expressed no confusion at any time as to his status or the waiving of his rights;<sup>114</sup> (iii) the information provided to Mr Selimi regarding the areas of interest of the SPO were commensurate with the investigation at the time and there was no requirement to provide additional information;<sup>115</sup> and (iv) Mr Selimi's waiver contained information that he "may revoke his waiver and request the assistance of an attorney at any time".<sup>116</sup>

ii. Determination by the Panel

43. The Panel notes that during the November 2019 Interview, Mr Selimi was informed by the SPO that there were grounds to believe that he had been involved in the commission of a crime within the jurisdiction of the SC.<sup>117</sup> Irrespective of whether the word "suspect" was used consistently throughout the November 2019 Interview, the Panel considers that this statement clearly informed Mr Selimi that he was suspected of having been involved in the commission of a crime. This was

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<sup>110</sup> Selimi Response, paras 38-39.

<sup>111</sup> Selimi Response, paras 40-42.

<sup>112</sup> Selimi Response, para. 44.

<sup>113</sup> Reply to the Selimi Response, paras 2-3.

<sup>114</sup> Reply to the Selimi Response, paras 3, 5-12.

<sup>115</sup> Reply to the Selimi Response, para. 4.

<sup>116</sup> Reply to the Selimi Response, para. 7.

<sup>117</sup> 068933-TR-ET Part 1, p. 2, lines 15-19.

further emphasised by the fact that the SPO read Mr Selimi his rights as a suspect.<sup>118</sup> The Panel notes the *Sesay* decision relied upon by the Selimi Defence,<sup>119</sup> where the SCSL Trial Chamber found that the accused could have been confused as to his status in the proceedings by certain assurances received by the investigators during his interview. No such assurances were provided to Mr Selimi during his November 2019 Interview. The Panel therefore finds that Mr Selimi had knowledge of his status as a suspect at the time of his November 2019 Interview and of the rights associated with that status.

44. Concerning the submissions that Mr Selimi was not sufficiently informed of the charges against him, the Panel recalls its finding, above, that there is no specific requirement as to the manner in which the accused is to be informed about the nature and cause of the accusation against him or the amount of detail that must be provided to a suspect.<sup>120</sup> Moreover, the Panel notes that Mr Selimi did not ask for more specificity, and was provided with specific locations and relevant factual details pertaining to relevant incidents throughout the interview.<sup>121</sup> Mr Selimi did not raise any objection or recorded any difficulties addressing those.

45. As to his rights, the Panel observes that Mr Selimi was informed that: (i) the interview was being recorded;<sup>122</sup> (ii) he had the right to remain silent;<sup>123</sup> (iii) he had the right to be assisted by a lawyer;<sup>124</sup> (iv) that any statement made could be used as evidence against him before the SC;<sup>125</sup> and (v) he had the right to an interpreter free of charge.<sup>126</sup> In addition, he was provided with a written record of his rights

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<sup>118</sup> See below para. 45.

<sup>119</sup> Selimi Response, para. 25, referring to SCSL, *Prosecutor v. Sesay et al.*, SCSL-04-15-T, Trial Chamber, [Written Reasons – Decision on the Admissibility of Certain Prior Statements of the Accused Given to the Prosecution](#), 30 June 2008, para. 46.

<sup>120</sup> See above para. 26.

<sup>121</sup> See 068933-TR-ET.

<sup>122</sup> 068933-TR-ET Part 1, p. 1, lines 7-10, p. 2, line 23.

<sup>123</sup> 068933-TR-ET Part 1, p. 2, lines 20-22.

<sup>124</sup> 068933-TR-ET Part 1, p. 3, lines 6-7.

<sup>125</sup> 068933-TR-ET Part 1, p. 2, lines 15-16, 23-25.

<sup>126</sup> 068933-TR-ET Part 1, p. 3, lines 13-15.

and obligations, including the indication that he may revoke his attorney waiver and request the assistance of an attorney at any time.<sup>127</sup> The Panel agrees with the Selimi Defence that Mr Selimi should have been informed about his right to revoke his waiver of counsel at the outset of the interview. However, the Panel notes that such information was provided to Mr Selimi in written form after the interview had begun.<sup>128</sup> The Panel is not persuaded by the Selimi Defence's argument that the delayed notification to Mr Selimi of the right to revoke his waiver of counsel affected his understanding of his right to revoke his right to silence as there is no textual requirement in the Rules to be explicitly informed of the possibility to revoke one's right to remain silent. Mr Selimi's waiver of his right to silence is apparent from the fact that he did not at any point express the need to consult with counsel and that, when informed of his right to revoke any part of his waiver, he did not express the wish to do so. The Panel further notes that during his subsequent February 2020 interview, Mr Selimi did not raise any objection to the record of his earlier interview based on an uninformed waiver of any of his rights.

46. The Panel notes that, during the interview, Mr Selimi confirmed that he understood his rights.<sup>129</sup> As noted, he did not consider that he needed to have his lawyer present.<sup>130</sup> The Panel is of the view that there is no indication that Mr Selimi was ever confused as to his suspect status. The Panel further notes that Mr Selimi: (i) was assisted by an interpreter;<sup>131</sup> (ii) confirmed that the statement was given voluntarily;<sup>132</sup> (iii) confirmed that he was not threatened or forced to attend the interview<sup>133</sup> and not given any promises, guarantees or incentives to give evidence;<sup>134</sup> and (iv) confirmed he had no objections to the manner in which the

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<sup>127</sup> See 068932-068932.

<sup>128</sup> 068933-TR-ET Part 5, p. 1, referring to 068932-068932.

<sup>129</sup> 068933-TR-ET Part 1, p. 3, lines 8-11.

<sup>130</sup> 068933-TR-ET Part 1, p. 3, lines 11-12.

<sup>131</sup> 068933-TR-ET Part 1, p. 3, lines 15-16.

<sup>132</sup> 068933-TR-ET Part 14, p. 29, lines 15-17.

<sup>133</sup> 068933-TR-ET Part 14, p. 29, lines 18-20.

<sup>134</sup> 068933-TR-ET Part 14, p. 29, lines 21-23.

interview was conducted.<sup>135</sup> In addition, the interview was recorded and subsequently transcribed, including by providing the Accused the opportunity to clarify, supplement or amend anything he said during the interview.<sup>136</sup>

47. The Panel finds that Mr Selimi was fully informed of his rights as a suspect, and his relinquishment of the right to access a lawyer was provided voluntarily and in an unequivocal, knowing and intelligent manner.<sup>137</sup>

48. In light of the above, the Panel finds that there was no violation of Mr Selimi's rights under the Law and the Rules.

(d) February 2020 SPO Interview with Mr Selimi<sup>138</sup>

i. Submissions

49. The SPO submits that: (i) the February 2020 SPO Interview with Mr Selimi was conducted by the SPO in the course of its investigation pursuant to, and in compliance with, the Law and Rules;<sup>139</sup> and (ii) similarly to the November 2019 SPO Interview, Mr Selimi's rights were respected during the February 2020 SPO Interview where he also received a written version of his rights and obligations in Albanian to review and sign and again intelligently and voluntarily waived his right to silence and to have a legal representative present.<sup>140</sup>

50. The Selimi Defence repeats the objections enumerated in respect of the November 2019 SPO Interview for the February 2020 SPO Interview.<sup>141</sup>

51. The SPO repeats its reply for the November 2019 SPO Interview.<sup>142</sup>

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<sup>135</sup> 068933-TR-ET Part 14, p. 29, line 24 to p. 30, line 1.

<sup>136</sup> 068933-TR-ET Part 14, p. 28, line 23 to p. 29, line 3, p. 29, lines 6-9.

<sup>137</sup> See ECtHR, [Ibrahim and Others Judgment](#), para. 272.

<sup>138</sup> 074459-TR-ET Parts 1-9.

<sup>139</sup> Request, paras 2, 4.

<sup>140</sup> See above para. 40. See also Request, paras 18-20.

<sup>141</sup> See above para. 41. See also Selimi Response, paras 2, 11-26, 38, 42.

<sup>142</sup> See above para. 42. See also Reply to the Selimi Response, paras 2-12.

ii. Determination by the Panel

52. The Panel notes that, during the February 2020 Interview, Mr Selimi was informed by the SPO that there were grounds to believe that he had been involved in the commission of a crime within the jurisdiction of the SC.<sup>143</sup> The Panel recalls its findings regarding the November 2019 SPO Interview with Mr Selimi and, in particular, its rejection of the submissions that Mr Selimi was not clearly and sufficiently informed: (i) that he was suspected of having been involved in the commission of a crime; and (ii) of the charges against him.<sup>144</sup> The Panel finds that those findings equally apply to the February 2020 SPO Interview with Mr Selimi.

53. As to his rights, the Panel observes that Mr Selimi was informed that: (i) the interview was being recorded;<sup>145</sup> (ii) he had the right to remain silent;<sup>146</sup> (iii) he had the right to be assisted by a lawyer;<sup>147</sup> (iv) that any statement made could be used as evidence against him before the SC;<sup>148</sup> and (v) he had the right to an interpreter free of charge.<sup>149</sup> In addition, he was provided with a written record of his rights and obligations.<sup>150</sup>

54. During the interview, Mr Selimi: (i) confirmed that he understood his rights;<sup>151</sup> (ii) confirmed that he understood he had a right to a lawyer and that he has chosen to waive his right to a lawyer;<sup>152</sup> (iii) was assisted by an interpreter;<sup>153</sup> (iv) confirmed that the statement was given voluntarily,<sup>154</sup> that he was not

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<sup>143</sup> 074459-TR-ET Part 1, p. 2, lines 13-16.

<sup>144</sup> See above paras 43-44.

<sup>145</sup> 074459-TR-ET Part 1, p. 1, lines 11-12, p. 2, lines 19-20.

<sup>146</sup> 074459-TR-ET Part 1, p. 2, lines 16-19.

<sup>147</sup> 074459-TR-ET Part 1, p. 2, line 25 to p. 3, line 2.

<sup>148</sup> 074459-TR-ET Part 1, p. 2, lines 12-13.

<sup>149</sup> 074459-TR-ET Part 1, p. 3, lines 8-10.

<sup>150</sup> See 074439-074439.

<sup>151</sup> 074459-TR-ET Part 1, p. 3, lines 12-14.

<sup>152</sup> 074459-TR-ET Part 1, p. 2, line 25 to p. 3, line 7.

<sup>153</sup> 074459-TR-ET Part 1, p. 3, lines 8-11.

<sup>154</sup> 074459-TR-ET Part 9, p. 15, lines 14-16.

threatened or forced to attend the interview<sup>155</sup> and not given any promises, guarantees or incentives to give evidence;<sup>156</sup> and (v) confirmed he had no objections to the manner in which the interview was conducted.<sup>157</sup> In addition, the interview was recorded and subsequently transcribed, including by providing the Accused the opportunity to clarify, supplement or amend anything he said during the interview.<sup>158</sup>

55. The Panel finds that Mr Selimi was fully informed of his rights as a suspect, and his relinquishment of the right to access a lawyer was provided, voluntarily and in an unequivocal, knowing and intelligent manner.<sup>159</sup>

56. In light of the above, the Panel finds that there was no violation of Mr Selimi's rights under the Law and the Rules.

(e) Conclusion

57. Based on the above, the Panel is satisfied that there was no violation of Mr Thaçi's nor Mr Selimi's rights under the Law and the Rules.

58. The Panel will therefore turn to assess whether the cumulative criteria set forth in Rule 138(1) for the admission of evidence (relevance, authenticity, probative value, and prejudicial effect) are met with respect to each of the SPO Interviews with the Accused and Associated Exhibits.

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<sup>155</sup> 074459-TR-ET Part 9, p. 15, lines 17-19.

<sup>156</sup> 074459-TR-ET Part 9, p. 15, lines 20-22.

<sup>157</sup> 074459-TR-ET Part 9, p. 15, lines 23-25.

<sup>158</sup> 074459-TR-ET Part 9, p. 15, lines 1-9.

<sup>159</sup> ECtHR, [Ibrahim and Others Judgment](#), para. 272.

## 2. Admissibility of the SPO Interviews with the Accused and Associated Exhibits pursuant to Rule 138(1)

59. The SPO avers that the SPO Interviews: (i) are relevant as they concern, *inter alia*, the Accused's whereabouts during relevant times, their roles as leaders within the KLA, including their involvement in the organisation's structure and decision-making, and their statements about their knowledge of and involvement in arrests, detentions, and mistreatment;<sup>160</sup> and (ii) are authentic and reliable as, at the time of the interviews, the Accused were "suspects" and were advised accordingly and provided with clear and comprehensive notifications of their rights.<sup>161</sup> For these reasons, and because the statements were given by the Accused following knowing and intelligent waivers of their rights, the SPO argues that the probative value of the SPO Interviews is not outweighed by any prejudice to the Accused. In addition, the SPO submits that the Associated Exhibits were used in and form an integral part of the SPO Interviews.<sup>162</sup> The SPO argues that the Defence will have the opportunity to challenge the evidence and the Panel, composed of professional judges, will be able to appropriately assess the entirety of the evidence and assign appropriate weight.<sup>163</sup>

60. The Defence's submissions in relation to the Rule 138(1) requirements are outlined below, as relevant to each SPO Interview.

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<sup>160</sup> Request, para. 95. *See also* Request, paras 8, 13, 17, 21, 90, 94.

<sup>161</sup> Request, paras 96-99.

<sup>162</sup> Request, para. 95.

<sup>163</sup> Request, paras 100-101.

(a) January 2020 SPO Interview with Mr Thaçi

i. Submissions

61. The SPO submits that, for the reasons set out above,<sup>164</sup> the January 2020 SPO Interview with Mr Thaçi<sup>165</sup> and its Associated Exhibits<sup>166</sup> are authentic, relevant, and have probative value which is not outweighed by any prejudicial effect.<sup>167</sup>

62. The Thaçi Defence does not make specific submissions on the Rule 138(1) criteria for the admission of the January 2020 SPO Interview with Mr Thaçi. The Panel notes, however, that the burden of establishing the requirements of admission is upon the moving party, *i.e.*, in this case, the SPO.<sup>168</sup> The Thaçi Defence objects to the admission into evidence of: (i) Associated Exhibits 10, 12 and 14 as these were not referred to during the interview; (ii) Associated Exhibit 2 as it lacks authenticity; (iii) Associated Exhibits 3 to 6 as these are dated, or relate to matters that are, outside the temporal jurisdiction of the indictment; and (iv) Associated Exhibits 3 to 7 as Mr Thaçi had no knowledge of these exhibits.<sup>169</sup> The Thaçi Defence notes that it challenges the authenticity and reliability of communiqués more generally and therefore, it avers, it is not the proper way to seek to tender them in the Request as Mr Thaçi said he had no knowledge of them and did not confirm their authenticity and/or reliability.<sup>170</sup>

63. The SPO replies that: (i) the relevant Associated Exhibits were discussed during the interview; (ii) Mr Thaçi repeatedly offered his opinion on the content of exhibits, which he now claims he has no knowledge of, are inauthentic or

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<sup>164</sup> See above para. 59.

<sup>165</sup> 071840-TR-ET Parts 1-9.

<sup>166</sup> 071793-071793-ET; 071794-071839 (Associated Exhibits 1-15).

<sup>167</sup> Request, para. 8, 90, 94-101.

<sup>168</sup> First Bar Table Motion Decision, para. 9; KSC-BC-2020-07, F00334, Trial Panel II, *Decision on the Prosecution Request for Admission of Items Through the Bar Table*, 29 September 2021, para. 11.

<sup>169</sup> Thaçi Response, para. 23.

<sup>170</sup> Thaçi Response, para. 24.



outside the temporal scope; and (iii) the relevant test is whether the Associated Exhibits form an “inseparable and indispensable” part of the record.<sup>171</sup>

ii. Determination by the Panel

64. The Panel notes that, in his January 2020 SPO Interview, Mr Thaçi provided evidence that the SPO intends to rely upon in relation to allegations pertaining to, *inter alia*: (i) his membership in the Kosovo Liberation Army (“KLA”);<sup>172</sup> (ii) his involvement in and leadership of the KLA’s Political and Information Directorate;<sup>173</sup> (iii) his whereabouts and the whereabouts of other KLA members and leaders during the relevant period;<sup>174</sup> (iv) his relationship with, *inter alia*, Adem Demaçi, Jakup Krasniqi, Rame Buja, Azem Syla, Agim Çeku, Sylejman Selimi, Xhavit Haliti, Sokol Bashota, Rexhep Selimi, Lahi Brahimaj, Kadri Veseli, Xheladin Gashi, Jashar Salihu, and Bislim Zyrapi;<sup>175</sup> (v) his membership on the General Staff and its functioning;<sup>176</sup> (vi) the transportation of weapons into Kosovo for the KLA;<sup>177</sup> (vii) disciplinary measures within the KLA;<sup>178</sup> (viii) the KLA’s Military Police;<sup>179</sup> (ix) the treatment of ‘collaborators’ by the KLA and the KLA General Staff;<sup>180</sup> (x) his knowledge of and involvement in arrests and detentions;<sup>181</sup> (xi) the battle of Glllogjan/Glođane on 24 March 1998;<sup>182</sup> and (xii) the Rambouillet conference.<sup>183</sup> The Panel also notes that the Thaçi Defence did not challenge the relevance of the January 2020 SPO Interview with Mr Thaçi. The Panel is satisfied

<sup>171</sup> Reply to the Thaçi Response, paras 9-10, p. 4.

<sup>172</sup> 071840-TR-ET Part 4, pp. 5-7.

<sup>173</sup> 071840-TR-ET Part 4, pp. 5-7.

<sup>174</sup> 071840-TR-ET Part 4, pp. 8-21, Part 5, pp. 3-17.

<sup>175</sup> 071840-TR-ET Part 4, pp. 8-9, 12-14, 16, Part 5, p. 3.

<sup>176</sup> 071840-TR-ET Part 4, pp. 14-15, 18-21.

<sup>177</sup> 071840-TR-ET Part 4, pp. 16-18.

<sup>178</sup> 071840-TR-ET Part 5, pp. 3-4.

<sup>179</sup> 071840-TR-ET Part 7, pp. 22-23.

<sup>180</sup> 071840-TR-ET Part 5, pp. 11-16, Part 6, pp. 6-15, Part 7, pp. 3-4.

<sup>181</sup> 071840-TR-ET Part 5, pp. 5-6, Part 6, pp. 1-3, 21-22, Part 7, pp. 23-25, Part 8, pp. 12-14.

<sup>182</sup> 071840-TR-ET Part 4, p. 15.

<sup>183</sup> 071840-TR-ET Part 4, p. 9.

that the January 2020 SPO Interview with Mr Thaçi is relevant to the charges in the indictment.

65. The Panel recalls its above findings regarding the information and safeguards provided by the SPO to Mr Thaçi at the outset and during his January 2020 interview.<sup>184</sup> The Panel also notes that the Thaçi Defence did not challenge the authenticity or probative value of the January 2020 SPO Interview with Mr Thaçi. For these reasons, the Panel is satisfied that the January 2020 SPO Interview with Mr Thaçi is *prima facie* authentic and has probative value. The Panel further observes that this interview was given voluntarily and in an informed manner by Mr Thaçi. The Panel notes furthermore that the Defence will have the opportunity to challenge any aspect of the January 2020 SPO Interview if the SPO puts this interview to one or more witnesses during trial. The Defence may also call witnesses at trial to challenge any aspect of this interview. The Panel shall assess this interview in light of the entire body of evidence, including corroborative evidence, admitted at trial. The Panel therefore finds that the probative value of the January 2020 SPO Interview with Mr Thaçi is not outweighed by its prejudicial effect.

66. Turning to the Associated Exhibits, the Panel notes that, contrary to the Thaçi Defence's submissions,<sup>185</sup> all of them, including Associated Exhibits 10, 12, and 14, were shown to Mr Thaçi and discussed in some detail during his interview.<sup>186</sup> The Panel is satisfied that the Associated Exhibits form an indispensable and inseparable part of the January 2020 SPO Interview. As such, the Panel is satisfied that they: (i) are relevant and will provide relevant context to the written record in which they are discussed; (ii) bear sufficient indicia of authenticity; and

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<sup>184</sup> See above paras 26-29.

<sup>185</sup> Thaçi Response, paras 23-245.

<sup>186</sup> See e.g. 071840-TR-ET Part 1, pp. 2-4 (071793-071793-ET), Part 4, p. 5 (Associated Exhibit 1), Part 5, pp. 1-4 (Associated Exhibit 2), 11-18 (Associated Exhibits 3-6), Part 6, pp. 5-8 (Associated Exhibits 7-9), 12-13 (Associated Exhibit 10), 15 (Associated Exhibit 11), Part 7, pp. 2-5 (Associated Exhibits 12-13), 10 (Associated Exhibit 14), 21 (Associated Exhibit 15).

(iii) have probative value, which is not outweighed by their prejudicial effect. The Panel is not persuaded by the Thaçi Defence's arguments in relation to Associated Exhibits 2-7 insofar as: (i) Associated Exhibit 2 bears the emblem of the KLA and thus appears to be *prima facie* authentic; and (ii) the relevance and authenticity of Associated Exhibits 3-7 are not undermined by their being dated, or relating to matters that are outside the temporal jurisdiction of the indictment, or by the Accused's alleged lack of knowledge thereof, because they contain communiqués which appear to have been issued by the KLA and published by known media outlets.<sup>187</sup>

67. For the above-mentioned reasons, the Panel finds that the January 2020 SPO Interview with Mr Thaçi and its Associated Exhibits are relevant and *prima facie* authentic, have probative value which is not outweighed by their prejudicial effect, and are therefore admissible pursuant to Rule 138(1).

(b) July 2020 SPO Interview with Mr Thaçi

i. Submissions

68. The SPO submits that, for the reasons set out above,<sup>188</sup> the July 2020 SPO Interview with Mr Thaçi<sup>189</sup> and its Associated Exhibits<sup>190</sup> are authentic, relevant, and have probative value which is not outweighed by any prejudicial effect.<sup>191</sup>

69. The Thaçi Defence does not make specific submissions on the Rule 138(1) criteria for the admission of the July 2020 SPO Interview with Mr Thaçi. The Thaçi

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<sup>187</sup> See F01596, Panel, *Second Decision on Specialist Prosecutor's Bar Table Motion* ("Second Bar Table Motion Decision"), 9 June 2023, confidential and *ex parte*, para. 73 (a confidential redacted version was issued on the same day (F01596/CONF/RED)).

<sup>188</sup> See *above* para. 59.

<sup>189</sup> 076563-TR-ET Parts 1-21.

<sup>190</sup> 076565-076705 (Associated Exhibits 16-54); 076565-076565-ET (English translation of the first page of Associated Exhibit 16); 076603-076603-ET (English translation of the first page of Associated Exhibit 30); 076630-076630-ET (English translation of Associated Exhibit 39); 076642-076642-ET (English translation of Associated Exhibit 42).

<sup>191</sup> Request, para. 13, 90, 94-101.

Defence, however, challenges the authenticity and therefore the admission of exhibits 16, 19-25.<sup>192</sup>

70. The Krasniqi Defence responds that three Associated Exhibits – a communiqué dated 23 September 1998, a screenshot of a Facebook post and a newspaper article reporting on it – fall short of any admissibility standard and should not be admitted into evidence.<sup>193</sup>

71. The Veseli Defence also challenges the admission of the communiqué dated 23 September 1998 as it submits that it lacks authenticity and reliability and ought to be tendered through a witness who can speak to the veracity of their contents.<sup>194</sup>

72. The SPO replies that Defence claims that the relevant Associated Exhibits are inauthentic do not justify their exclusion as the relevant test is whether they form an “inseparable and indispensable” part of the record.<sup>195</sup> The SPO submits that the Krasniqi Defence and Veseli Defence fail to substantiate adequate reasons why the Associated Exhibits they address should not be admitted.<sup>196</sup>

ii. Determination by the Panel

73. The Panel notes that, in his July 2020 SPO Interview, Mr Thaçi provided evidence that the SPO intends to rely upon in relation to allegations pertaining to, *inter alia*: (i) his membership in the KLA;<sup>197</sup> (ii) his movements within and outside of Kosovo;<sup>198</sup> (iii) his leadership of the KLA Information Directorate;<sup>199</sup> (iv) KLA

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<sup>192</sup> Thaçi Response, para. 30, referring to 076565-076705, pp. 076565-076566 (Associated Exhibit 16), 076576-076591 (Associated Exhibits 19-25).

<sup>193</sup> Krasniqi Response, para. 75(d)-(f), referring to 076565-076565-ET (first page of Associated Exhibit 16); 076565-076705, pp. 076596-076599 (Associated Exhibits 27-28).

<sup>194</sup> Veseli Response, paras 29-34, referring to 076565-076565-ET (first page of Associated Exhibit 16).

<sup>195</sup> Reply to the Thaçi Response, paras 9-10, p. 4.

<sup>196</sup> Reply to the Krasniqi Response, paras 15-18; Reply to the Veseli Response, para. 6.

<sup>197</sup> 076563-TR-ET Part 2, pp. 9-15, Part 5, p. 3, Part 12, pp. 3-6.

<sup>198</sup> 076563-TR-ET Part 10, p. 12, Part 16, pp. 10-12.

<sup>199</sup> 076563-TR-ET Part 5, p. 3, Part 8, p. 7.

command structures, hierarchy and bases;<sup>200</sup> (v) his relationship with, *inter alia*, Bislim Zyrapi, Rexhep Selimi, Sabit Geci, Sylejman Selimi, Kadri Veseli, Agim Çeku, and Azem Sylja;<sup>201</sup> (vi) the KLA General Staff and its functioning;<sup>202</sup> (vii) the arrest and detention of several individuals;<sup>203</sup> and (viii) his political functions and role in the negotiations and signing of the Rambouillet agreement.<sup>204</sup> The Panel also notes that the Thaçi Defence did not challenge the relevance of the July 2020 SPO Interview with Mr Thaçi. The Panel is satisfied that the July 2020 SPO Interview with Mr Thaçi is relevant to the charges in the indictment.

74. The Panel recalls its above findings regarding the information and safeguards provided by the SPO to Mr Thaçi at the outset and during his July 2020 interview.<sup>205</sup> The Panel also notes that the Thaçi Defence did not challenge the authenticity or probative value of the July 2020 SPO Interview with Mr Thaçi. For these reasons, the Panel is satisfied that the July 2020 SPO Interview with Mr Thaçi is *prima facie* authentic and has probative value. The Panel notes furthermore that the Defence will have the opportunity to challenge any aspect of the July 2020 SPO Interview if the SPO puts this interview to one or more witnesses during trial. The Defence may also call witnesses at trial to challenge any aspect of this interview. The Panel shall assess this interview in light of the entire body of evidence, including corroborative evidence, admitted at trial. The Panel therefore finds that the probative value of the July 2020 SPO Interview with Mr Thaçi is not outweighed by its prejudicial effect.

75. Turning to the Associated Exhibits, the Panel notes that they were shown to Mr Thaçi and discussed in some detail during his interview.<sup>206</sup> The Panel is

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<sup>200</sup> 076563-TR-ET Part 2, pp. 9-11, Part 3, pp. 1, 12-30, Part 12, p. 6.

<sup>201</sup> 076563-TR-ET Part 2, p. 19, Part 3, pp. 3, 12, Part 4, pp. 15-18, Part 6, p. 6, Part 7, p. 7, Part 21, p. 14.

<sup>202</sup> 076563-TR-ET Part 4, p. 17, Part 7, pp. 11-12, Part 9, p. 14, Part 15, p. 11.

<sup>203</sup> 076563-TR-ET Part 13, p. 7, Part 16, pp. 9-11, Part 17, pp. 2, 5-6.

<sup>204</sup> 076563-TR-ET Part 12, p. 10, Part 13, p. 3.

<sup>205</sup> See *above* paras 35-37.

<sup>206</sup> See *e.g.* 076563-TR-ET Part 4, pp. 5-15 (Associated Exhibit 16, p. 1), Part 6, pp. 6-8 (Associated Exhibit 17), 12-13 (Associated Exhibit 18), Part 7, pp. 1-5 (Associated Exhibits 19-20), 7 (Associated

satisfied that, contrary to the Krasniqi Defence's submissions,<sup>207</sup> the Associated Exhibits form an indispensable and inseparable part of the July 2020 SPO Interview. As such, the Panel is satisfied that they: (i) are relevant and will provide relevant context to the written record in which they are discussed; (ii) contrary to the Defence's submissions,<sup>208</sup> bear sufficient indicia of authenticity; and (iii) have probative value, which is not outweighed by their prejudicial effect. The Panel is not persuaded by the Defence's arguments in relation to Associated Exhibits 16, 19-25, 27-28 insofar as: (i) Associated Exhibit 16 contains a statement which is dated and appears to have been issued by the Military Police Directorate of the KLA and published by *Zëri i Kosovës*, and therefore bears sufficient indicia of authenticity; (ii) Associated Exhibits 19-20 are dated, appear to have been signed by Mr Thaçi and therefore bear sufficient indicia of authenticity; (iii) Associated Exhibits 21-23 contain decrees which appear to have been issued by the Government of Kosovo and made public by *Radio Kosova e lire*, and therefore bear sufficient indicia of authenticity; (iv) Associated Exhibits 24-25 contain communiqués which appear to have been issued by the KLA and published by *Zëri i Kosovës*, and therefore bear sufficient indicia of authenticity; and (v) Associated Exhibits 27-28, which contain a Facebook post originating from the account of Mr Krasniqi and a dated newspaper article commenting on it, appear to be *prima facie* authentic. For the same reasons, the Panel is also not persuaded that the relevance and authenticity of the Associated Exhibits shown to and

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Exhibit 21), 10 (Associated Exhibit 22), 12 (Associated Exhibit 23), 17 (Associated Exhibit 24), Part 8, pp. 1-3 (Associated Exhibits 24-26), 5-12 (Associated Exhibits 27-28), Part 9, pp. 2 (Associated Exhibit 29), 3-10 (Associated Exhibit 30), 12-13 (Associated Exhibit 31), Part 11, pp. 8 (Associated Exhibit 32), 11 (Associated Exhibit 33), Part 12, p. 11 (Associated Exhibit 34), Part 13, pp. 2, 4, 7 (Associated Exhibit 36), Part 14, p. 4 (Associated Exhibit 35), Part 15, pp. 4-5 (Associated Exhibit 37), 7-9 (Associated Exhibit 38), Part 16, pp. 11-12 (Associated Exhibit 39), Part 17, p. 7 (Associated Exhibit 40), Part 18, pp. 6-7 (Associated Exhibit 41), Part 19, p. 3 (Associated Exhibit 42), Part 20, pp. 8-26 (Associated Exhibits 43-51), Part 21, pp. 4 (Associated Exhibit 52), 7 (Associated Exhibit 53), 14 (Associated Exhibit 54).

<sup>207</sup> Krasniqi Response, para. 75(d)-(f).

<sup>208</sup> Thaçi Response, para. 30, Veseli Response, paras 29-34, Krasniqi Response, para. 75(d)-(f).

discussed by Mr Thaçi during the July 2020 SPO Interview are undermined by the Accused's alleged lack of knowledge thereof. This would constitute a factor for the Panel to assess when determining what weight and probative value can be attached to such items and whether knowledge of their content can be inferred despite the Accused's claim of lack of knowledge.

76. For the above-mentioned reasons, the Panel finds that the July 2020 SPO Interview with Mr Thaçi and its Associated Exhibits are relevant and *prima facie* authentic, have probative value which is not outweighed by their prejudicial effect, and are therefore admissible pursuant to Rule 138(1).

(c) November 2019 SPO Interview with Mr Selimi

i. Submissions

77. The SPO submits that, for the reasons set out above,<sup>209</sup> the November 2019 SPO Interview with Mr Selimi<sup>210</sup> and its Associated Exhibit<sup>211</sup> are authentic, relevant, and have probative value which is not outweighed by any prejudicial effect.<sup>212</sup>

78. The Selimi Defence does not make specific submissions on the Rule 138(1) criteria for the admission of the November 2019 SPO Interview with Mr Selimi and its Associated Exhibit.

ii. Determination by the Panel

79. The Panel notes that, in his November 2019 SPO Interview, Mr Selimi provided evidence that the SPO intends to rely upon in relation to allegations

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<sup>209</sup> See above para. 59.

<sup>210</sup> 068933-TR-ET Parts 1-14.

<sup>211</sup> 068932-068932-ET.

<sup>212</sup> Request, para. 17, 90, 94-101.

pertaining to, *inter alia*: (i) his membership in the KLA;<sup>213</sup> (ii) his involvement in and leadership of the KLA's Operational Department;<sup>214</sup> (iii) his relationship with, *inter alia*, Sylejman Selimi, Azem Sylja, Jakup Krasniqi, and Bislim Zyrapci;<sup>215</sup> (iv) his membership and duties within the KLA General Staff, as well as its functioning;<sup>216</sup> (v) the transportation of weapons into Kosovo;<sup>217</sup> (vi) the management of new KLA recruits;<sup>218</sup> (vii) communications between the KLA General Staff and KLA members;<sup>219</sup> (viii) the role of Drenoc/Drenovac as a supply base;<sup>220</sup> (ix) his duty to set up, structure and organise operational units;<sup>221</sup> (x) the set-up of operational zones;<sup>222</sup> (xi) the KLA Military Police;<sup>223</sup> (xii) the battle of Rahovec/Orahovac;<sup>224</sup> (xiii) his role as minister of public order in the provisional government;<sup>225</sup> (xiv) the definition and treatment of and punitive actions against so-called 'collaborators';<sup>226</sup> (xv) the 'special war';<sup>227</sup> and (xvi) his and the KLA General Staff's knowledge of detention sites.<sup>228</sup> The Panel also notes that the Selimi Defence did not challenge the relevance of the November 2019 SPO Interview with Mr Selimi. The Panel is thus satisfied that the November 2019 SPO Interview with Mr Selimi is relevant to the charges in the indictment.

80. The Panel recalls its above findings regarding the information and safeguards provided by the SPO to Mr Selimi at the outset and during his November 2019

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<sup>213</sup> 068933-TR-ET Part 1, pp. 4-6.

<sup>214</sup> 068933-TR-ET Part 1, p. 14.

<sup>215</sup> 068933-TR-ET Part 1, pp. 8, 13-15. Part 2, p. 8, Part 6, p. 6, Part 10, pp. 1-2.

<sup>216</sup> 068933-TR-ET Part 1, pp. 12, 15, 20, Part 3, pp. 1-3, 7-8, 19-20, Part 5, pp. 4-15, Part 9, pp. 12-15.

<sup>217</sup> 068933-TR-ET Part 1, pp. 12-13.

<sup>218</sup> 068933-TR-ET Part 1, pp. 12, 20, Part 3, p. 12.

<sup>219</sup> 068933-TR-ET Part 1, p. 13, Part 10, p. 1.

<sup>220</sup> 068933-TR-ET Part 1, p. 19.

<sup>221</sup> 068933-TR-ET Part 1, p. 20.

<sup>222</sup> 068933-TR-ET Part 3, p. 14, Part 6, pp. 5-6.

<sup>223</sup> 068933-TR-ET Part 3, pp. 2-4, 12-13, Part 12, pp. 2-3.

<sup>224</sup> 068933-TR-ET Part 1, p. 23, Part 9, pp. 12-15.

<sup>225</sup> 068933-TR-ET Part 6, p. 17.

<sup>226</sup> 068933-TR-ET Part 11, pp. 19-22.

<sup>227</sup> 068933-TR-ET Part 11, pp. 17-18, Part 12, pp. 9-13.

<sup>228</sup> 068933-TR-ET Part 14, pp. 2-4.



interview.<sup>229</sup> The Panel also notes that the Selimi Defence did not challenge the authenticity or probative value of the November 2019 SPO Interview with Mr Selimi. For these reasons, the Panel is satisfied that the November 2019 SPO Interview with Mr Selimi is *prima facie* authentic and has probative value. The Panel notes furthermore that the Defence will have the opportunity to challenge any aspect of the November 2019 SPO Interview if the SPO puts this interview to one or more witnesses during trial. The Defence may also call witnesses at trial to challenge any aspect of this interview. The Panel shall assess this interview in light of the entire body of evidence, including corroborative evidence, admitted at trial. The Panel therefore finds that the probative value of the November 2019 SPO Interview with Mr Selimi is not outweighed by its prejudicial effect.

81. Turning to the Associated Exhibit, the Panel notes that it consists of the rights and obligations which were read to Mr Selimi at the outset of his interview, and of his attorney waiver.<sup>230</sup> The Panel is satisfied that the Associated Exhibit forms an indispensable and inseparable part of the November 2019 SPO Interview. As such, the Panel is satisfied that it: (i) is relevant and will provide relevant context to the written record in which it is discussed; (ii) bears sufficient indicia of authenticity; and (iii) has probative value, which is not outweighed by its prejudicial effect.

82. For the above-mentioned reasons, the Panel finds that the November 2019 SPO Interview with Mr Selimi and its Associated Exhibit are relevant and *prima facie* authentic, have probative value which is not outweighed by their prejudicial effect, and are therefore admissible pursuant to Rule 138(1).

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<sup>229</sup> See above paras 35-37.

<sup>230</sup> See 068933-TR-ET Part 1, pp. 2-3.

## (d) February 2020 SPO Interview with Mr Selimi

## i. Submissions

83. The SPO submits that, for the reasons set out above,<sup>231</sup> the February 2020 SPO Interview with Mr Selimi<sup>232</sup> and its Associated Exhibits<sup>233</sup> are authentic, relevant, and have probative value which is not outweighed by any prejudicial effect.<sup>234</sup>

84. The Selimi Defence does not make specific submissions on the Rule 138(1) criteria for the admission of the February 2020 SPO Interview with Mr Selimi and its Associated Exhibits.

85. The Krasniqi Defence responds that two Associated Exhibits were only briefly touched upon in Mr Selimi's interview and should therefore be tendered through a witness who can testify to their accuracy.<sup>235</sup>

86. The SPO replies that the Krasniqi Defence fails to substantiate adequate reasons why the Associated Exhibits it addresses should not be admitted.<sup>236</sup>

## ii. Determination by the Panel

87. The Panel notes that, in his February 2020 SPO Interview, Mr Selimi provided evidence that the SPO intends to rely upon in relation to allegations pertaining to, *inter alia*: (i) his membership and role in the KLA;<sup>237</sup> (ii) the KLA General Staff, its members, communications, meetings, consultations and decision making processes;<sup>238</sup> (iii) the appointment of commanders;<sup>239</sup> (iv) his relation to Sylejman

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<sup>231</sup> See above para. 59.

<sup>232</sup> 074459-TR-ET Parts 1-9.

<sup>233</sup> 074439-074439-ET; 074440-074458A (Associated Exhibits 1-9).

<sup>234</sup> Request, para. 21, 90, 94-101.

<sup>235</sup> Krasniqi Response, para. 75(g)-(h), referring to 074440-074458A, pp. 074450-074453 (Associated Exhibit 6), 074458-074459 (Associated Exhibit 9).

<sup>236</sup> Reply to the Krasniqi Response, paras 15, 19-20.

<sup>237</sup> 074459-TR-ET Part 2, pp. 2-3.

<sup>238</sup> 074459-TR-ET Part 2, pp. 2-5, 10-13, Part 3, pp. 5-6, Part 5, p. 10, Part 6, p. 13.

<sup>239</sup> 074459-TR-ET Part 2, pp. 4-6.

Selimi and the relationship between certain KLA General Staff members;<sup>240</sup> (v) his and other KLA General Staff members' movements within and outside of Kosovo;<sup>241</sup> (vi) 'Operation Arrow';<sup>242</sup> (vii) the purchase of arms by KLA members;<sup>243</sup> (viii) the Rambouillet conference;<sup>244</sup> (ix) the transformation of the KLA into the Kosovo Protection Corps and the formation of the provisional government;<sup>245</sup> (x) the *Shërbimi Informativ i Kosovës* ("SHIK") and the *Zbulim Kunderzbulim* ("ZKZ/G2");<sup>246</sup> (xi) the incidents in Qirez/Ćirez and Baicë/Banjica;<sup>247</sup> and (xii) Likoc/Likovac and other detention sites.<sup>248</sup> The Panel also notes that the Selimi Defence did not challenge the relevance of the February 2020 SPO Interview with Mr Selimi. The Panel is thus satisfied that the February 2020 SPO Interview with Mr Selimi is relevant to the charges in the indictment.

88. The Panel recalls its above findings regarding the information and safeguards provided by the SPO to Mr Selimi at the outset and during his February 2020 interview.<sup>249</sup> The Panel also notes that the Selimi Defence did not challenge the authenticity or probative value of the February 2020 SPO Interview with Mr Selimi. For these reasons, the Panel is satisfied that the February 2020 SPO Interview with Mr Selimi is *prima facie* authentic and has probative value. The Panel notes furthermore that the Defence will have the opportunity to challenge any aspect of the February 2020 SPO Interview if the SPO puts this interview to one or more witnesses during trial. The Defence may also call witnesses at trial to challenge any aspect of this interview. The Panel shall assess this interview in light of the entire body of evidence, including corroborative evidence, admitted at trial.

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<sup>240</sup> 074459-TR-ET Part 1, p. 6, Part 5, p. 1.

<sup>241</sup> 074459-TR-ET Part 3, pp. 1-2, Part 5, pp. 1, 7, Part 8, pp. 1-4.

<sup>242</sup> 074459-TR-ET Part 5, pp. 17-18.

<sup>243</sup> 074459-TR-ET Part 5, p. 27.

<sup>244</sup> 074459-TR-ET Part 5, pp. 10-12.

<sup>245</sup> 074459-TR-ET Part 5, pp. 13-14, Part 6, p. 3.

<sup>246</sup> 074459-TR-ET Part 6, pp. 4-6.

<sup>247</sup> 074459-TR-ET Part 7, pp. 2-18.

<sup>248</sup> 074459-TR-ET Part 8, pp. 4-12.

<sup>249</sup> See above paras 35-37.

The Panel therefore finds that the probative value of the February 2020 SPO Interview with Mr Selimi is not outweighed by its prejudicial effect.

89. Turning to the Associated Exhibits, the Panel notes that they were shown to Mr Selimi and discussed in some detail during his interview.<sup>250</sup> The Panel is satisfied that, contrary to the Krasniqi Defence's submissions,<sup>251</sup> the Associated Exhibits form an indispensable and inseparable part of the February 2020 SPO Interview. As such, the Panel is satisfied that they: (i) are relevant and will provide relevant context to the written record in which they are discussed; (ii) contrary to the Krasniqi Defence's arguments,<sup>252</sup> bear sufficient indicia of authenticity; and (iii) have probative value, which is not outweighed by their prejudicial effect. The Panel is not persuaded by the Krasniqi Defence's arguments in relation to Associated Exhibits 6 and 9 insofar as: (i) the relevance of Associated Exhibit 6 is not undermined by the fact that it was only briefly touched upon in the February 2020 SPO Interview, or by the fact that Mr Selimi disputed its accuracy, because it consists of an extract from a book authored by Mr Krasniqi about the war and was shown to Mr Selimi during his interview and he commented upon it; and (ii) Associated Exhibit 9 appears to be authentic and its relevance is not undermined by the fact that it was only briefly touched upon by Mr Selimi in the February 2020 SPO Interview because it consists of a dated interview with Mr Krasniqi published by *Koha Ditore*, which was shown to Mr Selimi during his interview and he commented upon it. These are matters which the Panel could take into consideration in its assessment of the weight and/or probative value that could be attached to such items.

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<sup>250</sup> See e.g. 074459-TR-ET Part 1, pp. 2-3 (074439-074439-ET), Part 3, pp. 10 (Associated Exhibit 1), 16 (Associated Exhibit 2), 20 (Associated Exhibits 3-4), Part 5, p. 22 (Associated Exhibit 5), Part 6, pp. 10-13 (Associated Exhibit 6), Part 7, pp. 14-16 (Associated Exhibit 7), 21-22 (Associated Exhibit 8), Part 8, pp. 13-20 (Associated Exhibit 9).

<sup>251</sup> Krasniqi Response, para. 75(g)-(h).

<sup>252</sup> Krasniqi Response, para. 75(g)-(h).

90. For the above-mentioned reasons, the Panel finds that the February 2020 SPO Interview with Mr Selimi and its Associated Exhibits are relevant and *prima facie* authentic, have probative value which is not outweighed by their prejudicial effect, and are therefore admissible pursuant to Rule 138(1).

(e) Conclusion

91. Based on above, the Panel finds that Mr Thaçi's and Mr Selimi's SPO Interviews and their Associated Exhibits are relevant and *prima facie* authentic, have probative value which is not outweighed by their prejudicial effect, and are therefore admissible pursuant to Rule 138(1).

B. OTHER SUSPECT INTERVIEWS

**1. Compliance of the Other Suspect Interviews with the Accused with the Standards of International Human Rights Law pursuant to Rule 138(2)**

(a) May 2016 SPRK Interview with Mr Thaçi<sup>253</sup>

i. Submissions

92. The SPO submits that on 6 May 2016 the SPRK conducted an interview with Mr Thaçi as a suspect.<sup>254</sup> The SPO avers that the May 2016 SPRK Interview with Mr Thaçi complied with international human rights standards.<sup>255</sup> In particular, the SPO submits that Mr Thaçi's rights were respected as he: (i) was informed that there was a case against him and that there were grounds to believe that he had been involved in the commission of a war crime against the civilian population under Articles 142 and 22 of the Criminal Code of the Socialist Federal Republic of Yugoslavia ("CCSFRY"); (ii) was informed of his rights to silence, counsel and

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<sup>253</sup> 051716-051719-ET.

<sup>254</sup> Request, para. 22.

<sup>255</sup> Request, para. 90.

interpreter and of his privilege against self-incrimination; (iii) was informed that any statement given could be used as evidence in court; and (iv) was provided with a formal advisement as required under Article 125(3) and 152(3) of the KCPC.<sup>256</sup> The SPO avers that: (i) Mr Thaçi confirmed that he understood these rights and that he did not want a lawyer; and (ii) the record of the interview was read aloud to him and he signed it.<sup>257</sup>

93. The Thaçi Defence does not object to the admission of the May 2016 SPRK Interview.<sup>258</sup>

ii. Determination by the Panel

94. The Panel notes that, at the outset of the May 2016 SPRK Interview, Mr Thaçi was informed by the SPRK that there was a criminal case against him regarding the criminal offence of war crimes against a civilian population.<sup>259</sup>

95. As to his rights, the Panel observes that Mr Thaçi was informed that: (i) the interview was being recorded in writing in the absence of technical equipment for audio-video recording; (ii) he had the right to remain silent and not to answer questions; (iii) he had the right not to incriminate himself; (iv) any statement given could be used as testimony in court; (v) he had the right to an interpreter; (vi) he had the right to be assisted by a lawyer; and (vii) if he did not understand a question, he should ask that it be asked differently.<sup>260</sup>

96. During the interview, Mr Thaçi: (i) confirmed that he understood his rights;<sup>261</sup> (ii) confirmed that he understood the criminal offence he has been charged with;<sup>262</sup>

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<sup>256</sup> Request, paras. 22-23.

<sup>257</sup> Request, paras 23-25.

<sup>258</sup> Thaçi Response, para. 34.

<sup>259</sup> 051716-051719-ET, p. 1.

<sup>260</sup> 051716-051719-ET, p. 2.

<sup>261</sup> 051716-051719-ET, p. 2.

<sup>262</sup> 051716-051719-ET, p. 3.

(iii) confirmed that he understood that he had a right to a lawyer and responded that he will make a defence, answered the questions put to him, and stated that he does not want to engage an attorney for his defence at this stage of the criminal proceedings;<sup>263</sup> and (iv) confirmed that the record of the interview was read aloud to him and that he signed the statement without any comment.<sup>264</sup>

97. The Panel finds that Mr Thaçi was fully informed of his rights as a suspect, and his relinquishment of the right of access to a lawyer was provided, voluntarily and in an unequivocal, knowing and intelligent manner. The Panel is satisfied that he waived all of his other rights in an informed and intelligent manner.

98. In light of the above, the Panel finds no violation of Mr Thaçi's rights under the standards of international human rights.

(b) December 2013 SPRK Interview with Mr Krasniqi<sup>265</sup>

i. Submissions

99. The SPO submits that on 20 December 2013 the SPRK conducted an interview with Mr Krasniqi as a suspect.<sup>266</sup> The SPO avers that the December 2013 SPRK Interview with Mr Krasniqi complied with international human rights standards.<sup>267</sup> In particular, the SPO submits that Mr Krasniqi's rights were respected as: (i) he was read the warning pursuant to Article 125(3) of the KCPC; (ii) the interview was audio-recorded in accordance with Article 152(5) of the KCPC; (iii) he was informed of his rights to silence, counsel, interpreter and of his privilege against self-incrimination; and (iv) he was provided with a formal advisement as required under Article 125(3) and 152(3) of the KCPC.<sup>268</sup> In addition,

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<sup>263</sup> 051716-051719-ET, p. 3.

<sup>264</sup> 051716-051719-ET, p. 4.

<sup>265</sup> SITF00364476-00364497; 031024-05-TR-ET Part 1; 031024-05.

<sup>266</sup> Request, para. 27.

<sup>267</sup> Request, para. 90.

<sup>268</sup> Request, para. 28.

the SPO avers that Mr Krasniqi voluntarily and intelligently waived his right to remain silent and made use of his right to have an attorney present.<sup>269</sup>

100. The Krasniqi Defence opposes the admission of prior statements of Accused generally, arguing that they are inadmissible absent an express provision rendering such statements admissible.<sup>270</sup> Further, the Krasniqi Defence argues that, to the extent the admission of prior statements of an Accused erodes the fundamental rights against self-incrimination and to legal assistance, they should not be admitted as they cast doubt on the reliability of such statement and would seriously damage the integrity of the proceedings thereby violating Rules 138(1)-(2).<sup>271</sup> The Krasniqi Defence further argues that these same principles apply when the infringement of rights comes from an entity other than the KSC.<sup>272</sup>

101. The SPO replies that the Krasniqi Defence has failed to show that the December 2013 SPRK Interview should not be admitted as he was afforded his rights as a suspect. In addition, Mr Krasniqi was afforded use of an interpreter, was represented by counsel, signed the statement and initiated every page.<sup>273</sup>

ii. Determination by the Panel

102. The Panel notes that, at the outset of the December 2013 SPRK Interview, Mr Krasniqi was informed by the SPRK that there was a criminal case against him regarding the criminal offence of war crimes against a civilian population.<sup>274</sup>

103. As to his rights, the Panel observes that Mr Krasniqi was informed that: (i) the interview was being recorded;<sup>275</sup> (ii) he had the right to remain silent and not to

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<sup>269</sup> Request, paras 28-29.

<sup>270</sup> Krasniqi Response, para. 22.

<sup>271</sup> Krasniqi Response, paras 22-25, 27.

<sup>272</sup> Krasniqi Response, para. 26.

<sup>273</sup> Reply to the Krasniqi Response, para. 13.

<sup>274</sup> SITF00364476-00364497, p. 2.

<sup>275</sup> SITF00364476-00364497, p. 1.



answer questions;<sup>276</sup> (iii) he had the right not to incriminate himself;<sup>277</sup> (iv) any statement given could be used as testimony in court;<sup>278</sup>(v) he had the right to an interpreter;<sup>279</sup> (vi) he had the right to be assisted by a lawyer;<sup>280</sup> and (vii) if he does not understand a question being asked, he should ask that it be asked differently.<sup>281</sup>

104. During the interview, Mr Krasniqi: (i) confirmed that he understood his rights;<sup>282</sup> (ii) had the charges read out to him and confirmed that he understood these charges;<sup>283</sup> (iii) had an interpreter present;<sup>284</sup> (iv) was assisted by defence counsel;<sup>285</sup> (v) confirmed that he did not wish to exercise his right to remain silent but responded that he wished to give a statement and help justice;<sup>286</sup> and (vi) confirmed that the interpreter read the record to him in Albanian and confirmed that “everything is correct.”<sup>287</sup>

105. The Panel finds that Mr Krasniqi was fully informed of his rights as a suspect, and was represented by legal counsel during the interview. The Panel is satisfied that he waived his right to silence and against self-incrimination in an informed and intelligent manner and benefited from the assistance of counsel all through the interview.

106. In light of the above, the Panel finds that no violation of Mr Krasniqi’s rights under the standard of international human rights law.

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<sup>276</sup> SITF00364476-00364497, pp. 1-2.

<sup>277</sup> SITF00364476-00364497, p. 1.

<sup>278</sup> SITF00364476-00364497, pp. 1-2.

<sup>279</sup> SITF00364476-00364497, p. 2.

<sup>280</sup> SITF00364476-00364497, p. 2.

<sup>281</sup> SITF00364476-00364497, p. 2.

<sup>282</sup> SITF00364476-00364497, p. 2.

<sup>283</sup> SITF00364476-00364497, pp. 2-3.

<sup>284</sup> SITF00364476-00364497, p. 3.

<sup>285</sup> SITF00364476-00364497, p. 3.

<sup>286</sup> SITF00364476-00364497, p. 3.

<sup>287</sup> SITF00364476-00364497, p. 7.

(c) Conclusion

107. Based on the above, the Panel is satisfied that Mr Thaçi's and Mr Krasniqi's Other Suspect Interviews were conducted in compliance with the standards of international human right law.

108. The Panel will therefore turn to assess whether the cumulative criteria set forth in Rule 138(1) for the admission of evidence (relevance, authenticity, probative value, and prejudicial effect) are met with respect to each of the Other Suspect Interviews and Associated Exhibits.

**2. Admissibility of the Other Suspect Interviews with the Accused and Associated Exhibits pursuant to Rule 138(1)**

109. The SPO submits that the Other Suspect Interviews consist of evidence collected in criminal proceedings and investigations both before and after the establishment of the SC.<sup>288</sup> The SPO avers that the Other Suspect Interviews: (i) are relevant as they concern, *inter alia*, the Accused's position and involvement in the KLA, the organisation's structure, the Accused's whereabouts during the indictment period and the Accused's knowledge of the arrest and detention of civilians;<sup>289</sup> (ii) are authentic and reliable as at the time of the interviews, the Accused were "suspects", were advised accordingly and informed of their rights at the outset of each interview;<sup>290</sup> (iii) have probative value which is not outweighed by any prejudice to the Accused as the statements were given by the Accused following knowing and intelligent waivers of their rights and, in the case of Mr Krasniqi, with counsel present.<sup>291</sup> In addition, the SPO submits that the Defence will have opportunity to challenge the evidence and the Panel, composed

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<sup>288</sup> Request, para. 102.

<sup>289</sup> Request, para. 103. *See also* Request, paras 26, 29.

<sup>290</sup> Request, paras 104-106.

<sup>291</sup> Request, paras 107-108.

of professional judges, will be able to appropriately assess the entirety of the evidence presented at the conclusion of the trial and assign the Other Suspect Interviews appropriate weight.<sup>292</sup>

110. The Defence's objections are outlined below in respect of each proposed item.

(a) May 2016 SPRK Interview with Mr Thaçi

i. Submissions

111. The SPO submits that, for the reasons set out above,<sup>293</sup> the May 2016 SPRK Interview with Mr Thaçi<sup>294</sup> is authentic, relevant, and has probative value which is not outweighed by any prejudicial effect.<sup>295</sup>

112. The Panel recalls that the Thaçi Defence does not object to the admission of the May 2016 SPRK Interview.<sup>296</sup>

ii. Determination by the Panel

113. The Panel notes that, in his May 2016 SPRK Interview, Mr Thaçi provided evidence that the SPO intends to rely upon in relation to allegations pertaining to, *inter alia*: (i) his role within the KLA; (ii) the KLA General Staff, (iii) the issuance of KLA communiqués; and (iv) his movements within Kosovo.<sup>297</sup> The Panel also notes that the Thaçi Defence did not challenge the relevance of the May 2016 SPRK Interview with Mr Thaçi. The Panel is satisfied that the May 2016 SPRK Interview with Mr Thaçi is relevant to the charges in the indictment.

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<sup>292</sup> Request, para. 108.

<sup>293</sup> *See above* para. 109.

<sup>294</sup> 051716-051719-ET.

<sup>295</sup> Request, para. 26, 103-108.

<sup>296</sup> *See above* para. 93. *See also* Thaçi Response, para. 34.

<sup>297</sup> 051716-051719-ET, pp. 3-4.

114. The Panel recalls its above findings regarding the information and safeguards provided to Mr Thaçi at the outset and during his May 2016 SPRK interview.<sup>298</sup> The Panel also notes that the Thaçi Defence did not challenge the authenticity or probative value of the May 2016 SPRK Interview with Mr Thaçi. For these reasons, the Panel is satisfied that the May 2016 SPRK Interview with Mr Thaçi is *prima facie* authentic and has probative value. The Panel notes furthermore that the Defence will have the opportunity to challenge any aspect of the May 2016 SPRK Interview if the SPO puts this interview to one or more witnesses during trial. The Defence may also call witnesses at trial to challenge any aspect of this interview. The Panel shall assess this interview in light of the entire body of evidence, including corroborative evidence, admitted at trial. The Panel therefore finds that the probative value of the May 2016 SPRK Interview with Mr Thaçi is not outweighed by its prejudicial effect.

115. For the above-mentioned reasons, the Panel finds that the May 2016 SPRK Interview with Mr Thaçi is relevant and *prima facie* authentic, has probative value which is not outweighed by its prejudicial effect, and is therefore admissible pursuant to Rule 138(1).

(b) December 2013 SPRK Interview with Mr Krasniqi

i. Submissions

116. The SPO submits that, for the reasons set out above,<sup>299</sup> the December 2013 SPRK Interview with Mr Krasniqi<sup>300</sup> is authentic, relevant, and has probative value which is not outweighed by any prejudicial effect.<sup>301</sup>

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<sup>298</sup> See above paras 94-96.

<sup>299</sup> See above para. 109.

<sup>300</sup> SITF00364476-00364497; 031024-05-TR-ET Part 1; 031024-05.

<sup>301</sup> Request, para. 29, 103-108.

117. The Krasniqi Defence opposes the admission of the December 2013 SPRK Interview challenging the reliability and authenticity of this interview based on the fact that: (i) Mr Krasniqi had a reduced ability to consider the record and make changes as his statement was in English, a language which he does not speak;<sup>302</sup> (ii) the statement only concerns issues which are not in dispute or which Mr Krasniqi confirmed that he did not know;<sup>303</sup> (iii) the content of the statement is analogous to parts of W02652's evidence, recently excluded by the Panel on the basis that the events to which it related are not alleged to have been part of the joint criminal enterprise ("JCE") and are not evidence of a widespread or systematic attack against opponents or of the armed conflict in the indictment;<sup>304</sup> and (iv) while Mr Krasniqi was afforded the right of a suspect, the allegations of which he was on notice were entirely different than those he faces now and hence his waiver of the right to silence cannot be treated as an informed one.<sup>305</sup>

118. The SPO replies that the Krasniqi Defence fails to mention that the December 2013 SPRK Interview provides information on a range of relevant matters, including the location of the KLA general headquarters, meetings he attended, Sylejman Selimi's positions in the KLA and his position relative to Mr Krasniqi.<sup>306</sup>

ii. Determination by the Panel

119. The Panel notes that, in his December 2013 SPRK Interview, Mr Krasniqi provided evidence that the SPO intends to rely upon in relation to allegations

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<sup>302</sup> Krasniqi Response, para. 46.

<sup>303</sup> Krasniqi Response, para. 47.

<sup>304</sup> Krasniqi Response, para. 48, *referring to* Transcript of Hearing, 17 April 2023, p. 2863, lines 13 to p. 2866, line 8.

<sup>305</sup> Krasniqi Response, para. 49.

<sup>306</sup> Reply to the Krasniqi Response, para. 13.

pertaining to, *inter alia*: (i) his role in the KLA;<sup>307</sup> (ii) the KLA's structure;<sup>308</sup> (iii) his relationship with other KLA members, such as Sylejman Selimi;<sup>309</sup> (iv) his movements within and outside of Kosovo;<sup>310</sup> (v) the Rambouillet negotiations;<sup>311</sup> and (vi) his knowledge about arrests and detentions, such as in Likoc/Likovac.<sup>312</sup> The Panel is satisfied that, contrary to the Krasniqi Defence's submissions,<sup>313</sup> the December 2013 SPRK Interview with Mr Krasniqi is relevant to the charges in the indictment.

120. The Panel recalls its above findings regarding the information and safeguards provided to Mr Krasniqi at the outset and during his December 2013 SPRK interview.<sup>314</sup> In particular, the Panel notes that Mr Krasniqi had an interpreter present, confirmed that the interpreter read the record to him in Albanian and confirmed that "everything is correct".<sup>315</sup> This contradicts Mr Krasniqi's suggestion that he had a reduced ability to consider the record and to suggest amendments in respect of it. Moreover, the Panel is not persuaded by the Krasniqi Defence's argument that Mr Krasniqi's waiver of the right to silence cannot be treated as an informed one insofar as the allegations upon which he was on notice were different than those faced now. In this regard, the Panel is of the view that the information and safeguards to be provided to a suspect for his waiver of the right to silence to be considered as an informed one must necessarily pertain to the contemporaneous allegations against the suspect and not to allegations that might be levelled at him in the future, insofar as only the former are known by the prosecuting authority at the time of the interview.<sup>316</sup> The Panel therefore finds that

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<sup>307</sup> SITF00364476-00364497, p. 3.

<sup>308</sup> SITF00364476-00364497, p. 4.

<sup>309</sup> SITF00364476-00364497, pp. 4-6.

<sup>310</sup> SITF00364476-00364497, pp. 3-4.

<sup>311</sup> SITF00364476-00364497, p. 3.

<sup>312</sup> SITF00364476-00364497, pp. 3-6.

<sup>313</sup> Krasniqi Response, paras 47-48.

<sup>314</sup> See above paras 94-96.

<sup>315</sup> SITF00364476-00364497, pp. 3, 7.

<sup>316</sup> See above paras 17, 26, and references cited therein.

Mr Krasniqi voluntarily and intelligently waived his right to remain silent based on the information and safeguards provided to him at the beginning and during his December 2013 SPRK interview, and made use of his right to have an attorney present.<sup>317</sup> For these reasons, the Panel is satisfied that, contrary to the Krasniqi Defence's submissions,<sup>318</sup> the December 2013 SPRK Interview with Mr Krasniqi is *prima facie* authentic and has probative value. The Panel notes furthermore that the Defence will have the opportunity to challenge any aspect of the December 2013 SPRK Interview if the SPO puts this interview to one or more witnesses during trial. The Defence may also call witnesses at trial to challenge any aspect of this interview. The Panel shall assess this interview in light of the entire body of evidence, including corroborative evidence, admitted at trial. The Panel therefore finds that the probative value of the December 2013 SPRK Interview with Mr Krasniqi is not outweighed by its prejudicial effect.

121. For the above-mentioned reasons, the Panel finds that the December 2013 SPRK Interview with Mr Krasniqi is relevant and *prima facie* authentic, has probative value which is not outweighed by its prejudicial effect, and is therefore admissible pursuant to Rule 138(1).

(c) Conclusion

122. Based on the above, the Panel finds that Mr Thaçi's and Mr Krasniqi's Other Suspect Interviews are relevant and *prima facie* authentic, have probative value which is not outweighed by their prejudicial effect, and are therefore admissible pursuant to Rule 138(1).

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<sup>317</sup> SITF00364476-00364497, p. 3.

<sup>318</sup> Krasniqi Response, paras 46-49.

## C. WITNESS STATEMENTS AND TESTIMONY OF THE ACCUSED

123. The SPO submits that the Witness Statements and Testimony consist of evidence collected in criminal proceedings and investigations both before and after the establishment of the SC.<sup>319</sup> The SPO avers that the Witness Statements and Testimony are: (i) relevant insofar as they concern, *inter alia*, the Accused's positions and involvement in the KLA, the organisation's structure, the Accused's whereabouts during the times relevant to the indictment, the KLA's policy regarding the treatment of "collaborators" and the Accused's knowledge of and involvement in arrests, detentions, and mistreatment;<sup>320</sup> (ii) authentic and probative as they were voluntary, free of coercion and improper compulsion and taken in a manner consistent with international human rights standards;<sup>321</sup> and (iii) their probative value is not outweighed by any prejudicial effect for the above-mentioned reasons, and the Defence will have the opportunity to challenge this evidence and the Panel, composed of professional judges, will be able to appropriately assess the entirety of the evidence presented at the conclusion of the trial and assign appropriate weight.<sup>322</sup> In addition, the SPO submits that the Associated Exhibits were used in, and form an integral part of, the relevant Witness Statements and Testimony.<sup>323</sup>

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<sup>319</sup> Request, para. 109.

<sup>320</sup> Request, para. 110. *See also* Request, paras 32, 36, 38, 40, 44, 47, 50, 53, 57, 61, 63, 66, 69, 75, 77, 81, 83, 85, 87, 89.

<sup>321</sup> Request, paras. 111-115. *See also* Request, paras 2, 31-35, 37, 39, 41-43, 45-46, 48-49, 51-52, 54-56, 58-60, 62-65, 67-68, 70-74, 76, 78-80, 82, 84, 86, 88.

<sup>322</sup> Request, para. 115-116.

<sup>323</sup> Request, para. 110.



## 1. Thaçi Witness Statements

### (a) Submissions

124. The SPO requests the admission of the following prior witness statements with Mr Thaçi: (i) SPRK interview dated 8 November 2011<sup>324</sup> in the investigation against *Arben Krasniqi et al.*; (ii) SPRK interview dated 3 July 2018<sup>325</sup> in the investigation against *NN et al.*; and (iii) investigator's notes from a statement taken by the ICTY on 5 May 2004<sup>326</sup> ("Thaçi Witness Statements").<sup>327</sup> The SPO submits that, for the reasons set out above,<sup>328</sup> the Thaçi Witness Statements are authentic, relevant, and have probative value which is not outweighed by any prejudicial effect.<sup>329</sup>

125. The Thaçi Defence objects to the admission of the "statement" given to the ICTY in May 2004 as it submits that it does not qualify as a statement, but constitute notes of the investigator who interviewed Mr Thaçi and therefore the admission of this document could threaten the fairness of the proceedings.<sup>330</sup> Specifically, the Thaçi Defence avers that: (i) there is no way of knowing that this is the complete record of what Mr Thaçi said; (ii) the notes include a disclaimer that "[t]hese notes are not intended to constitute a comprehensive/contemporaneous record of interview, but a summary of the most relevant important points" and "those notes are drafted on my personal recollection of the interview;" and (iii) in the July 2020 SPO Interview, Mr Thaçi pointed out that it was not his full interview and distanced himself from it.<sup>331</sup> The Thaçi Defence does not object to the admission of the SPRK witness statements.<sup>332</sup>

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<sup>324</sup> SITF00009007-00009016 ("November 2011 SPRK Witness Statement").

<sup>325</sup> SPOE00213717-SPOE00213719-ET ("July 2018 SPRK Witness Statement").

<sup>326</sup> U008-1957-U008-1967 ("May 2004 ICTY Witness Statement").

<sup>327</sup> Request, paras 31-36, 70-75. *See also* Annex to the Request, items 9-10, 22.

<sup>328</sup> *See above* para. 123.

<sup>329</sup> Request, paras 110-116.

<sup>330</sup> Thaçi Response, paras 31-33.

<sup>331</sup> Thaçi Response, para. 31.

<sup>332</sup> Thaçi Response, para. 34.

126. The SPO replies that Mr Thaçi's 2004 ICTY interview need not have been recorded given that Mr Thaçi was interviewed as a witness and not a suspect and was completed in less than four hours, with detailed investigator's notes reviewed and amended by Mr Thaçi where appropriate.<sup>333</sup>

(b) Determination by the Panel

i. Thaçi November 2011 SPRK Witness Statement

127. The Panel notes that, in his November 2011 SPRK Witness Statement, Mr Thaçi provided evidence that the SPO intends to rely upon in relation to allegations pertaining to, *inter alia*: (i) his role in the KLA General Staff in 1999;<sup>334</sup> and (ii) his movements in Kosovo and Albania in approximately February to April 1999, including information about other KLA members and leaders he met or travelled with.<sup>335</sup>

128. The Panel notes that the Thaçi Defence did not challenge the relevance of the November 2011 SPRK Witness Statement and the Panel is thus satisfied that its content is indeed relevant to the charges in the indictment.

129. The Panel observes that, prior to questioning, the Public Prosecutor advised Mr Thaçi of his obligation to tell the truth and of the fact that he did not need to answer a particular question "if it is likely that [he] would expose [him]self or a close relative to disgrace, considerable material damage or criminal prosecution". Mr Thaçi responded by stating that he understood his rights.<sup>336</sup> The Panel further notes that there is nothing to suggest that Mr Thaçi's status during the course of his interview should have changed to that of a suspect. The Panel therefore finds that Mr Thaçi was not entitled to the protections of a suspect at the time of the

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<sup>333</sup> Reply to the Thaçi Response, para. 11.

<sup>334</sup> SITF00009007-00009016, p. 2.

<sup>335</sup> SITF00009007-00009016, pp. 2-4.

<sup>336</sup> SITF00009007-00009016, p. 1.

November 2011 SPRK Witness Statement. The Panel is of the view that an individual interviewed as a witness is not entitled to the same due process protections as those afforded to a suspect if he or she is not regarded or treated as a suspect at the time of the interview, regardless of whether he or she later becomes a suspect, or an accused.<sup>337</sup> It follows that the full array of warnings for a suspect is not normally necessary for the purpose of admission in subsequent proceedings of a statement given as a witness. The Panel is mindful that there may be exceptions to this principle, such as in the case of bad faith on the part of the authorities, and/or situations where responses provided by the interviewee provided clear indications of his involvement in the commission of a crime that should have required the interviewing authority to revisit the question of his status. The Panel is satisfied that the November 2011 SPRK Witness Statement was voluntary, free of coercion and improper compulsion and taken in a manner consistent with the standards of international human rights law. The Panel further observes that the November 2011 SPRK Witness Statement is dated and signed by the SPRK Public Prosecutor, the Court Recorder, the Interpreter, and Mr Thaçi.<sup>338</sup> The Panel also notes that the Thaçi Defence did not challenge the authenticity or probative value of the November 2011 SPRK Witness Statement. The Panel therefore finds that the November 2011 SPRK Witness Statement is *prima facie* authentic and has probative value. The Panel further observes that: (i) the Defence will have the opportunity to present evidence to challenge the November 2011 SPRK Witness Statement, including Mr Thaçi's answer to Question 27 as corrected in his July 2020 SPO Interview, and to question any witness to whom such statements could be put;<sup>339</sup> and (ii) the November 2011 SPRK Witness Statement will then be assessed by the Panel in light of the entirety of the evidence,

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<sup>337</sup> See ECtHR, [Ibrahim and Others Judgment](#), para. 270; *Schmid-Laffer v. Switzerland*, Application no. 41269/08, [Judgement](#), 16 June 2015, paras 29, 39.

<sup>338</sup> SITF00009007-00009016, pp. 1, 5.

<sup>339</sup> See Thaçi Response, para. 34, referring to 076563-TR-ET Part 18, pp. 6-12.

accounting in particular for any corroboration or lack thereof in respect of any material aspect of the record. The Panel therefore finds that the probative value of the November 2011 SPRK Witness Statement is not outweighed by its prejudicial effect.

130. For the above-mentioned reasons, the Panel finds that the Thaçi November 2011 SPRK Witness Statement is relevant and *prima facie* authentic, was obtained in compliance with the standards of international human rights law, has probative value which is not outweighed by its prejudicial effect, and is therefore admissible pursuant to Rule 138(1).

ii. Thaçi July 2018 SPRK Witness Statement

131. The Panel notes that, in his July 2018 SPRK Witness Statement, Mr Thaçi provided evidence that the SPO intends to rely upon in relation to allegations pertaining to, *inter alia*: (i) his relationship with Ramiz Lladrovci and Milaim Zeka; and (ii) Lladrovci blackmailing him “in relation to the murder case or the fall of” the victim concerned.<sup>340</sup> The Panel also notes that the Thaçi Defence did not challenge the relevance of the July 2018 SPRK Witness Statement.<sup>341</sup> The Panel is satisfied that the July 2018 SPRK Witness Statement is relevant to the charges in the indictment.

132. The Panel observes that, before the start of the interview, Mr Thaçi was advised of his rights and obligations under Articles 125 and 129 of the KCPC and informed that “as a witness he is not obligated to answer specific questions where by so doing he is likely to expose himself or a close relative to serious disgrace, considerable material damage or criminal prosecution”, and confirmed that he understood his rights.<sup>342</sup> The Panel recalls its previous finding regarding the full

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<sup>340</sup> SPOE00213717-SPOE00213719-ET, pp. 2-3.

<sup>341</sup> Thaçi Response, para. 34.

<sup>342</sup> SPOE00213717-SPOE00213719-ET, p. 2.

array of warnings for a suspect not being necessary for the admission of a statement given to previous investigative authorities by a witness who is not considered a suspect at the time and through the course of his or her interview or testimony.<sup>343</sup> The Panel is therefore of the view that the July 2018 SPRK Witness Statement was voluntary, free of coercion and improper compulsion and taken in a manner consistent with the standards of international human rights law. The Panel further observes that the July 2018 SPRK Witness Statement is dated and signed by the State Prosecutor, the Court Recorder, and Mr Thaçi.<sup>344</sup> The Panel also notes that the Thaçi Defence did not challenge the authenticity or probative value of the July 2018 SPRK Witness Statement. The Panel therefore finds that the July 2018 SPRK Witness Statement is *prima facie* authentic and has probative value. The Panel notes furthermore that the Defence will have the opportunity to challenge any aspect of the July 2018 SPRK Witness Statement which the SPO would put to a witness and to call witnesses to challenge any aspect of this record with which issue is being taken. The Panel further notes that it will assess the weight and probative value of this record in light of the entirety of the evidence and any element of corroboration that might form part of that record. The Panel therefore finds that the probative value of the July 2018 SPRK Witness Statement is not outweighed by its prejudicial effect.

133. For the above-mentioned reasons, the Panel finds that the Thaçi July 2018 SPRK Witness Statement is relevant and *prima facie* authentic, was obtained in compliance with the standards of international human rights law, has probative value which is not outweighed by its prejudicial effect, and is therefore admissible pursuant to Rule 138(1).

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<sup>343</sup> See above para. 129.

<sup>344</sup> SPOE00213717-SPOE00213719, pp. 1-3.

iii. Thaçi May 2004 ICTY Witness Statement

134. The Panel notes that, in his May 2004 ICTY Witness Statement, Mr Thaçi provided evidence that the SPO intends to rely upon in relation to allegations pertaining to: (i) his membership in the KLA since its founding in 1992;<sup>345</sup> (ii) his relationships with Jakup Krasniqi, Fatmir Limaj, Ismet Jashari, Sahit Jashari, Fehmi Lladrovci, Jakup Lladrovci, Haxhi Shala, Shukri Buja and Bislim Zyrapci;<sup>346</sup> (iii) the General Staff and its communication, command structure and bases;<sup>347</sup> (iv) his operational responsibility when traveling to Kosovo;<sup>348</sup> (v) the KLA Military Police;<sup>349</sup> (vi) the treatment of 'collaborators';<sup>350</sup> (vii) his knowledge of and involvement in arrests and detentions;<sup>351</sup> (viii) the battle of Glllogjan/Glođane on 24 March 1998.<sup>352</sup> The Panel also notes that the Thaçi Defence did not challenge the relevance of the May 2004 ICTY Witness Statement. The Panel is thus satisfied that the May 2004 ICTY Witness Statement is relevant to the charges in the indictment.

135. The Panel observes that, before the start of the interview, Mr Thaçi was informed that he was a witness and that the statement would be recorded, and he confirmed his understanding and consented to the interview.<sup>353</sup> The Panel notes that, due to a technical failure, no audio was recorded and the investigator's notes are the only record of the interview.<sup>354</sup> The Panel considers that Mr Thaçi had the opportunity to review those notes and provided written clarifications and explanations, which were added to the record.<sup>355</sup> The Panel further considers that

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<sup>345</sup> U008-1957-U008-1967, pp. 2-10.

<sup>346</sup> U008-1957-U008-1967, pp. 2, 7-8.

<sup>347</sup> U008-1957-U008-1967, pp. 2-3, 6.

<sup>348</sup> U008-1957-U008-1967, p. 2.

<sup>349</sup> U008-1957-U008-1967, p. 4.

<sup>350</sup> U008-1957-U008-1967, p. 7.

<sup>351</sup> U008-1957-U008-1967, pp. 4-5, 7.

<sup>352</sup> U008-1957-U008-1967, p. 8.

<sup>353</sup> U008-1957-U008-1967, p. 1-2.

<sup>354</sup> U008-1957-U008-1967, p. 1.

<sup>355</sup> U008-1957-U008-1967, pp. 10-11.

Mr Thaçi: (i) supported the text of his statement;<sup>356</sup> (ii) confirmed that he attended the interview on request of the ICTY Office of the Prosecutor (“OTP”) and that no pressure, promises, or incentives were offered to him for responding to the questions;<sup>357</sup> (iii) confirmed that he was advised that his statement may be provided to other law enforcement agencies and/or judicial authorities, and agreed to his statement being provided to those authorities at the discretion of the ICTY OTP;<sup>358</sup> and (iv) in his January 2020 SPO Interview, confirmed that he gave the May 2004 ICTY Witness Statement.<sup>359</sup> The Panel recalls its previous finding regarding the full array of warnings for a suspect not being necessary in principle for the admission of a statement given to previous investigative authorities by a witness who was not considered a suspect at the time and through the course of his or her interview or testimony.<sup>360</sup> The Panel is therefore of the view that the May 2004 ICTY Witness Statement was voluntary, free of coercion and improper compulsion and taken in a manner consistent with the standards of international human rights law. The Panel notes that Mr Thaçi did not raise any objection based on self-incrimination regarding this statement in subsequent occasions. Furthermore, as noted above, it was made clear to him at the time that this statement could be provided to other law enforcement agencies and/or judicial authorities and he agreed to it. It would therefore have been apparent to him that he was agreeing to the possibility that an authority other than the one interviewing him could regard the information he provided as inculpatory. There is no evidence of bad faith on the part of the Prosecutor of the ICTY, nor is it apparent from the record of the interview that Mr Thaçi’s responses called for the Prosecutor to revise its position in relation to his status as a witness rather than a suspect. The

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<sup>356</sup> U008-1957-U008-1967, p. 11.

<sup>357</sup> U008-1957-U008-1967, p. 10.

<sup>358</sup> U008-1957-U008-1967, p. 11.

<sup>359</sup> 071840-TR-ET Part 6, pp. 8-9, Part 7, p. 2.

<sup>360</sup> *See above* para. 129. *See below* paras 159-160, 194.

Panel is also of the view that, contrary to the Thaçi Defence's submissions,<sup>361</sup> the investigator's notes are an accurate record of what Mr Thaçi said during his interview as Mr Thaçi was given the opportunity to review the notes and provided written comments which were incorporated in the document. The Panel therefore finds that the May 2004 ICTY Witness Statement is *prima facie* authentic and has probative value. The Panel observes that the Defence will have the opportunity to present evidence to challenge any aspect of the May 2004 ICTY Witness Statement with which it takes issue and to test the content thereof with any witness capable of providing evidence in respect of it. The Panel therefore finds that the probative value of the May 2004 ICTY Witness Statement is not outweighed by its prejudicial effect, and dismisses the Thaçi Defence's argument that the admission of the May 2004 ICTY Witness Statement could threaten the fairness of the proceedings.

136. For the above-mentioned reasons, the Panel finds that the Thaçi May 2004 ICTY Witness Statement is relevant and *prima facie* authentic, was obtained in compliance with the standards of international human rights law, has probative value which is not outweighed by its prejudicial effect, and is therefore admissible pursuant to Rule 138(1).

(c) Conclusion

137. Based on the above, the Panel finds that the Thaçi Witness Statements are relevant and *prima facie* authentic, were obtained in compliance with the standards of international human rights law, have probative value which is not outweighed by their prejudicial effect, and are therefore admissible pursuant to Rule 138(1).

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<sup>361</sup> Thaçi Response, paras 31-33.



## 2. Selimi Witness Statements and Testimony

### (a) Submissions

138. The SPO seeks admission of the following prior witness statements or testimony with Mr Selimi: (i) SPRK interview dated 27 September 2011;<sup>362</sup> (ii) SPRK interview dated 3 June 2013;<sup>363</sup> (iii) SPRK interview dated 13 October 2016;<sup>364</sup> (iv) SPRK interview dated 22 May 2018;<sup>365</sup> (v) SPRK trial testimony dated 15 January 2018;<sup>366</sup> (vi) ICTY statement dated 2 April 2004;<sup>367</sup> and (vii) ICTY trial testimony dated 27-31 May 2005 in the *Limaj et al.* proceedings,<sup>368</sup> and its Associated Exhibits<sup>369</sup> (“Selimi Witness Statements and Testimony”).<sup>370</sup> The SPO submits that, for the reasons set out above,<sup>371</sup> the Selimi Witness Statements and Testimony are authentic, relevant, and have probative value which is not outweighed by any prejudicial effect.<sup>372</sup>

139. The Selimi Defence opposes the admission of the Selimi Witness Statements and Testimony noting that at no point was Mr Selimi notified that he was a suspect.<sup>373</sup> The Selimi Defence avers that witness statements given to previous investigative authorities should only be admitted if necessary warnings for a suspect were given before the interview proceeded.<sup>374</sup> The Selimi Defence argues

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<sup>362</sup> SITF00009289-00009298 (“September 2011 SPRK Witness Statement”).

<sup>363</sup> SITF00371392-00371396 (“June 2013 SPRK Witness Statement”).

<sup>364</sup> SPOE00067168-SPOE00067174-ET (“October 2016 SPRK Witness Statement”).

<sup>365</sup> SPOE00213583-SPOE00213586 (“May 2018 SPRK Witness Statement”).

<sup>366</sup> SPOE00068075-SPOE00068087-ET (“January 2018 SPRK Trial Testimony”).

<sup>367</sup> T000-2344-T000-2345 (“April 2004 ICTY Witness Statement”).

<sup>368</sup> IT-03-66 T6583-T6589; IT-03-66 T6590-T6679; IT-03-66 T6680-T6699; IT-03-66 20050527; IT-03-66 20050530 Parts 1-3; IT-03-66 20050531 (“May 2005 ICTY Trial Testimony”).

<sup>369</sup> IT-03-66 P1.7; IT-03-66 P24; IT-03-66 P248.

<sup>370</sup> Request, paras 45-57, 64-66, 76-77, 82-83. *See also* Annex to the Request, items 14-17, 20, 23, 25-26.

<sup>371</sup> *See above* para. 123.

<sup>372</sup> Request, paras 110-116.

<sup>373</sup> Selimi Response, para. 49.

<sup>374</sup> Selimi Response, paras 50-53 *referring to* ICTY, [Halilović Trial Decision](#), para. 21; *Prosecutor v. Prlić et al.*, IT-04-74-T, Trial Chamber III, Decision on the Admission into Evidence of Slobodan Praljak’s Evidence in the Case of Naletelic and Marinovic (“[Prlić et al. Trial Decision](#)”), 5 September 2007, para. 22.

that this was not done in any of the Selimi Witness Statements and Testimony as during: (i) the 27 September 2011 SPRK interview, Mr Selimi was not informed of the right to have a lawyer or the right to remain silent, and was given confusing instructions regarding the right not to answer questions;<sup>375</sup> (ii) the 3 June 2013, 13 October 2016 and 22 May 2018 SPRK interviews, Mr Selimi was notified of the right to have counsel, but was told that his right to have access to counsel was relevant only if he believed that he needed the assistance of counsel in order to answer a question, and he was also informed of his obligation to testify;<sup>376</sup> (iii) the 2 April 2004 ICTY statement, while his counsel was present, Mr Selimi was not informed of his right to silence or right to counsel;<sup>377</sup> and (iv) the Gjakova Basic Court testimony dated 15 January 2018 and ICTY testimony, dated 27, 30-31 May 2005, Mr Selimi was not notified of his rights to counsel and to remain silent.<sup>378</sup>

(b) Determination by the Panel

i. Selimi September 2011 SPRK Witness Statement

140. The Panel notes that, in his September 2011 SPRK Witness Statement, Mr Selimi provided evidence that the SPO intends to rely upon in relation to allegations pertaining to, *inter alia*: (i) the KLA's structure;<sup>379</sup> (ii) his role and the roles of others in the KLA;<sup>380</sup> (iii) his radio call sign '10';<sup>381</sup> (iv) the KLA's operational zones and bases;<sup>382</sup> (v) 'Operation Arrow';<sup>383</sup> (vi) his relation to

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<sup>375</sup> Selimi Response, para. 54.

<sup>376</sup> Selimi Response, para. 55.

<sup>377</sup> Selimi Response, para. 56.

<sup>378</sup> Selimi Response, para. 57.

<sup>379</sup> SITF00009289-00009298, pp. 2-3.

<sup>380</sup> SITF00009289-00009298, pp. 2-3.

<sup>381</sup> SITF00009289-00009298, p. 1.

<sup>382</sup> SITF00009289-00009298, pp. 3-5.

<sup>383</sup> SITF00371392-00371396, pp. 4.

Sylejman Selimi and Agim Çeku,<sup>384</sup> and (vii) his whereabouts and the whereabouts of other KLA leaders.<sup>385</sup> The Panel also notes that the Selimi Defence did not challenge the relevance of the September 2011 SPRK Witness Statement. The Panel is satisfied that the September 2011 SPRK Witness Statement is relevant to the charges in the indictment.

141. The Panel observes that, prior to questioning, the Public Prosecutor advised Mr Selimi of his obligation to tell the truth and of the fact that he did not need to answer a particular question “if it is likely that [he] would expose [him]self or a close relative to disgrace, considerable material damage or criminal prosecution”, and Mr Selimi stated that he understood his rights.<sup>386</sup> The Panel is not persuaded by the Selimi Defence’s argument that witness statements given to previous investigative authorities should only be admitted if necessary warnings for a suspect were given before the interview proceeded.<sup>387</sup> In this regard, the Panel recalls its previous finding regarding the full array of warnings for a suspect not being necessary for the admission of a statement given to previous investigative authorities by a witness who is not considered a suspect at the time and through the course of his or her interview or testimony.<sup>388</sup> The Panel is satisfied that there has been no showing that the SPRK had acted in bad faith or unreasonably when treating Mr Selimi as a witness rather than a suspect. The Panel is of the view that the September 2011 SPRK Witness Statement was voluntary, free of coercion and improper compulsion and taken in a manner consistent with the standards of international human rights law. The Panel further observes that the September 2011 SPRK Witness Statement is dated and signed by the SPRK Public

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<sup>384</sup> SITF00009289-00009298, pp. 3-4.

<sup>385</sup> SITF00009289-00009298, pp. 2-5.

<sup>386</sup> SITF00009289-00009298, p. 1. *See also* Art. 162 of the UNMIK 2003 Provisional Criminal Procedure Code of Kosovo.

<sup>387</sup> Selimi Response, paras 50-53.

<sup>388</sup> *See above* para. 129.

Prosecutor, the Court Recorder, the Interpreter, the investigator, and Mr Selimi.<sup>389</sup> The Panel therefore finds that the September 2011 SPRK Witness Statement is *prima facie* authentic and has probative value. The Panel further observes that the Defence will have the opportunity to present evidence to challenge the September 2011 SPRK Witness Statement and/or to test any aspect of the statement with which issue is being taken. The Panel therefore finds that the probative value of the September 2011 SPRK Witness Statement is not outweighed by its prejudicial effect.

142. For the above-mentioned reasons, the Panel finds that the Selimi September 2011 SPRK Witness Statement is relevant and *prima facie* authentic, was obtained in compliance with the standards of international human rights law, has probative value which is not outweighed by its prejudicial effect, and is therefore admissible pursuant to Rule 138(1).

ii. Selimi June 2013 SPRK Witness Statement

143. The Panel notes that, in his June 2013 SPRK Witness Statement, Mr Selimi provided evidence that the SPO intends to rely upon in relation to allegations pertaining to, *inter alia*: (i) his roles and activities in the KLA;<sup>390</sup> (ii) his movements within Kosovo;<sup>391</sup> (iii) the Military Police;<sup>392</sup> (iv) his relation to Sylejman Selimi and Sabit Geci;<sup>393</sup> and (v) the KLA's operational zones.<sup>394</sup> The Panel also notes that the Selimi Defence did not challenge the relevance of the June 2013 SPRK Witness Statement. The Panel is satisfied that the June 2013 SPRK Witness Statement is relevant to the charges in the indictment.

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<sup>389</sup> SITF00009289-00009298, pp. 1, 5.

<sup>390</sup> SITF00371392-00371396, p. 2.

<sup>391</sup> SITF00371392-00371396, pp. 2-5.

<sup>392</sup> SITF00371392-00371396, p. 3.

<sup>393</sup> SITF00371392-00371396, pp. 3-5.

<sup>394</sup> SITF00371392-00371396, pp. 2-5.

144. The Panel observes that, before the start of the interview, Mr Selimi: (i) was advised of his rights and obligations under Article 125 of the KCPC, including his privilege against self-incrimination; (ii) confirmed that he understood his rights and obligations; and (iii) stressed that he did not wish to avail himself of the exemption from the duty to testify due to his familial relation to one of the Accused, Sylejman Selimi.<sup>395</sup> The Panel is of the view that Mr Selimi expressly waived his right to remain silent as he was duly informed of and cautioned about that right before the start of the interview. The Panel is not persuaded by the Selimi Defence's argument that a statement given as a witness to previous investigative authorities in previous criminal proceedings can only be admitted in subsequent criminal proceedings if the necessary warnings for a suspect were given before the witness gave his or her testimony.<sup>396</sup> In this regard, the Panel recalls that the full array of warnings for a suspect are not necessary for the admission of a statement given to previous investigative authorities by a witness who was not considered a suspect at the time and through the course of his or her interview or testimony.<sup>397</sup> This would in effect require a degree of hindsight into the views of third parties that cannot be expected of investigative authorities. Those can only operate on the basis of the information that they have in their possession and the Panel will not try to second guess their views insofar as here is no indication that the investigative authorities acted in bad faith or unreasonably in this instance. The Panel finds that the June 2013 SPRK Witness Statement was voluntary, free of coercion and improper compulsion and taken in a manner consistent with the standards of international human rights law. The Panel further observes that the June 2013 SPRK Witness Statement is dated and signed by the SPRK Public Prosecutor, the Court Recorder, the Interpreter, and Mr Selimi.<sup>398</sup> The Panel is

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<sup>395</sup> SITF00371392-00371396, p. 2.

<sup>396</sup> Selimi Response, paras 50-53, 55.

<sup>397</sup> See *above* para. 129.

<sup>398</sup> SITF00371392-00371396, pp. 1, 5.

therefore satisfied that the June 2013 SPRK Witness Statement is *prima facie* authentic and has probative value. The Panel further observes that the Defence will have the opportunity to present evidence to challenge the June 2013 SPRK Witness Statement, which will then be assessed by the Panel in light of the entirety of the evidence. The Panel therefore finds that the probative value of the June 2013 SPRK Witness Statement is not outweighed by its prejudicial effect.

145. For the above-mentioned reasons, the Panel finds that the Selimi June 2013 SPRK Witness Statement is relevant and *prima facie* authentic, was obtained in compliance with the standards of international human rights law, has probative value which is not outweighed by its prejudicial effect, and is therefore admissible pursuant to Rule 138(1).

iii. Selimi October 2016 SPRK Witness Statement

146. The Panel notes that, in his October 2016 SPRK Witness Statement, Mr Selimi provided evidence that the SPO intends to rely upon in relation to allegations pertaining to, *inter alia*: (i) the KLA's structure and its operational zones;<sup>399</sup> (ii) his roles and duties within the KLA, including as Chief of the Operational Directorate;<sup>400</sup> (iii) the KLA General Staff and its military court;<sup>401</sup> (iv) the roles of other KLA leaders;<sup>402</sup> (v) his relationship with Fatmir Limaj and Bislim Zyrap;<sup>403</sup> and (vi) his knowledge of the murders of Ramiz Hoxha and Selman Binishi.<sup>404</sup> The Panel also notes that the Selimi Defence did not challenge the relevance of the October 2016 SPRK Witness Statement. The Panel is thus satisfied that the

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<sup>399</sup> SPOE00067168-SPOE00067174-ET, pp. 3-4.

<sup>400</sup> SPOE00067168-SPOE00067174-ET, pp. 2-7.

<sup>401</sup> SPOE00067168-SPOE00067174-ET, pp. 3-6.

<sup>402</sup> SPOE00067168-SPOE00067174-ET, pp. 3-7.

<sup>403</sup> SPOE00067168-SPOE00067174-ET, pp. 4-5.

<sup>404</sup> SPOE00067168-SPOE00067174-ET, pp. 5-6.

October 2016 SPRK Witness Statement is relevant to the charges in the indictment.

147. The Panel observes that, before the start of the interview, Mr Selimi was advised of his rights and obligations under Articles 125 and 129 of the KCPC and informed that “as a witness he is not obligated to answer specific questions where by so doing he is likely to expose himself or a close relative to serious disgrace, considerable material damage or criminal prosecution,” and confirmed that he understood his rights and obligations as a witness.<sup>405</sup> The Panel is not persuaded by the Selimi Defence’s argument that a statement given as a witness to previous investigative authorities in previous criminal proceedings can only be admitted in subsequent criminal proceedings if the necessary warnings for a suspect were given before the witness gave his or her testimony.<sup>406</sup> In this regard, the Panel recalls its previous finding regarding the full array of warnings for a suspect not being necessary for the admission of a statement given to previous investigative authorities by a witness who is not considered a suspect at the time and through the course of his or her interview or testimony.<sup>407</sup> The Panel is of the view that the October 2016 SPRK Witness Statement was voluntary, free of coercion and improper compulsion and taken in a manner consistent with the standards of international human rights law. The Panel further observes that the October 2016 SPRK Witness Statement is dated and signed by the State Prosecutor, the Court Recorder, and Mr Selimi.<sup>408</sup> The Panel therefore finds that the October 2016 SPRK Witness Statement is *prima facie* authentic and has probative value. The Panel observes that the Defence will have the opportunity to present evidence to challenge the October 2016 SPRK Witness Statement, which will then be assessed by the Panel in light of the entirety of the evidence. The Panel therefore

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<sup>405</sup> SPOE00067168-SPOE00067174-ET, p. 2.

<sup>406</sup> Selimi Response, paras 50-53.

<sup>407</sup> See *above* para. 129.

<sup>408</sup> SPOE00067168-SPOE00067174-ET, pp. 1-7.

finds that the probative value of the October 2016 SPRK Witness Statement is not outweighed by its prejudicial effect.

148. For the above-mentioned reasons, the Panel finds that the Selimi October 2016 SPRK Witness Statement is relevant and *prima facie* authentic, was obtained in compliance with the standards of international human rights law, has probative value which is not outweighed by its prejudicial effect, and is therefore admissible pursuant to Rule 138(1).

iv. Selimi May 2018 SPRK Witness Statement

149. The Panel notes that, in his May 2018 SPRK Witness Statement, Mr Selimi provided evidence that the SPO intends to rely upon in relation to allegations pertaining to, *inter alia*: (i) his relationship with Ramiz Lladrovci;<sup>409</sup> (ii) whether he knew of letters Ramiz Lladrovci sent to the Accused Hashim Thaçi;<sup>410</sup> (iii) his friendship with Fehmi Lladrovci until his death in September 1998;<sup>411</sup> (iv) whether he knew the victim in the case;<sup>412</sup> and (v) him denying of having any knowledge regarding the victim's whereabouts.<sup>413</sup> The Panel also notes that the Selimi Defence did not challenge the relevance of the May 2018 SPRK Witness Statement. The Panel is satisfied that the May 2018 SPRK Witness Statement is relevant to the charges in the indictment.

150. The Panel observes that, before the start of the interview, Mr Selimi was advised of his rights and obligations under Articles 125 and 129 of the KCPC and informed that "as a witness he is not obligated to answer specific questions where by so doing he is likely to expose himself or a close relative to serious disgrace, considerable material damage or criminal prosecution," and confirmed that he

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<sup>409</sup> SPOE00213583-SPOE00213586-ET, pp. 3-4.

<sup>410</sup> SPOE00213583-SPOE00213586-ET, p. 3.

<sup>411</sup> SPOE00213583-SPOE00213586-ET, p. 3.

<sup>412</sup> SPOE00213583-SPOE00213586-ET, pp. 2-3.

<sup>413</sup> SPOE00213583-SPOE00213586-ET, pp. 2-3.



understood his rights and obligations as a witness.<sup>414</sup> The Panel is not persuaded by the Selimi Defence's argument that a statement given as a witness to previous investigative authorities in previous criminal proceedings can only be admitted in subsequent criminal proceedings if the necessary warnings for a suspect were given before the witness gave his or her testimony.<sup>415</sup> In this regard, the Panel recalls its previous finding regarding the full array of warnings for a suspect not being necessary for the admission of a statement given to previous investigative authorities by a witness who is not considered a suspect at the time and through the course of his or her interview or testimony.<sup>416</sup> The Panel is of the view that the May 2018 SPRK Witness Statement was voluntary, free of coercion and improper compulsion and taken in a manner consistent with the standards of international human rights law. The Panel further observes that the May 2018 SPRK Witness Statement is dated and signed by the State Prosecutor, the Court Recorder, two investigating sergeants, and Mr Selimi.<sup>417</sup> The Panel therefore finds that the May 2018 SPRK Witness Statement is *prima facie* authentic and has probative value. The Panel observes that the Defence will have the opportunity to present evidence to challenge the May 2018 SPRK Witness Statement, which will then be assessed by the Panel in light of the entirety of the evidence. The Panel therefore finds that the probative value of the May 2018 SPRK Witness Statement is not outweighed by its prejudicial effect.

151. For the above-mentioned reasons, the Panel finds that the Selimi May 2018 SPRK Witness Statement is relevant and *prima facie* authentic, was obtained in compliance with the standards of international human rights law, has probative value which is not outweighed by its prejudicial effect, and is therefore admissible pursuant to Rule 138(1).

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<sup>414</sup> SPOE00213583-SPOE00213586-ET, p. 2.

<sup>415</sup> Selimi Response, paras 50-53.

<sup>416</sup> See *above* para. 129.

<sup>417</sup> SPOE00213583-SPOE00213586-ET, pp. 1-4.

v. Selimi January 2018 SPRK Trial Testimony

152. The Panel notes that, in his January 2018 SPRK Trial Testimony, Mr Selimi provided evidence that the SPO intends to rely upon in relation to allegations pertaining to, *inter alia*: (i) his role and duties within the KLA, specifically as the head of the Operational Directorate;<sup>418</sup> (ii) the KLA's operational zones;<sup>419</sup> (iii) the structuring and reorganisation of KLA units;<sup>420</sup> (iv) the role of other KLA members and leaders;<sup>421</sup> (v) KLA General Staff functions;<sup>422</sup> (vi) the KLA Military Police;<sup>423</sup> (vii) his knowledge of the alleged killings of Selman Binishi and Ramiz Hoxha;<sup>424</sup> and (vi) the arrest of two LDK members.<sup>425</sup> The Panel also notes that the Selimi Defence did not challenge the relevance of the January 2018 SPRK Trial Testimony. The Panel is satisfied that the January 2018 SPRK Trial Testimony is relevant to the charges in the indictment.

153. The Panel observes that, before the start of his testimony, Mr Selimi "was informed by the Court that he has an obligation to tell the truth and that giving false testimony constitutes a criminal offense, that he can refuse to answer any question that would subject himself or close relative to disgrace or serious material or other harm."<sup>426</sup> The Panel is not persuaded by the Selimi Defence's argument that a statement given as a witness to previous investigative authorities in previous criminal proceedings can only be admitted in subsequent criminal proceedings if the necessary warnings for a suspect were given before the witness

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<sup>418</sup> SPOE00068075-SPOE00068087-ET, p. 2.

<sup>419</sup> SPOE00068075-SPOE00068087-ET, p. 2.

<sup>420</sup> SPOE00068075-SPOE00068087-ET, pp. 2-3.

<sup>421</sup> SPOE00068075-SPOE00068087-ET, pp. 6, 9.

<sup>422</sup> SPOE00068075-SPOE00068087-ET, pp. 2, 5.

<sup>423</sup> SPOE00068075-SPOE00068087-ET, p. 12.

<sup>424</sup> SPOE00068075-SPOE00068087-ET, p. 7.

<sup>425</sup> SPOE00068075-SPOE00068087-ET, pp. 2-7, 11.

<sup>426</sup> SPOE00068075-SPOE00068087-ET, p. 2.

gave his or her testimony.<sup>427</sup> In this regard, the Panel recalls its previous finding regarding the full array of warnings for a suspect not being necessary for the admission of a statement given to previous investigative authorities by a witness who is not considered a suspect at the time and through the course of his or her interview or testimony.<sup>428</sup> The Panel is of the view that the January 2018 SPRK Trial Testimony was voluntary, free of coercion and improper compulsion and taken in a manner consistent with the standards of international human rights law. The Panel further observes that the January 2018 SPRK Trial Testimony is dated and consists of the transcript of a hearing held in criminal proceedings before the Gjakova Basic Court.<sup>429</sup> The Panel therefore finds that the January 2018 SPRK Trial Testimony is *prima facie* authentic and has probative value. The Panel observes that the Defence will have the opportunity to present evidence to challenge the January 2018 SPRK Trial Testimony, which will then be assessed by the Panel in light of the entirety of the evidence. The Panel therefore finds that the probative value of the January 2018 SPRK Trial Testimony is not outweighed by its prejudicial effect.

154. For the above-mentioned reasons, the Panel finds that the Selimi January 2018 SPRK Trial Testimony is relevant and *prima facie* authentic, was obtained in compliance with the standards of international human rights law, has probative value which is not outweighed by its prejudicial effect, and is therefore admissible pursuant to Rule 138(1).

vi. Selimi April 2004 ICTY Witness Statement

155. The Panel notes that, in his April 2004 ICTY Witness Statement, Mr Selimi provided evidence that the SPO intends to rely upon in relation to allegations

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<sup>427</sup> Selimi Response, paras 50-53.

<sup>428</sup> See *above* para. 129.

<sup>429</sup> SPOE00068075-SPOE00068087-ET, pp. 1-13.

pertaining to, *inter alia*: (i) events related to the Kosovo conflict;<sup>430</sup> (ii) his role in the KLA;<sup>431</sup> (iii) his recruitment of other KLA members;<sup>432</sup> (iv) the KLA's structure, communications, and its operational zones;<sup>433</sup> (v) the KLA General Staff;<sup>434</sup> (vi) the roles of Hashim Thaçi, Kadri Veseli, Jakup Krasniqi, Bislim Zyrapi, Lahi Brahimaj, Rame Buja, Azem Sylja, Agim Çeku, Sylejman Selimi, Fatmir Limaj, Shukri Buja, and Haxhi Shala;<sup>435</sup> (vii) KLA detention sites and Mr Selimi's awareness thereof;<sup>436</sup> and (viii) his travel within Kosovo.<sup>437</sup> The Panel also notes that the Selimi Defence did not challenge the relevance of the April 2004 ICTY Witness Statement. The Panel is satisfied that the April 2004 ICTY Witness Statement is relevant to the charges in the indictment.

156. The Panel observes that Mr Selimi: (i) was informed that he was being interviewed as a witness;<sup>438</sup> (ii) had his legal representative present;<sup>439</sup> and (iii) at the end of the interview, was asked if he wanted to add anything to his statement, which he declined.<sup>440</sup> The Panel recalls its previous finding regarding the full array of warnings for a suspect not being necessary for the admission of a statement given to previous investigative authorities by a witness who is not considered a suspect at the time and through the course of his or her interview or testimony.<sup>441</sup> The Panel finds that there is no indication of bad faith or unreasonableness on the part of the Prosecutor of the ICTY when it decided to treat Mr Selimi as a witness rather than as a suspect in these circumstances. The Panel is of the view that the April 2004 ICTY Witness Statement was voluntary, free of coercion and improper

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<sup>430</sup> T000-2344-T000-2345, pp. 2-8.

<sup>431</sup> T000-2344-T000-2345, pp. 2, 30-31, 36.

<sup>432</sup> T000-2344-T000-2345, pp. 12, 24.

<sup>433</sup> T000-2344-T000-2345, pp. 5, 14-15, 17-22, 26, 35, 38-43.

<sup>434</sup> T000-2344-T000-2345, pp. 49-53.

<sup>435</sup> T000-2344-T000-2345, pp. 50-53, 86-96.

<sup>436</sup> T000-2344-T000-2345, pp. 81-86.

<sup>437</sup> T000-2344-T000-2345, pp. 27.

<sup>438</sup> T000-2344-T000-2345, pp. 1, 3. *See also* IT-03-66 T6680-T6699 p. 7.

<sup>439</sup> T000-2344-T000-2345, pp. 1-2.

<sup>440</sup> T000-2344-T000-2345, pp. 98-99.

<sup>441</sup> *See above* para. 129.

compulsion and taken in a manner consistent with the standards of international human rights law. The Panel further observes that the April 2004 ICTY Witness Statement is dated and consists of an authenticated copy of the transcript of an ICTY audio recorded interview, held by the Office of the Prosecutor of the International Residual Mechanism for Criminal Tribunals (“IRMCT”).<sup>442</sup> The Panel therefore finds that the April 2004 ICTY Witness Statement is *prima facie* authentic and has probative value. The Panel observes that the Defence will have the opportunity to present evidence to challenge the April 2004 ICTY Witness Statement, which will then be assessed by the Panel in light of the entirety of the evidence. The Panel therefore finds that the probative value of the April 2004 ICTY Witness Statement is not outweighed by its prejudicial effect.

157. For the above-mentioned reasons, the Panel finds that the Selimi April 2004 ICTY Witness Statement is relevant and *prima facie* authentic, was obtained in compliance with the standards of international human rights law, has probative value which is not outweighed by its prejudicial effect, and is therefore admissible pursuant to Rule 138(1).

vii. Selimi May 2005 ICTY Trial Testimony

158. The Panel notes that, in his May 2005 ICTY Trial Testimony, Mr Selimi provided evidence that the SPO intends to rely upon in relation to allegations pertaining to, *inter alia*: (i) events related to the Kosovo conflict;<sup>443</sup> (ii) his role and duties within the KLA;<sup>444</sup> (iii) the KLA’s structure and its operational zones, particularly the Drenicë operational zone and the formation of brigades;<sup>445</sup> (iv) the

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<sup>442</sup> T000-2344-T000-2345, pp. 1, 99.

<sup>443</sup> IT-03-66 T6590-T6679, pp. 2-6, 42.

<sup>444</sup> IT-03-66 T6583-T6589, p. 3; IT-03-66 T6590-T6679, pp. 6-7.

<sup>445</sup> IT-03-66 T6590-T6679, pp. 2-3, 6, 12-13; 60-64, 84-86; IT-03-66 T6680-T6699, pp. 8-9, 12.

KLA General Staff;<sup>446</sup> (v) his relationship with other KLA members, in particular, Fatmir Limaj, Sylejman Selimi and Xhavit Haliti;<sup>447</sup> and (vi) detentions by the KLA.<sup>448</sup> The Panel also notes that the Selimi Defence did not challenge the relevance of the May 2005 ICTY Trial Testimony. The Panel is satisfied that the May 2005 ICTY Trial Testimony is relevant to the charges in the indictment.

159. The Panel observes that, before the start of his testimony, Mr Selimi was asked to read aloud the affirmation printed on the card handed to him, after which he solemnly declared that he would “speak the truth, the whole truth, and nothing but the truth”.<sup>449</sup> The Panel notes that Mr Selimi was not given express notice that he had the right to counsel or enjoyed privilege against self-incrimination. In this regard, the Panel recalls its previous finding regarding the full array of warnings to which a suspect is entitled, which do not apply in the same way to an individual who is questioned as a witness.<sup>450</sup> The Panel notes that, under the regime applicable before the ICTY, neither its Prosecutor nor the Tribunal itself had any obligation to inform Mr Selimi about his privilege against self-incrimination.<sup>451</sup> Instead, Rule 90(E) of the ICTY Rules of Procedure and Evidence provided for a specific procedure applicable if and where a witness objected to answer questions on the grounds that this could incriminate him. The ICTY has explained the purpose of this provision in the following terms:

The immunity from prosecution guaranteed under Rule 90(E) of the Rules clearly prohibits the subsequent direct use of any self-incriminating statements compelled under the provision against the witness in criminal proceedings other than those concerned with false testimony. Thus, where an accused or appellant is compelled to make self-incriminating statements under Rule 90(E)

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<sup>446</sup> IT-03-66 T6583-T6589, pp. 2, 6; IT-03-66 T6590-T6679, p. 6; IT-03-66 T6680-T6699, p. 8.

<sup>447</sup> IT-03-66 T6583-T6589, pp. 2, 4; IT-03-66 T6590-T6679, p. 2; IT-03-66 T6680-T6699, pp. 2-3, 14-16.

<sup>448</sup> IT-03-66 T6590-T6679, p. 43.

<sup>449</sup> IT-03-66 T6583-T6589, p. 1.

<sup>450</sup> See *above* para. 129.

<sup>451</sup> See Rule 90(E) ICTY RPE, as opposed to, *e.g.*, Rule 151(1), second sentence.

of the Rules, the Prosecution is prohibited from directly relying on such statements in the accused's or appellant's own case.<sup>452</sup>

The ICTY also made it clear that this provision did not and was not intended to have extra-jurisdictional effect.<sup>453</sup> The safeguards against self-incrimination provided by Rule 90(E) to a witness only applied *before the ICTY*, and did not bind national authorities.<sup>454</sup> In other words, self-incrimination warning given by the ICTY would, in any instance, have only had an effect before the said jurisdiction. Applying the same logic in reverse, the ICTY also made it clear that testimony compelled before a national court was not necessarily rendered inadmissible for that reason before the ICTY (or another domestic jurisdiction).<sup>455</sup>

160. In this context, the Panel has considered the jurisprudence referred to by the Selimi Defence and the Krasniqi Defence in their Responses.<sup>456</sup> The Panel is not persuaded that the *Halilović* and *Prlić et al.* decisions to which the Krasniqi and Selimi Defence refer are precedents applicable to resolving the present matter. First, those Chambers were dealing with prior statements/testimony that had originated from the same institution (the ICTY) as was then being asked to admit them. The transcript of testimony of Slobodan Praljak given as a Defence witness in the *Naletilić* case was being produced against him in the *Prlić et al.* proceedings; the record of interview given by Mr Halilović to the Prosecutor of the ICTY was then being produced by that same Prosecutor in proceedings against him. In both

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<sup>452</sup> ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-AR73.11, Appeals Chamber, [Decision on Appeal against the Decision on the Accused's Motion to Subpoena Zdravko Tolimir](#), 13 November 2013, para. 43.

<sup>453</sup> See e.g. *Prosecutor v. Perišić*, IT-04-81-T, Decision on Prosecution Motion for an Advance Ruling on the Scope of Permissible Cross Examination ("[Perišić Decision](#)"), 12 June 2009, para. 21.

<sup>454</sup> See e.g. [Perišić Decision](#), para. 21.

<sup>455</sup> ICTY, *Prosecutor v. Mladić*, IT-09-92-R75bis.1, Trial Chamber I, [Second Decision on Request for Assistance from the Court of Bosnia and Herzegovina Pursuant to Rule 75 bis](#), 21 December 2011, para. 10.

<sup>456</sup> Selimi Response, paras 50-51, referring to ICTY, [Halilović Trial Decision](#), para. 21; [Prlić et al. Trial Decision](#), paras 20-22. Krasniqi Response, para. 25, referring to ICTY, *Prosecutor v. Halilović*, IT-01-48-AR73.2, Appeals Chamber, Decision on Interlocutory Appeal Concerning Admission of Record of Interview of the Accused from the Bar Table ("[Halilović Appeal Decision](#)"), 19 August 2005, para. 15; [Prlić et al. Trial Decision](#), para. 14.

instances, the tendering Party would therefore have been in a position to guarantee the rights of the individual whose statement it sought to rely upon. This is consistent with the jurisprudence of the ICTY, outlined above, which makes it clear that the protection against self-incrimination guaranteed by its Rules is only intended and can only have effect within that jurisdiction. From that point of view already, the present case is entirely different. The impugned statements were produced before the ICTY, i.e., another jurisdiction, not before the KSC or by the SPO. The SPO had no part in the production of these documents and was not in a position to influence or affect in any way the protection of the rights of the individuals concerned. Secondly, these cases are also materially distinguishable. In the *Halilović* case, the impugned record of interview had been given at a time when Mr Halilović had already been charged by the ICTY Office of the Prosecutor and was being detained by the ICTY. Those circumstances are not present here. Furthermore, it is of note that the Appeals Chamber of the ICTY quashed the decision of the Trial Chamber to admit Mr Halilović's record of interview with the ICTY Prosecutor based on circumstances entirely foreign to the present case, namely: the existence of an inducement and promise of an 'agreement' with the Accused on the part of the Prosecutor and the ineffectiveness of counsel who had represented Mr Halilović during those interviews.<sup>457</sup> Regarding the case of Mr Praljak, he was called to give evidence by the Defence in the *Naletelić and Martinović* case and subject to cross-examination by the Prosecutor of the ICTY, who was thus in a position to elicit incriminating evidence from him which it would later seek to produce as evidence in the prosecution of Mr Praljak. Again, those circumstances are materially distinct from the present one where the SPO has had no part in producing or eliciting incriminating evidence from the Accused in the statements and records concerned. Finally, the Panel notes that the Defence did not point to any precedent or

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<sup>457</sup> [Halilović Appeal Decision](#), quashing ICTY, *Prosecutor v. Halilović*, IT-01-48-T, Trial Chamber, [Decision on Admission into Evidence of Interview of the Accused](#), 20 June 2005.



principle that would require this Panel to grant the Accused not just retrospective (as per the *Prlić et al.* decision noted above) but also extra-jurisdictional effect to their rights to silence and/or against self-incrimination. The Panel also concludes that the ICTY acted in full compliance with its own regulatory regime and that there is no indication that, when so doing, it violated the fundamental rights of those concerned.<sup>458</sup> The record in fact suggests that all statements made by the Accused before the ICTY were made freely and voluntarily.

161. For the reasons mentioned above, the Panel is satisfied that the May 2005 ICTY Trial Testimony was voluntary, free of coercion and improper compulsion and, hence, taken in a manner consistent with the standards of international human rights law. Moreover, the Panel notes that, as a witness, Mr Selimi had the right to object to making any statement which might tend to incriminate him, pursuant to ICTY Rule 90(E). While this cannot be taken to constitute a waiver of Mr Selimi's right to silence and/or against self-incrimination in respect of the present proceedings, it shows that any concern that he may have had at the time regarding the risk of self-incrimination (if any) was not such as to prompt him to seek any relief from the ICTY. The Panel further notes that when subsequently presented with the content of his testimony, Mr Selimi did not raise any objection that his rights had been violated.<sup>459</sup> There is also no indication before the Panel that Mr Selimi felt pressured or coerced to answer any question, which he would otherwise have elected not to answer. The Panel further observes that

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<sup>458</sup> ICTY, *Prosecutor v. Brđanin*, IT-99-36-T, Trial Chamber II, [Decision on Motion to Set Aside Confidential Subpoena to give Evidence](#), 7 June 2002, para. 31; *Prosecutor v. Brđanin*, IT-99-36-T, Trial Chamber II, [Order on the Standards Governing the Admission of Evidence](#), 15 February 2002, para. 9. See also International Criminal Tribunal for Rwanda ("ICTR"), *Prosecutor v. Bizimungu et al.*, ICTR-99-50-T, Trial Chamber II, [Decision on Prosper Mugiraneza's Second Motion to Dismiss Indictment for Violation of Right to Trial Without Undue Delay – Articles 19 and 20\(4\)\(c\) of the Statute of the Tribunal](#), 29 May 2007, paras 19-21; Special Tribunal for Lebanon ("STL"), *In the matter of El Sayed*, CH/PTH/2010/005, Pre-Trial Judge, [Order Relating to the Jurisdiction of the Tribunal to Rule on the Application by Mr El Sayed Dated 17 March 2010 and Whether Mr El Sayed has Standing before the Tribunal](#), 17 September 2010, para. 46.

<sup>459</sup> The Panel notes that two parts of the Selimi May 2005 ICTY Trial Testimony were put to Mr Selimi during his November 2019 SPO Interview (068933-TR-ET Part 8, p. 18 and 068933-TR-ET Part 13, p. 11).

the May 2005 ICTY Trial Testimony is dated and consists of the transcript of three hearings held in the *Limaj et al.* proceedings before the ICTY.<sup>460</sup> The Panel is therefore satisfied that the May 2005 ICTY Trial Testimony is *prima facie* authentic and has probative value. The Panel observes that the Defence will have the opportunity to present evidence to challenge the May 2005 ICTY Trial Testimony, which will then be assessed by the Panel in light of the entirety of the evidence. The Panel therefore finds that the probative value of the May 2005 ICTY Trial Testimony is not outweighed by its prejudicial effect.

162. Turning to the Associated Exhibits, the Panel notes that they were shown to Mr Selimi and discussed in some detail during his trial testimony.<sup>461</sup> The Panel is satisfied that the Associated Exhibits form an indispensable and inseparable part of the May 2005 ICTY Trial Testimony. As such, the Panel is satisfied that they: (i) are relevant and will provide relevant context to the written record in which they are discussed; (ii) bear sufficient indicia of authenticity; and (iii) have probative value, which is not outweighed by their prejudicial effect.

163. For the above-mentioned reasons, the Panel finds that: (i) the Selimi May 2005 ICTY Trial Testimony was obtained in compliance with the standards of international human rights law; and (ii) the Selimi May 2005 ICTY Trial Testimony and its Associated Exhibits are relevant and *prima facie* authentic, have probative value which is not outweighed by their prejudicial effect, and are therefore admissible pursuant to Rule 138(1).

### (c) Conclusion

164. Based on the above, the Panel finds that: (i) the Selimi Witness Statements and Testimony were obtained in compliance with the standards of international

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<sup>460</sup> IT-03-66 T6583-T6589; IT-03-66 T6590-T6679; T6680-T6699.

<sup>461</sup> See *e.g.* IT-03-66 T6590-T6679, pp. 16-17 (IT-03-66 P1.7), 88-90 (IT-03-66 P24); IT-03-66 T6680-T6699, pp. 1-4 (IT-03-66 P248).

human rights law; and (ii) the Selimi Witness Statements and Testimony and their Associated Exhibits are relevant and *prima facie* authentic, have probative value which is not outweighed by their prejudicial effect, and are therefore admissible pursuant to Rule 138(1).

### 3. Veseli Witness Statements and Testimony

#### (a) Submissions

165. The SPO requests the admission of the following prior witness statements or testimony with Mr Veseli: (i) SPRK interviews dated 13 September 2010 and 3 May 2011;<sup>462</sup> (ii) SPRK interview dated 26 September 2011;<sup>463</sup> (iii) SPRK interview dated 9 July 2018;<sup>464</sup> (iv) EULEX trial testimony before the Supreme Court of Kosovo dated 20 June 2012;<sup>465</sup> and (v) UNMIK statement dated 18 November 2003<sup>466</sup> (“Veseli Witness Statements and Testimony”).<sup>467</sup> The SPO submits that, for the reasons set out above,<sup>468</sup> the Veseli Witness Statements and Testimony are authentic, relevant, and have probative value which is not outweighed by any prejudicial effect.<sup>469</sup>

166. The Veseli Defence does not oppose the admission of the Veseli Witness Statements and Testimony.<sup>470</sup>

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<sup>462</sup> SITF00398137-SITF00398157 (“2010/2011 SPRK Witness Statement”).

<sup>463</sup> SITF00009124-00009133 (“September 2011 SPRK Witness Statement”).

<sup>464</sup> SPOE00213660-SPOE00213662-ET (“July 2018 SPRK Witness Statement”).

<sup>465</sup> SITF00398181-00398216 (“June 2012 EULEX Trial Testimony”).

<sup>466</sup> SITF00253817-00253819 (“November 2003 UNMIK Witness Statement”).

<sup>467</sup> Request, paras 37-44, 62-63, 88-89. *See also* Annex to the Request, items 11-13, 19, 31.

<sup>468</sup> *See above* para. 123.

<sup>469</sup> Request, paras 110-116.

<sup>470</sup> Veseli Response, para. 3.

(b) Determination by the Panel

i. Veseli 2010/2011 SPRK Witness Statement

167. The Panel notes that, in his 2010/2011 SPRK Witness Statement, Mr Veseli provided evidence that the SPO intends to rely upon in relation to allegations pertaining to, *inter alia*: (i) his positions within the KLA and the Provisional Government of Kosovo (“PGoK”);<sup>471</sup> (ii) his leadership of the SHIK, its organisation, and its role in gathering intelligence about ‘the enemy’;<sup>472</sup> and (iii) strategies to uncover ‘collaborators’.<sup>473</sup> The Panel also notes that the Veseli Defence did not challenge the relevance of the 2010/2011 SPRK Witness Statement. The Panel is satisfied that the 2010/2011 SPRK Witness Statement is relevant to the charges in the indictment.

168. The Panel observes that, before the start of his interview, Mr Veseli was informed that he was a witness, that he had to tell the truth and that he was not required to answer questions that would expose him to criminal prosecution, and confirmed that he understood his rights and obligations.<sup>474</sup> The Panel is therefore of the view that the 2010/2011 SPRK Witness Statement was voluntary, free of coercion and improper compulsion and taken in a manner consistent with the standards of international human rights law. The Panel further observes that the 2010/2011 SPRK Witness Statement is dated and consists of the transcript of two interviews conducted by the SPRK with Mr Veseli.<sup>475</sup> The Panel also notes that the Veseli Defence did not challenge the authenticity or probative value of the 2010/2011 SPRK Witness Statement. There is no indication of any of the authorities involved having acted in bad faith or unreasonably when treating him as a witness rather than a suspect in the circumstances prevailing at the time. The Panel is

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<sup>471</sup> SITF00398137-SITF00398157, pp. 2-3.

<sup>472</sup> SITF00398137-SITF00398157, pp. 2-4, 6-12.

<sup>473</sup> SITF00398137-SITF00398157, p. 10.

<sup>474</sup> SITF00398137-SITF00398157, pp. 1, 2, 5.

<sup>475</sup> SITF00398137-SITF00398157, pp. 1, 5.

therefore satisfied that the 2010/2011 SPRK Witness Statement is *prima facie* authentic and has probative value. The Panel observes that the Defence will have the opportunity to present evidence to challenge any aspects of the 2010/2011 SPRK Witness Statement with which it takes issue and to raise any such aspect with witnesses called by the SPO who are capable of testifying to those issues. The Panel therefore finds that the probative value of the 2010/2011 SPRK Witness Statement is not outweighed by its prejudicial effect.

169. For the above-mentioned reasons, the Panel finds that the Veseli 2010/2011 SPRK Witness Statement is relevant and *prima facie* authentic, was obtained in compliance with the standards of international human rights law, has probative value which is not outweighed by its prejudicial effect, and is therefore admissible pursuant to Rule 138(1).

ii. Veseli September 2011 SPRK Witness Statement

170. The Panel notes that, in his September 2011 SPRK Witness Statement, Mr Veseli provided evidence that the SPO intends to rely upon in relation to allegations pertaining to, *inter alia*: (i) his membership within the KLA;<sup>476</sup> (ii) his position on the KLA General Staff;<sup>477</sup> (iii) his movements within and outside of Kosovo;<sup>478</sup> (iv) his interactions with other KLA members, such as Fatmir Limaj and Bislim Zyrapi;<sup>479</sup> (v) 'Operation Arrow';<sup>480</sup> and (vi) interactions between Fatmir Limaj, Azem Sylja, Jakup Krasniqi, Hashim Thaçi, Xhavit Haliti, Bislim Zyrapi, Agim Çeku, and Rame Buja.<sup>481</sup> The Panel also notes that the Veseli Defence did not challenge the relevance of the September 2011 SPRK Witness Statement. The Panel

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<sup>476</sup> SITF00009124-00009133, p. 2.

<sup>477</sup> SITF00009124-00009133, p. 2.

<sup>478</sup> SITF00009124-00009133, pp. 2-5.

<sup>479</sup> SITF00009124-00009133, pp. 3-5.

<sup>480</sup> SITF00009124-00009133, p. 4.

<sup>481</sup> SITF00009124-00009133, pp. 3-5.

is thus satisfied that the September 2011 SPRK Witness Statement is relevant to the charges in the indictment.

171. The Panel observes that, before the start of his interview, Mr Veseli was informed that he was a witness, that he had to tell the truth and that he was not required to answer questions that would expose him to criminal prosecution, and confirmed that he understood his rights and obligations.<sup>482</sup> The Panel is therefore of the view that the September 2011 SPRK Witness Statement was voluntary, free of coercion and improper compulsion and taken in a manner consistent with the standards of international human rights law. The Panel further observes that the September 2011 SPRK Witness Statement is dated and signed by the SPRK Public Prosecutor, the Court Recorder, the Interpreter, and Mr Veseli.<sup>483</sup> The Panel also notes that the Veseli Defence did not challenge the authenticity or probative value of the September 2011 SPRK Witness Statement. The Panel is therefore satisfied that the September 2011 SPRK Witness Statement is *prima facie* authentic and has probative value. The Panel observes that the Defence will have the opportunity to challenge any aspects of the September 2011 SPRK Witness Statement with which it takes issue and to put those to witnesses called by the SPO. The Panel therefore finds that the probative value of the September 2011 SPRK Witness Statement is not outweighed by its prejudicial effect.

172. For the above-mentioned reasons, the Panel finds that the Veseli September 2011 SPRK Witness Statement is relevant and *prima facie* authentic, was obtained in compliance with the standards of international human rights law, has probative value which is not outweighed by its prejudicial effect, and is therefore admissible pursuant to Rule 138(1).

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<sup>482</sup> SITF00009124-00009133, p. 1.

<sup>483</sup> SITF00009124-00009133, pp. 1-5.

iii. Veseli July 2018 SPRK Witness Statement

173. The Panel notes that, in his July 2018 SPRK Witness Statement, Mr Veseli provided evidence that the SPO intends to rely upon in relation to allegations pertaining to, *inter alia*: (i) his relationship with Fehmi Lladrovci; (ii) whether he knew of Ramiz Lladrovci attempting to contact Hashim Thaçi; (iii) whether he knew the victim in the case; and (iv) whether Mr Veseli had any knowledge of the victim's whereabouts.<sup>484</sup> The Panel also notes that the Veseli Defence did not challenge the relevance of the July 2018 SPRK Witness Statement. The Panel is satisfied that the July 2018 SPRK Witness Statement is relevant to the charges in the indictment.

174. The Panel observes that, before the start of the interview, Mr Veseli was advised of his rights and obligations under Articles 125 and 129 of the KCPC and informed that "as a witness he is not obligated to answer specific questions where by so doing he is likely to expose himself or a close relative to serious disgrace, considerable material damage or criminal prosecution", and confirmed that he understood his rights.<sup>485</sup> The Panel is therefore of the view that the July 2018 SPRK Witness Statement was voluntary, free of coercion and improper compulsion and taken in a manner consistent with the standards of international human rights law. The Panel further observes that the July 2018 SPRK Witness Statement is dated and signed by the State Prosecutor, the Court Recorder, the Investigating Sergeant, and Mr Veseli.<sup>486</sup> The Panel also notes that the Veseli Defence did not challenge the authenticity or probative value of the July 2018 SPRK Witness Statement. The Panel therefore finds that the July 2018 SPRK Witness Statement is *prima facie* authentic and has probative value. The Panel observes that the Defence will have the opportunity to challenge at trial any aspect of the statement and to present

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<sup>484</sup> SPOE00213660-SPOE00213662-ET, pp. 2-3.

<sup>485</sup> SPOE00213660-SPOE00213662-ET, p. 2.

<sup>486</sup> SPOE00213660-SPOE00213662-ET, pp. 1-3.

evidence in respect of any such aspect. The Panel therefore finds that the probative value of the July 2018 SPRK Witness Statement is not outweighed by its prejudicial effect.

175. For the above-mentioned reasons, the Panel finds that the Veseli July 2018 SPRK Witness Statement is relevant and *prima facie* authentic, was obtained in compliance with the standards of international human rights law, has probative value which is not outweighed by its prejudicial effect, and is therefore admissible pursuant to Rule 138(1).

iv. Veseli June 2012 EULEX Trial Testimony

176. The Panel notes that, in his June 2012 EULEX Trial Testimony, Mr Veseli provided evidence that the SPO intends to rely upon in relation to allegations pertaining to, *inter alia*: (i) his positions and duties within the KLA;<sup>487</sup> (ii) his leadership of the ZKZ/G2 and the SHIK, as well as the SHIK's degree of organisation, and the recruitment of members;<sup>488</sup> and (iii) the command structures within the KLA.<sup>489</sup> The Panel also notes that the Veseli Defence did not challenge the relevance of the June 2012 EULEX Trial Testimony. The Panel is satisfied that the June 2012 EULEX Trial Testimony is relevant to the charges in the indictment.

177. The Panel observes that, prior to questioning, Mr Veseli was advised of his obligation to tell the truth and of the fact that he did not need to answer a particular question "by which [he] would be likely to expose [him]self or a close relative to serious disgrace, considerable material damage or criminal prosecution", and took the oath accordingly.<sup>490</sup> The Panel is therefore of the view that the June 2012 EULEX Trial Testimony was voluntary, free of coercion and

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<sup>487</sup> SITF00398181-00398216, p. 6.

<sup>488</sup> SITF00398181-00398216, pp. 3-12, 28-31.

<sup>489</sup> SITF00398181-00398216, p. 9.

<sup>490</sup> SITF00398181-00398216, p. 3.



improper compulsion and taken in a manner consistent with the standards of international human rights law. The Panel further observes that the June 2012 EULEX Trial Testimony is dated and consists of the transcript of a hearing held in a EULEX criminal proceedings before the Supreme Court of Kosovo.<sup>491</sup> The Panel also notes that the Veseli Defence did not challenge the authenticity or probative value of the June 2012 EULEX Trial Testimony. The Panel therefore finds that the June 2012 EULEX Trial Testimony is *prima facie* authentic and has probative value. The Panel observes that the Defence will have the opportunity to challenge at trial any aspect of the statement and to present evidence in respect of any such aspect. The Panel therefore finds that the probative value of the June 2012 EULEX Trial Testimony is not outweighed by its prejudicial effect.

178. For the above-mentioned reasons, the Panel finds that the Veseli June 2012 EULEX Trial Testimony is relevant and *prima facie* authentic, was obtained in compliance with the standards of international human rights law, has probative value which is not outweighed by its prejudicial effect, and is therefore admissible pursuant to Rule 138(1).

v. Veseli November 2003 UNMIK Witness Statement

179. The Panel notes that, in his November 2003 UNMIK Witness Statement, Mr Veseli provided evidence that the SPO intends to rely upon in relation to allegations pertaining to, *inter alia*: (i) events related to the Kosovo conflict;<sup>492</sup> (ii) his role and duties within the KLA;<sup>493</sup> (iii) his movements within and outside of Kosovo;<sup>494</sup> and (iv) his relationship with Sabit Geci.<sup>495</sup> The Panel also notes that the Veseli Defence did not challenge the relevance of the November 2003 UNMIK

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<sup>491</sup> SITF00398181-00398216, pp. 1-36.

<sup>492</sup> SITF00253817-00253819, pp. 1-3.

<sup>493</sup> SITF00253817-00253819, pp. 1-2.

<sup>494</sup> SITF00253817-00253819, pp. 1-2.

<sup>495</sup> SITF00253817-00253819, pp. 2-3.

Witness Statement. The Panel is satisfied that the November 2003 UNMIK Witness Statement is relevant to the charges in the indictment.

180. The Panel observes that, prior to questioning, Mr Veseli was advised that he was “obliged to provide [his] details correctly and to the best of [his] knowledge” and that he was “free to say nothing, and anything [he says] can and will be used as evidence”, and consented to it.<sup>496</sup> The Panel is therefore of the view that the November 2003 UNMIK Witness Statement was voluntary, free of coercion and improper compulsion and taken in a manner consistent with the standards of international human rights law. The Panel further observes that the November 2003 UNMIK Witness Statement is dated and signed by the investigator and Mr Veseli.<sup>497</sup> The Panel also notes that the Veseli Defence did not challenge the authenticity or probative value of the November 2003 UNMIK Witness Statement. The Panel therefore finds that the November 2003 UNMIK Witness Statement is *prima facie* authentic and has probative value. The Panel observes that the Defence will have the opportunity to challenge at trial any aspect of the statement and to present evidence in respect of any such aspect. The Panel therefore finds that the probative value of the November 2003 UNMIK Witness Statement is not outweighed by its prejudicial effect.

181. For the above-mentioned reasons, the Panel finds that the Veseli November 2003 UNMIK Witness Statement is relevant and *prima facie* authentic, was obtained in compliance with the standards of international human rights law, has probative value which is not outweighed by its prejudicial effect, and is therefore admissible pursuant to Rule 138(1).

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<sup>496</sup> SITF00253817-00253819, p. 1.

<sup>497</sup> SITF00253817-00253819, pp. 1-3.

## (c) Conclusion

182. Based on the above, the Panel finds that the Veseli Witness Statements and Testimony are relevant and *prima facie* authentic, were obtained in compliance with the standards of international human rights law, have probative value which is not outweighed by their prejudicial effect, and are therefore admissible pursuant to Rule 138(1).

#### 4. Krasniqi Witness Statements and Testimony

## (a) Submissions

183. The SPO seeks admission of the following prior witness statements or testimony of Mr Krasniqi: (i) SPRK interview dated 13 June 2018;<sup>498</sup> (ii) Gjakova Basic Court SPRK trial testimony dated 2 February 2018;<sup>499</sup> (iii) ICTY statement dated 23 and 24 May 2007<sup>500</sup> and its Associated Exhibits;<sup>501</sup> (iv) ICTY trial testimony dated 10 to 15 February 2005 in the *Limaj et al.* proceedings,<sup>502</sup> and its Associated Exhibits<sup>503</sup>; (v) ICTY trial testimony dated 29 to 31 May 2007 in the *Haradinaj et al.* proceedings,<sup>504</sup> and its Associated Exhibits<sup>505</sup> (“Krasniqi Witness Statements and Testimony”).<sup>506</sup> The SPO submits that, for the reasons set out

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<sup>498</sup> SPOE00213595-SPOE00213597-ET (“June 2018 SPRK Witness Statement”).

<sup>499</sup> SPOE00068088-SPOE00068094-ET (“February 2018 SPRK Trial Testimony”).

<sup>500</sup> IT-04-84 P00328, pp. 1-9 (“May 2007 ICTY Witness Statement”).

<sup>501</sup> IT-04-84 P00328, pp. 10-94 (Associated Exhibits 1-19).

<sup>502</sup> IT-03-66 T3285-T3365; IT-03-66 T3366-T3447; IT-03-66 T3448-T3540 (pp. 1-46); IT-03-66 10 February 2005 Jakup KRASNIQI Parts 1-3; IT-03-66 14 February 2005 Jakup KRASNIQI Parts 1-3; IT-03-66 15 February 2005 Jakup KRASNIQI Parts 1-2 (“February 2005 ICTY Trial Testimony”).

<sup>503</sup> IT-03-66 P1.5; IT-03-66 P49; IT-03-66 P138; IT-03-66 P139; IT-03-66 P140; IT-03-66 P147; IT-03-66 P148; IT-03-66 P150.

<sup>504</sup> IT-04-84bis P00064; IT-04-84bis P00063 Confidential; IT-04-84 T5000-T5086 unredacted Parts 1-3 Confidential; IT-04-84 T5087-T5185 Parts 1-2 Confidential; IT-04-84 29 May 2007 Jakup KRASNIQI Parts 1-2; IT-04-84 30 May 2007 Jakup KRASNIQI Parts 1-3; IT-04-84 31 May 2007 Jakup KRASNIQI Parts 1-2 (“May 2007 ICTY Trial Testimony”).

<sup>505</sup> U003-8552-U003-8690; IT-04-84 D00037.

<sup>506</sup> Request, paras 58-61, 67-69, 78-81, 84-87. *See also* Annex to the Request, items 18, 21, 24, 27-30.

above,<sup>507</sup> the Krasniqi Witness Statements and Testimony are authentic, relevant, and have probative value which is not outweighed by any prejudicial effect.<sup>508</sup>

184. The Krasniqi Defence objects to the admission of the Krasniqi Witness Statements and Testimony as Mr Krasniqi's rights were not sufficiently safeguarded and therefore the prejudicial effect of their admission outweighs any probative value and should be excluded pursuant to Rules 138(1)-(2) and/or Article 55 of the Constitution.<sup>509</sup> Specifically, the Krasniqi Defence submits that the Krasniqi Witness Statements and Testimony were obtained in violation of Mr Krasniqi's rights and should be excluded as: (i) the February 2005 ICTY testimony was not given voluntarily rather Mr Krasniqi was legally compelled to testify and he was not advised of his right against self-incrimination, his right to not answer questions and right to seek legal assistance;<sup>510</sup> (ii) during the May 2007 ICTY statement, Mr Krasniqi was not notified of his right to seek legal assistance, or privilege against self-incrimination, and expressly withheld his consent for this statement to be provided to other law enforcement agencies and the statement is not a *verbatim* record;<sup>511</sup> (iii) during the May 2007 ICTY testimony, Mr Krasniqi was not informed of his right to seek legal assistance, or privilege against self-incrimination;<sup>512</sup> and (iv) it contests the authenticity of the February 2018 SPRK statement as the "record equipment went missing" and is only available in transcription form, and submits that the notification of Mr Krasniqi's right against self-incrimination was inconsistent with the requirements of the SC's legal framework and the testimony was given in respect of matters which form the subject matter of the charges against Mr Krasniqi, and

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<sup>507</sup> See above para. 123.

<sup>508</sup> Request, paras 110-116.

<sup>509</sup> Krasniqi Response, paras 27, 37-39.

<sup>510</sup> Krasniqi Response, paras 29-31.

<sup>511</sup> Krasniqi Response, paras 32-34.

<sup>512</sup> Krasniqi Response, para. 35.

he should therefore have been afforded the rights of a suspect.<sup>513</sup> In addition, the Krasniqi Defence submits that the June 2018 SPRK interview should be excluded due to its low probative value as the interview was only 19 minutes, only consisted of seven questions, and the content therein is not in dispute, is exculpatory in nature and adds nothing to the SPO's case.<sup>514</sup> The Krasniqi Defence also challenges the admissibility of an Associated Exhibit – an interview with Mr Krasniqi published by “Der Spiegel” on 6 July 1998 – as it alleges doubts on the accuracy of the document.<sup>515</sup>

185. The Veseli Defence challenges the admission, as an associated exhibit to the May 2007 ICTY Witness Statement, of a communiqué published on 13 May 1998 by the newspaper *Koha Ditore* as it submits that it lacks authenticity and reliability and ought to be tendered through a witness who can speak to the veracity of their contents.<sup>516</sup>

186. The SPO replies that the Krasniqi Defence's arguments are based on the erroneous assertion that he was entitled to the rights of a suspect when these statements were taken, but as he was not a suspect at the time, he was not entitled to those rights.<sup>517</sup> The SPO avers that there is no barrier to admitting statements that were taken in accordance with Mr Krasniqi's rights at the time.<sup>518</sup> The SPO argues that, while Mr Krasniqi's ICTY statement does not contain an acknowledgment of his right not to self-incriminate as a witness, that is because the ICTY Rules of Procedure and Evidence did not require that a witness be informed of this right.<sup>519</sup> The SPO also submits that: (i) Mr Krasniqi explained his reasons for not appearing voluntarily at his 2005 ICTY testimony, and did not

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<sup>513</sup> Krasniqi Response, paras 40-42.

<sup>514</sup> Krasniqi Response, para. 43.

<sup>515</sup> Krasniqi Response, para. 75(i).

<sup>516</sup> Veseli Response, paras 29-30, 35-37, *referring to* IT-04-84 P00328, pp. 58-60.

<sup>517</sup> Reply to the Krasniqi Response, paras 3, 6.

<sup>518</sup> Reply to the Krasniqi Response, para. 3.

<sup>519</sup> Reply to the Krasniqi Response, paras 4-5.

mention concerns regarding self-incrimination;<sup>520</sup> (ii) Mr Krasniqi later confirmed his 2005 ICTY testimony;<sup>521</sup> (iii) the Krasniqi Defence's argument that Mr Krasniqi's ICTY statement should not be admitted because it is not a verbatim transcript is meritless;<sup>522</sup> and (iv) the 2 February 2018 and 13 June 2018 SPRK interviews should be admitted as they have probative value and Mr Krasniqi was afforded the appropriate rights commensurate with his status of witness.<sup>523</sup> The SPO further argues that the Krasniqi Defence and Veseli Defence fail to substantiate adequate reasons why the Associated Exhibit they address should not be admitted.<sup>524</sup>

(b) Determination by the Panel

i. Krasniqi June 2018 SPRK Witness Statement

187. The Panel notes that, in his June 2018 SPRK Witness Statement, Mr Krasniqi provided evidence that the SPO intends to rely upon in relation to allegations pertaining to, *inter alia*: (i) his position within the KLA;<sup>525</sup> (ii) the KLA General Staff;<sup>526</sup> (iii) whether he knew the whereabouts of the victim in that case;<sup>527</sup> (iv) him denying of having any knowledge regarding the victim's whereabouts;<sup>528</sup> and (v) his knowledge of Ramiz Lladrovci's request for a meeting with the Accused Hashim Thaçi.<sup>529</sup> The Panel also notes that the Krasniqi Defence did not challenge the relevance of the June 2018 SPRK Witness Statement. The Panel is satisfied that the June 2018 SPRK Witness Statement is relevant to the charges in the indictment.

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<sup>520</sup> Reply to the Krasniqi Response, para. 7.

<sup>521</sup> Reply to the Krasniqi Response, para. 7.

<sup>522</sup> Reply to the Krasniqi Response, para. 8.

<sup>523</sup> Reply to the Krasniqi Response, paras 9-12.

<sup>524</sup> Reply to the Krasniqi Response, paras 15, 21; Reply to the Veseli Response, para. 7.

<sup>525</sup> SPOE00213595-SPOE00213597-ET, p. 2.

<sup>526</sup> SPOE00213595-SPOE00213597-ET, pp. 2-3.

<sup>527</sup> SPOE00213595-SPOE00213597-ET, pp. 2-3.

<sup>528</sup> SPOE00213595-SPOE00213597-ET, pp. 2-3.

<sup>529</sup> SPOE00213595-SPOE00213597-ET, pp. 2-3.

188. The Panel observes that, before the start of the interview, Mr Krasniqi was advised of his rights and obligations under Articles 125 and 129 of the KCPC. In particular, he was informed that: (i) if he believed that he may incriminate himself as a result of answering a question, he may refuse to answer; (ii) if he believed that he needed the assistance of an attorney as a result of answering a question, he may hire and consult an attorney and that; and (iii) “as a witness he is not obligated to answer individual questions by which he would be likely to expose himself or a close relative to serious disgrace, considerable material damage or criminal prosecution”.<sup>530</sup> Mr Krasniqi confirmed that he understood his rights.<sup>531</sup> The Panel is therefore of the view that the June 2018 SPRK Witness Statement was voluntary, free of coercion and improper compulsion, and taken in a manner consistent with the standards of international human rights law. The Panel further notes, in response to the Defence’s general submissions on that point, that the privilege against self-incrimination does not exempt a person from the duty to give evidence in criminal cases, as an exercise of one’s civic duties.<sup>532</sup> Instead, it provides a safeguard against the possibility of an individual unwittingly providing information that could incriminate him or her. There is no indication of this happening in the present context. The Panel further observes that the June 2018 SPRK Witness Statement is dated and signed by the State Prosecutor, the Court Recorder, and Mr Krasniqi.<sup>533</sup> The Panel also notes that the Krasniqi Defence did not challenge the authenticity of the June 2018 SPRK Witness Statement. The Panel is therefore satisfied that the June 2018 SPRK Witness Statement is *prima facie* authentic. Considering the relevance of the evidence contained in the June 2018 SPRK Witness Statement, the Panel is also satisfied that the probative value of the June 2018 SPRK Witness Statement is not undermined by its limited

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<sup>530</sup> SPOE00213595-SPOE00213597-ET, p. 2.

<sup>531</sup> SPOE00213595-SPOE00213597-ET, p. 2.

<sup>532</sup> See e.g. ECtHR, *Voskuil v. the Netherlands*, Application no. 64752/01, [Judgment](#), 22 November 2007, para. 86.

<sup>533</sup> SPOE00213595-SPOE00213597-ET, pp. 1-3.

length or exculpatory content. The Panel further observes that the Defence will have the opportunity to present evidence in respect of any issue discussed in these records with which issue is being taken and/or to call evidence in respect of those issues. The Panel therefore finds that the June 2018 SPRK Witness Statement has probative value, which, contrary to the Krasniqi Defence's submissions, is not outweighed by any prejudicial effect.

189. For the above-mentioned reasons, the Panel finds that the Krasniqi June 2018 SPRK Witness Statement is relevant and *prima facie* authentic, was obtained in compliance with the standards of international human rights law, has probative value which is not outweighed by its prejudicial effect, and is therefore admissible pursuant to Rule 138(1).

ii. Krasniqi February 2018 SPRK Trial Testimony

190. The Panel notes that, in his February 2018 SPRK Trial Testimony, Mr Krasniqi provided evidence that the SPO intends to rely upon in relation to allegations pertaining to, *inter alia*: (i) his role and duties within the KLA;<sup>534</sup> (ii) the role of other KLA members and leaders;<sup>535</sup> (iii) KLA General Staff functions;<sup>536</sup> (iv) his relationship to Fatmir Limaj;<sup>537</sup> (v) his knowledge of the killings of Ramiz Hoxha and Selman Binishi;<sup>538</sup> and (vi) the arrest of two LDK members.<sup>539</sup> The Panel also notes that the Krasniqi Defence did not challenge the relevance of the February 2018 SPRK Trial Testimony. The Panel is satisfied that the February 2018 SPRK Trial Testimony is relevant to the charges in the indictment.

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<sup>534</sup> SPOE00068088-SPOE00068094-ET, pp. 2-7.

<sup>535</sup> SPOE00068088-SPOE00068094-ET, pp. 2-7.

<sup>536</sup> SPOE00068088-SPOE00068094-ET, pp. 2, 6.

<sup>537</sup> SPOE00068088-SPOE00068094-ET, p. 6.

<sup>538</sup> SPOE00068088-SPOE00068094-ET, p. 3.

<sup>539</sup> SPOE00068088-SPOE00068094-ET, pp. 2-7.



191. The Panel observes that, before the start of the testimony, Mr Krasniqi was “informed by the Court that he has an obligation to tell the truth and that giving false testimony constitutes a criminal offense, that he can refuse to answer any question that would subject himself or [a] close relative to disgrace or serious material or other harm.”<sup>540</sup> The Panel is satisfied that Mr Krasniqi was properly notified of his privilege against self-incrimination, regardless of the inconsistency between the wordings of the warning he received at the outset of his testimony and that now required by the KSC.<sup>541</sup> The Panel is not persuaded by the Krasniqi Defence’s argument that it is unfair to rely on evidence elicited without suspect safeguards, against Mr Krasniqi.<sup>542</sup> In this regard, the Panel recalls its previous finding regarding the full array of warnings for a suspect not being necessary for the admission of a statement given to previous investigative authorities by a witness who is not considered a suspect at the time and through the course of his or her interview or testimony.<sup>543</sup> The Panel also reiterates, once again, that the principle of self-incrimination does not constitute a basis to refuse to fulfil one’s civic duty to provide evidence in a criminal case, but a guarantee against unwittingly providing incriminating information. There is no indication of the SPRK having violated this safeguard or having acted in bad faith or unreasonably when interviewing Mr Krasniqi as a witness rather than a suspect. The Panel is therefore satisfied that the February 2018 SPRK Trial Testimony was voluntary, free of coercion and improper compulsion and taken in a manner consistent with the standards of international human rights law. The Panel further observes that the February 2018 SPRK Trial Testimony is dated and consists of the transcript of a hearing held in a criminal proceedings before the Gjakova Basic Court.<sup>544</sup> The

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<sup>540</sup> SPOE00068088-SPOE00068094-ET, p. 2.

<sup>541</sup> Krasniqi Response, para. 41.

<sup>542</sup> Krasniqi Response, para. 42.

<sup>543</sup> See *above* para. 129, 159-160.

<sup>544</sup> SPOE00068088-SPOE00068094-ET, pp. 1-7.

Panel is of the view that, contrary to the Krasniqi Defence's submissions,<sup>545</sup> the fact that the February 2018 SPRK Trial Testimony was not recorded does not affect its reliability as Mr Krasniqi's statements were transcribed in the course of a hearing before the Gjakova Basic Court and the parties involved did not object to the proceedings being recorded in transcribed form.<sup>546</sup> The Panel is therefore satisfied that the February 2018 SPRK Trial Testimony is *prima facie* authentic and therefore has probative value. The Panel observes that the Defence will have the opportunity to present evidence in respect of any issue discussed in these records with which issue is being taken and/or to call evidence in respect of those issues. The Panel therefore finds that, contrary to the Krasniqi Defence's submissions,<sup>547</sup> the probative value of the February 2018 SPRK Trial Testimony is not outweighed by its prejudicial effect.

192. For the above-mentioned reasons, the Panel finds that the Krasniqi February 2018 SPRK Trial Testimony is relevant and *prima facie* authentic, was obtained in compliance with the standards of international human rights law, has probative value which is not outweighed by its prejudicial effect, and is therefore admissible pursuant to Rule 138(1).

iii. Krasniqi May 2007 ICTY Witness Statement

193. The Panel notes that, in his May 2007 ICTY Witness Statement, Mr Krasniqi provided evidence that the SPO intends to rely upon in relation to allegations pertaining to, *inter alia*: (i) events related to the Kosovo conflict, such as the January 1998 attack on the Jashari compound;<sup>548</sup> (ii) his role in the KLA;<sup>549</sup> (iii) the KLA's structure, organisation of members, its operational zones, weapons,

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<sup>545</sup> Krasniqi Response, para. 40.

<sup>546</sup> SPOE00068088-SPOE00068094-ET, p. 1.

<sup>547</sup> Krasniqi Response, para. 41.

<sup>548</sup> IT-04-84 P00328, p. 3.

<sup>549</sup> IT-04-84 P00328, p. 2.

recruitments and funds,<sup>550</sup> and (iv) the KLA General Staff.<sup>551</sup> The Panel also notes that the Krasniqi Defence did not challenge the relevance of the May 2007 ICTY Witness Statement. The Panel is satisfied that the May 2007 ICTY Witness Statement is relevant to the charges in the indictment.

194. The Panel observes that Mr Krasniqi: (i) confirmed that he came to the ICTY voluntarily, and was not forced or threatened to do so;<sup>552</sup> (ii) acknowledged that the May 2007 ICTY Witness Statement is true to the best of his knowledge and recollection, that he gave it voluntarily in the awareness that it may be used in legal proceedings before the ICTY and that he may be called to give evidence before the Tribunal;<sup>553</sup> and (iii) at the start of his May 2007 ICTY Trial Testimony, confirmed that he gave the May 2007 ICTY Witness Statement and also confirmed the accuracy and truthfulness thereof.<sup>554</sup> The Panel recalls its previous finding regarding the full array of warnings for a suspect not being necessary for the admission of a statement given to previous investigative authorities by a witness who is not considered a suspect at the time and through the course of his or her interview or testimony.<sup>555</sup> The Panel further considers the jurisprudence referred to by the Krasniqi Defence in its Response regarding prior statements gathered by a different institution.<sup>556</sup> The Panel is not persuaded that the *Delalic et al.* ICTY Decision upon which the Krasniqi Defence relies provides a relevant precedent for present purposes. In that case, Mr Delalic was considered a suspect by the domestic investigating authorities eliciting his prior statement. As such he was entitled to the protection relevant to that status. The question was whether the

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<sup>550</sup> IT-04-84 P00328, pp. 3-4.

<sup>551</sup> IT-04-84 P00328, pp. 2-7.

<sup>552</sup> IT-04-84 P00328, p. 2.

<sup>553</sup> IT-04-84 P00328, p. 8.

<sup>554</sup> IT-04-84bis P00064, p. 2.

<sup>555</sup> See above paras 129, 159-160.

<sup>556</sup> Krasniqi Response, para. 26, referring to ICTY, *Prosecutor v. Delalic et al.*, IT-96-21-T, Trial Chamber, [Decision on Zdravko Mucic's Motion for the Exclusion of Evidence](#), 2 September 1997, para. 55. See also *id.* at paras 46-54.

protection afforded to such an individual under the domestic legal framework, which did not recognise the right of a suspect to counsel during questioning and therefore differed materially from the guarantees given to a suspect under the ICTY regime, had caused him prejudice or unfairness. Differently, the Panel notes that, during the Krasniqi May 2007 ICTY Witness Statement, Mr Krasniqi was not regarded as a suspect and there was no material distinction between the protection he was entitled to under the ICTY's regime and the SC's legal framework. Consideration must therefore be given to whether such witness statement was taken in a manner consistent with the standards of international human rights law. For the reasons mentioned above, the Panel is satisfied that the May 2007 ICTY Witness Statement was voluntary, free of coercion and improper compulsion and, hence, taken in a manner consistent with the standards of international human rights law. The Panel further observes that the May 2007 ICTY Witness Statement is dated and signed by Mr Krasniqi and the others present during the interview.<sup>557</sup>

195. The Krasniqi Defence submits, however, that the fact that the transcript of the May 2007 ICTY Witness Statement is not a verbatim transcript and Mr Krasniqi did not consent to it being disclosed to the SPO by the ICTY requires that this statement not be admitted.<sup>558</sup> First, the Panel notes that the admission of a statement is not limited to those that constitute a verbatim record of an interview. Instead, where sufficient indicia of its reliability exist, a record of interview can be admitted despite it not being a verbatim rendition of the interview. The Panel is satisfied that such indicia exist in the present case. Secondly, Mr Krasniqi's indication that he did not agree to his ICTY record of interview to be shared with others is not binding on this jurisdiction. Insofar as the Krasniqi Defence raises a breach of promise, it is one that would be attributable to another jurisdiction, not

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<sup>557</sup> IT-04-84 P00328, pp. 1-8.

<sup>558</sup> Krasniqi Response, paras 33-34.

this one. Furthermore, the Panel notes that the ICTY Rules of Procedure do not, on their face, provide for the possibility of witnesses having a right to prevent the transmission of their statements to another jurisdiction. To the extent the Office of the Prosecutor of the ICTY queried this matter with the interviewee, it would therefore have done so as a matter of internal policy, not as a matter of law. Furthermore, the Panel finds that the fact that the transcript of the May 2007 ICTY Witness Statement is not a verbatim transcript and Mr Krasniqi did not consent to it being disclosed to the SPO does not affect the reliability of the record as the Panel is satisfied that Mr Krasniqi gave the statement voluntarily and he himself later confirmed the accuracy and truthfulness of his May 2007 ICTY Witness Statement.<sup>559</sup>

196. The Panel is therefore satisfied that the May 2007 ICTY Witness Statement is *prima facie* authentic and has probative value. The Panel observes that the Defence will have the opportunity to present evidence to challenge the May 2007 ICTY Witness Statement, which will then be assessed by the Panel in light of the entirety of the evidence. The Panel therefore finds that, contrary to the Krasniqi Defence's submissions,<sup>560</sup> the probative value of the May 2007 ICTY Witness Statement is not outweighed by its prejudicial effect.

197. Turning to the Associated Exhibits, the Panel notes that they were shown to Mr Krasniqi and discussed in some detail during his witness statement.<sup>561</sup> The Panel is satisfied that the Associated Exhibits form an indispensable and inseparable part of the May 2007 ICTY Witness Statement. As such, the Panel is satisfied that they: (i) are relevant and will provide relevant context to the written record in which they are discussed; (ii) contrary to the Veseli Defence's submissions, bear sufficient indicia of authenticity; and (iii) have probative value,

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<sup>559</sup> IT-04-84bis P00064, p. 2.

<sup>560</sup> Krasniqi Response, para. 37.

<sup>561</sup> IT-04-84 P00328, pp. 4-7 (Associated Exhibits 1-19).

which is not outweighed by their prejudicial effect. The Panel is not persuaded by the Veseli Defence's arguments in relation to Associated Exhibit 13,<sup>562</sup> insofar as it contains a dated communiqué which appears to have been issued by the KLA and published by *Koha Ditore*, and therefore bears sufficient indicia of authenticity.<sup>563</sup>

198. For the above-mentioned reasons, the Panel finds that: (i) the Krasniqi May 2007 ICTY Witness Statement was obtained in compliance with the standards of international human rights law; and (ii) the Krasniqi May 2007 ICTY Witness Statement and its Associated Exhibits are relevant and *prima facie* authentic, have probative value which is not outweighed by their prejudicial effect, and are therefore admissible pursuant to Rule 138(1).

iv. Krasniqi February 2005 ICTY Trial Testimony

199. The Panel notes that, in his February 2005 ICTY Trial Testimony, Mr Krasniqi provided evidence that the SPO intends to rely upon in relation to allegations pertaining to, *inter alia*: (i) events related to the Kosovo conflict;<sup>564</sup> (ii) the formation of the KLA;<sup>565</sup> (iii) his role in the KLA and the role of other KLA members;<sup>566</sup> (iv) the issuance of KLA communiqués and interviews he gave as KLA spokesperson;<sup>567</sup> (v) the KLA's structure and operational zones, and the members of the General Staff;<sup>568</sup> (vi) arrests and detentions;<sup>569</sup> (vii) the 'Special war';<sup>570</sup> and (viii) the Rambouillet conference.<sup>571</sup> The Panel also notes that the Krasniqi Defence did not challenge the relevance of the February 2005 ICTY Trial Testimony. The

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<sup>562</sup> Veseli Response, paras 29-30, 35-37.

<sup>563</sup> See Second Bar Table Motion Decision, para. 73.

<sup>564</sup> IT-03-66 T3285-T3365, p. 15; IT-03-66 T3366-T3447, pp. 3, 15.

<sup>565</sup> IT-03-66 T3285-T3365, pp. 9-10.

<sup>566</sup> IT-03-66 T3285-T3365, pp. 29, 61.

<sup>567</sup> IT-03-66 T3285-T3365, pp. 29-33, 40, 52, 61-62, 75-79; IT-03-66 T3366-T3447, pp. 27-29, 58-61.

<sup>568</sup> IT-03-66 T3285-T3365, pp. 26-29, 40; IT-03-66 T3366-T3447, pp. 49-51; IT-03-66 T3448-T3540, pp. 19-21.

<sup>569</sup> IT-03-66 T3448-T3540, pp. 2-3.

<sup>570</sup> IT-03-66 T3366-T3447, pp. 32-33.

<sup>571</sup> IT-03-66 T3285-T3365, pp. 29-30.

Panel is satisfied that the February 2005 ICTY Trial Testimony is relevant to the charges in the indictment.

200. The Panel observes that, at the outset of his testimony, Mr Krasniqi was asked to read aloud the affirmation printed on the card handed to him, after which he solemnly declared that he would “speak the truth, the whole truth, and nothing but the truth.”<sup>572</sup> The Panel recalls its previous findings regarding warnings for a suspect not being necessary for the admission of a statement given to previous investigative authorities by a witness who is not considered a suspect at the time and through the course of his or her interview or testimony.<sup>573</sup> The Panel notes that the ICTY OTP was under no obligation to inform Mr Krasniqi about his privilege against self-incrimination as he was not being regarded as a suspect, but as a witness.<sup>574</sup> Mr Krasniqi was subpoenaed to appear as a witness in the *Limaj et al.* proceedings. The Panel notes that a subpoena does not constitute a limitation on the right of a witness to refuse to answer incriminating questions. This is apparent from the terms of ICTY Rule 90(E), which applies generally including to such a situation. A subpoena is merely the procedural instrument used to bring a witness before the court to hear his or her evidence. In that sense, Mr Krasniqi was not forced to give incriminating evidence by reason of the fact that he was subpoenaed to appear before the court. Furthermore, the Panel notes that Mr Krasniqi was given an opportunity to explain his reasons for not appearing voluntarily.<sup>575</sup> The Panel notes in this respect that he raised no concern in respect of the risk of incriminating himself. As noted above, the right not to incriminate oneself is not to be mistaken for a right not to provide evidence in criminal cases.<sup>576</sup> The Panel also notes that Mr Krasniqi did not make use of his right not to answer questions on the ground of self-incrimination. Therefore, while the Panel agrees that the fact

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<sup>572</sup> IT-03-66 T3285-T3365, p. 2.

<sup>573</sup> See above paras 129, 159-160, 194.

<sup>574</sup> See Rule 90(E) ICTY RPE and above para. 159, footnote 451.

<sup>575</sup> IT-03-66 T3285-T3365, p. 7.

<sup>576</sup> See above paras 188, 191.

that Mr Krasniqi was subpoenaed affected the voluntariness of his *appearance* before the ICTY, there is no indication that this resulted in his providing incriminating information that he would not otherwise have been prepared to give to the court. The Panel also notes that, in the course of his May 2007 ICTY Witness Statement and May 2007 ICTY Trial Testimony, Mr Krasniqi confirmed that he had told the truth during his February 2005 ICTY Trial Testimony and would give the same answers if questioned on the same topic again.<sup>577</sup> The Panel is therefore of the view that, although Mr Krasniqi was subpoenaed to appear as a witness in the *Limaj et al.* proceedings, the February 2005 ICTY Trial Testimony was voluntary, free of coercion and improper compulsion and taken in a manner consistent with the standards of international human rights law. The Panel further observes that the February 2005 ICTY Trial Testimony is dated and consists of the transcript of three hearings held in the *Limaj et al.* proceedings before the ICTY.<sup>578</sup> The Panel also notes that the Krasniqi Defence did not challenge the authenticity of the February 2005 ICTY Trial Testimony. The Panel therefore finds that the February 2005 ICTY Trial Testimony is *prima facie* authentic and has probative value. The Panel observes that the Defence will have the opportunity to present evidence to challenge any aspect of the February 2005 ICTY Trial Testimony with which it takes issue and to call witnesses, if necessary, in respect of those issues. The Panel therefore finds that, contrary to the Krasniqi Defence's submissions,<sup>579</sup> the probative value of the February 2005 ICTY Trial Testimony is not outweighed by its prejudicial effect.

201. Turning to the Associated Exhibits, the Panel notes that IT-03-66 P49, IT-03-66 P138, IT-03-66 P139, and IT-03-66 P140 were shown to Mr Krasniqi and

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<sup>577</sup> IT-04-84 P00328, para. 9; IT-04-84bis P00064, p. 4, lines 9-16, p. 127, lines 7-9, p. 141, lines 18-23; IT-04-84bis P00063 Confidential, p. 8, lines 22-23, p. 11, lines 14-15, p. 12, lines 17-18, p. 13, lines 1-3, p. 19, lines 23-24, p. 27, lines 1-2, p. 49, lines 24-25, p. 107, lines 3-4. *See also above* paras 194 and *below* paras 204.

<sup>578</sup> IT-03-66 T3285-T3365; IT-03-66 T3366-T3447; IT-03-66 T3448-T3540.

<sup>579</sup> Krasniqi Response, para. 37.



discussed in some detail during his trial testimony.<sup>580</sup> The Panel is satisfied that these Associated Exhibits form an indispensable and inseparable part of the February 2005 ICTY Trial Testimony. As such, the Panel is satisfied that they: (i) are relevant and will provide relevant context to the written record in which they are discussed; (ii) contrary to the Krasniqi Defence's arguments,<sup>581</sup> bear sufficient indicia of authenticity; and (iii) have probative value, which is not outweighed by their prejudicial effect. Regarding IT-03-66 P1.5, IT-03-66 P147, IT-03-66 P148, and IT-03-66 P150, the Panel notes that these items were not discussed with Mr Krasniqi during his February 2005 ICTY Trial Testimony.<sup>582</sup> The Panel is not satisfied that IT-03-66 P1.5, IT-03-66 P147, IT-03-66 P148, and IT-03-66 P150 form an indispensable and inseparable part of the February 2005 ICTY Trial Testimony, and their admission as associated exhibits is therefore denied without prejudice.

202. For the above-mentioned reasons, the Panel finds that: (i) the Krasniqi February 2005 ICTY Trial Testimony was obtained in compliance with the standards of international human rights law; (ii) the Krasniqi February 2005 ICTY Trial Testimony and Associated Exhibits IT-03-66 P49, IT-03-66 P138, IT-03-66 P139, and IT-03-66 P140 are relevant and *prima facie* authentic, have probative value which is not outweighed by their prejudicial effect, and are therefore admissible pursuant to Rule 138(1); and (iii) IT-03-66 P1.5, IT-03-66 P147, IT-03-66 P148, and IT-03-66 P150 cannot be admitted as associated exhibits and are therefore not admitted, without prejudice.

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<sup>580</sup> See e.g. IT-03-66 T3285-T3365, pp. 28-67, 69-70 (IT-03-66 P49), 67-69, 71-80 (IT-03-66 P138; IT-03-66 P139; IT-03-66 P140); IT-03-66 3366-3447, pp. 10-24, 61 (IT-03-66 P49), 57-60 (IT-03-66 P140).

<sup>581</sup> Krasniqi Response, para. 75(i).

<sup>582</sup> See e.g. IT-03-66, T3448-T3540, pp. 55 (IT-03-66 P1.5), 56-57 (IT-03-66 P147), 67-73 (IT-03-66 P148), 75-85 (IT-03-66 P150).

## v. Krasniqi May 2007 ICTY Trial Testimony

203. The Panel notes that, in his May 2007 ICTY Trial Testimony, Mr Krasniqi provided evidence that the SPO intends to rely upon in relation to allegations pertaining to, *inter alia*: (i) his role in the KLA and contacts with other members of the KLA;<sup>583</sup> (ii) KLA military operations;<sup>584</sup> (iii) the treatment of so-called ‘collaborators’;<sup>585</sup> and (iv) KLA General Staff communiqués and the activities described therein.<sup>586</sup> The Panel also notes that the Krasniqi Defence did not challenge the relevance of the May 2007 ICTY Trial Testimony. The Panel is satisfied that the May 2007 ICTY Trial Testimony is relevant to the charges in the indictment.

204. The Panel observes that, at the outset of the testimony, Mr Krasniqi was asked to repeat the solemn declaration that he would “speak the truth, the whole truth, and nothing but the truth”, which he did.<sup>587</sup> For reasons already outlined above, the Panel is not persuaded by the Krasniqi Defence’s argument that failure to notify a witness of his privilege against self-incrimination and right to legal assistance affects the voluntariness or reliability of the witness testimony. In this regard, the Panel recalls its previous finding regarding the full array of warnings for a suspect not being necessary for the admission of a statement given to previous investigative authorities by a witness who is not considered a suspect at the time and through the course of his or her interview or testimony.<sup>588</sup> The Panel notes that the ICTY OTP was under no obligation to inform Mr Krasniqi about his privilege against self-incrimination as he was regarded as being a witness, not a suspect.<sup>589</sup> The Panel also highlights once again that the obligation to tell the truth

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<sup>583</sup> IT-04-84bis P00064, pp. 6, 13-14, 33-34, 73-74, 115, 210.

<sup>584</sup> IT-04-84bis P00064, pp. 16-18.

<sup>585</sup> IT-04-84bis P00064, pp. 32, 77-80, 100-101, 120-130, 163-174.

<sup>586</sup> IT-04-84bis P00064, pp. 2, 6, 8-9.

<sup>587</sup> IT-04-84bis P00064, p. 1.

<sup>588</sup> See *above* paras 129, 159-160, 194.

<sup>589</sup> See Rule 90(E) ICTY RPE and *above* para. 159, footnote 451.

under which Mr Krasniqi testified does not constitute an exception to the possibility of objecting to providing incriminating evidence. This is apparent from the second and third sentence of Rule 90(E) of the ICTY Rules of Procedure, from which Rule 151 is directly inspired. In other words, the oath under which Mr Krasniqi testified did not compel him to renounce his right against self-incrimination.<sup>590</sup> It merely subjected its exercise to a particular procedure. The Panel is of the view that the May 2007 ICTY Trial Testimony was voluntary, free of coercion and improper compulsion and taken in a manner consistent with the standards of international human rights law. The Panel further observes that the May 2007 ICTY Trial Testimony is dated and consists of the transcript of three hearings held in the *Haradinaj et al.* proceedings before the ICTY.<sup>591</sup> The Panel also notes that the Krasniqi Defence did not challenge the authenticity of the May 2007 ICTY Witness Statement. The Panel is therefore satisfied that the May 2007 ICTY Witness Statement is *prima facie* authentic and has probative value. The Panel observes that the Defence will have the opportunity to present evidence to challenge any aspect of this record with which it takes issue and to call witnesses, if necessary, in respect of those issues. The Panel therefore finds that, contrary to the Krasniqi Defence's submissions,<sup>592</sup> the probative value of the May 2007 ICTY Witness Statement is not outweighed by its prejudicial effect.

205. Turning to the Associated Exhibits, the Panel notes that IT-04-84 D00037 was shown to Mr Krasniqi and discussed in some detail during his trial testimony.<sup>593</sup> The Panel is satisfied that this Associated Exhibit forms an indispensable and inseparable part of the May 2007 ICTY Trial Testimony. As such, the Panel is satisfied that it: (i) is relevant and will provide relevant context to the written record in which it is discussed; (ii) bears sufficient indicia of authenticity; and

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<sup>590</sup> See above paras 159-160.

<sup>591</sup> IT-04-84bis P00064, pp. 1-216.

<sup>592</sup> Krasniqi Response, para. 37.

<sup>593</sup> IT-04-84bis P00064, pp. 132-133.

(iii) has probative value, which is not outweighed by its prejudicial effect. Regarding U003-8552-U003-8690, the Panel notes that: (i) the documents included therein which were shown to and discussed with Mr Krasniqi during his May 2007 ICTY Trial Testimony were also shown to and discussed with Mr Krasniqi during his May 2007 ICTY Witness Statement;<sup>594</sup> (ii) the Panel has found those documents admissible when discussing the Krasniqi May 2007 ICTY Witness Statement above;<sup>595</sup> and (iii) the remaining documents were not shown to and discussed by Mr Krasniqi during his May 2007 ICTY Trial Testimony, and some of them have already been ruled upon by the Panel.<sup>596</sup> For these reasons, the Panel is not satisfied that U003-8552-U003-8690 forms an indispensable and inseparable part of the Krasniqi May 2007 ICTY Trial Testimony, and its admission as an associated exhibit is therefore denied without prejudice.

206. For the above-mentioned reasons, the Panel finds that: (i) the Krasniqi May 2007 ICTY Trial Testimony was obtained in compliance with the standards of international human rights law; (ii) the Krasniqi May 2007 ICTY Trial Testimony and Associated Exhibit IT-04-84 D00037 are relevant and *prima facie* authentic, have probative value which is not outweighed by their prejudicial effect, and are therefore admissible pursuant to Rule 138(1); and (iii) U003-8552-U003-8690 cannot be admitted as an associated exhibit and is therefore not admitted, without prejudice.

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<sup>594</sup> See *above* para. 183, footnote 501. See IT-04-84bis P00064, p. 24, lines 7-10, p. 173, line 18 to p. 175, line 22 (Annex 1); p. 24, line 23 to p. 25, line 6, p. 100, line 6 to p. 102, line 1, p. 173, line 18 to p. 175, line 22, p. 178, line 17 to p. 181, line 23 (Annex 2); p. 15, line 14 to p. 21, line 5, p. 23, line 20 to p. 24, line 3 (Annex 3); p. 25, lines 8-11, p. 173, line 18 to p. 175, line 22 (Annex 4); p. 10, line 23 to p. 14, line 15, p. 32, line 14 to p. 40, line 11, p. 49, line 21 to p. 53, line 23, p. 117, line 15 to p. 119, line 2, p. 173, line 18 to p. 175, line 22 (Annex 5); p. 25, lines 12-15, p. 26, lines 1-5 (Annex 6); p. 26, lines 6-9, p. 123, line 9 to p. 126, line 24 (Annex 7); p. 26, lines 10-13 (Annex 8); p. 26, lines 14-16, p. 102, line 2 to p. 104, line 21 (Annex 9); p. 26, lines 17-20 (Annex 10); p. 74, line 11 to p. 80, line 16, p. 99, lines 5-23 (Annex 18); p. 26, line 21 to p. 28, line 15 (Annexes 11-19); p. 74, lines 4-9 (Annexes 14-19).

<sup>595</sup> See *above* paras 197-198.

<sup>596</sup> See *above* para. 22, footnote 42.

(c) Conclusion

207. Based on the above, the Panel finds that: (i) the Krasniqi Witness Statements and Testimony were obtained in compliance with the standards of international human rights law; (ii) the Krasniqi Witness Statements and Testimony and Associated Exhibits IT-03-66 P49, IT-03-66 P138, IT-03-66 P139, IT-03-66 P140, and IT-04-84 D00037 are relevant and *prima facie* authentic, have probative value which is not outweighed by their prejudicial effect, and are therefore admissible pursuant to Rule 138(1); and (iii) Associated Exhibits IT-03-66 P1.5, IT-03-66 P147, IT-03-66 P148, IT-03-66 P150, and U003-8552-U003-8690 cannot be admitted as associated exhibits and are therefore not admitted, without prejudice.

D. ADMISSIBILITY OF THE ACCUSED'S STATEMENTS AGAINST CO-ACCUSED

208. Having found that the Accused's Statements and Associated Exhibits are admissible pursuant to Rule 138, the Panel will turn to assess whether any limitations apply to their use against the co-Accused.

**1. Submissions**

209. The SPO submits that there are no grounds to doubt the fairness of proceedings and therefore all prior statements should be admitted. The SPO recognises that the ability of an Accused to test the evidence against him is an important aspect of a fair trial,<sup>597</sup> but avers that, if some or all Accused elect not to testify: (i) they will, nevertheless, be able to effectively challenge the evidence by using other evidence and having the opportunity to present their own version of events and challenge credibility; (ii) the SPO will present corroborative

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<sup>597</sup> Request, para. 91.

testimonial and documents evidence on the matters addressed in the prior statements; and (iii) the Panel will be able to observe the Accused's demeanour where audio and/or video recordings are available.<sup>598</sup> The SPO submits that these safeguards allow for a fair and proper assessment of the Statements by the Panel in the context of the entirety of the evidence presented, noting that Rule 140(4) provides that when the Defence does not have the opportunity to examine a witness, a conviction may not be based solely, or to a decisive extent, on such evidence.<sup>599</sup>

210. The *Thaçi* Defence, while acknowledging the Panel's prior holding that "the admission of a record or statement made by an accused does not, without more, infringe upon the fundamental rights of his co-defendants", challenges the future use of prior statements of the Accused as evidence of any critical element of the SPO's case, unless corroborated, or as evidence of the acts or conduct of Mr *Thaçi*.<sup>600</sup>

211. The *Selimi* Defence responds that, if admitted, the Statements should be subject to the limitations that: (i) they may only be admitted against the Accused who provided the statement or interview and not against his co-Accused; and (ii) if used against a co-Accused, they may not be admitted for evidence in relation to the acts or conducts of the co-Accused, or as evidence of any critical elements of the SPO case unless corroborated accordingly.<sup>601</sup>

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<sup>598</sup> Request, para. 91.

<sup>599</sup> Request, paras 91-92.

<sup>600</sup> *Thaçi* Response, paras 36-43 referring to ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-AR73.6, Appeals Chamber, Decision on Appeals Against Decision Admitting Transcript of Jadranko Prlić's Questioning Into Evidence ("[Prlić et al. Appeal Decision](#)"), 23 November 2007, paras 57, 59, 60; ICTY, *Prosecutor v. Sainović et al.*, IT-05-87-T, Trial Chamber, [Judgement](#), 26 February 2009, para. 42; ICTR, *Prosecutor v. Karemera and Ntirumpatse*, ICTR-98-44-T, Trial Chamber III, [Decision on Prosecution Motion for Admission into Evidence of Post-Arrest Interviews with Joseph Nzirorera and Matthieu Ntirumpatse](#), 2 November 2007, paras 44-46

<sup>601</sup> *Selimi* Response, paras 59-85, 87 referring to, *inter alia*, Rule 155(5); Articles 119(5), 142(4), 256(1), and 345 of the KCPC; ICTY, [Prlić et al. Appeal Decision](#), para. 40; *Prosecutor v. Popović et al.*, IT-05-88-T, Trial Chamber II, [Decision on the Admissibility of the Borovčanin Interview and the Amendment of the Rule 65 ter Exhibit List](#), 25 October 2007, footnote 167; ICC, *Prosecutor v. Katanga and Ngudjolo Chui*, ICC-

212. The Veseli Defence responds that, if admitted, the Panel should use the statements of an Accused statements only against that defendant.<sup>602</sup> The Veseli Defence submits that the use of a co-Accused's statement to establish Mr Veseli's acts and conduct would be more prejudicial than probative, until such time that the maker provides oral evidence in the proceedings. Accordingly, it avers that – when read in conjunction with Article 123 of the KCPC which fills a void left unaddressed by the SC's legal framework – the Statements are inadmissible against the co-Accused under Rule 138(1).<sup>603</sup> To further this argument, the Veseli Defence recalls that a number of jurisdictions accept similar limitations on the purpose for which the statements of a co-Accused may be used.<sup>604</sup> In the alternative, the Veseli Defence submits that certain portions of the co-Accused's statements should be excluded because their prejudicial impact outweighs their probative value and, in any event, should not be admitted as evidence of the truth of their content.<sup>605</sup> Specifically, the Veseli Defence avers that certain parts of Mr Selimi's statements constitute hearsay of a special character, which, if used for the truth of their contents, would be overtly prejudicial to Mr Veseli's fair trial rights.<sup>606</sup>

213. The Krasniqi Defence objects to the use of the co-Accused's prior statements and testimony as Mr Krasniqi cannot confront this evidence in cross-examination, which is contradictory to his rights in Article 21(4)(f) and the reliance of such statements would be extremely prejudicial.<sup>607</sup> The Krasniqi Defence avers that, contrary to the SPO's submissions, such prejudice cannot be remedied by

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01/04-01/07-2635, Trial Chamber II, [Decision on the Prosecutor's Bar Table Motions](#), 17 December 2010, para. 53.

<sup>602</sup> Veseli Response, paras 3, 21.

<sup>603</sup> Veseli Response, paras 16-19, 21.

<sup>604</sup> Veseli Response, para. 20.

<sup>605</sup> Veseli Response, paras 4, 23.

<sup>606</sup> Veseli Response, paras 4, 24-27.

<sup>607</sup> Krasniqi Response, para. 58.

instituting “considerable safeguards and counterbalancing measures”, which are no more than generic platitudes.<sup>608</sup>

214. The SPO replies that the Statements should be admitted without limitation arguing that, as held by the Panel, the admission of the Statements does not, without more, infringe upon the fundamental rights of the co-Accused.<sup>609</sup>

## **2. Determination by the Panel**

215. As a preliminary matter, the Panel recalls that the requirements for admission of evidence are regulated by the Rules, subject to the safeguards provided by the Law and the Constitution. Neither the Constitution, the Law, nor the Rules, specifically address the question of the admissibility of statements of co-defendants. Provisions of the KCPC regulating the admission of statements provided by a defendant, in particular Articles 119(5), 256(1) and 257(2) of the KCPC are not part of the SC’s regulatory regime and do not apply in these proceedings. As noted above, the question of admission of such statements is therefore subject to the general rules and principles regarding admission of evidence before the SC, first of all Rule 138(1). However, the core concern reflected in Articles 119(5), 256(1) and 257(2) of the KCPC is that the accused’s guilt should not be based solely, or to a decisive extent, upon such statements. This forms an integral part of the evidential regime applicable before this court.<sup>610</sup>

216. The Panel notes, furthermore, that there is no general principle of law or human rights obligation that would render such evidence inadmissible or its admission unfair to an accused in a criminal case. Instead, the Panel notes the jurisprudence of other international(ised) criminal tribunals according to which

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<sup>608</sup> Krasniqi Response, para. 59.

<sup>609</sup> Reply to the Krasniqi Response, para. 14; Reply to the Selimi Response, para. 10, pp. 6-7; Reply to the Thaçi Response, para. 10, pp. 5-6; Reply to the Veseli Response, para. 2.

<sup>610</sup> See Rule 140(4); Rule 155 Decision, para. 18.



the admission of the statements of an accused against his or her co-defendant(s) does not infringe upon the fair trial rights of the latter, provided that the probative value of the statements is not outweighed by the potential prejudice of their admission to the co-defendant(s).<sup>611</sup> In this vein, the Panel has previously found that “the admission of a record or statement made by an accused does not, without more, infringe upon the fundamental rights of his co-defendants”.<sup>612</sup>

217. The Panel is mindful that triers of fact have been afforded, and some of them exercised, a margin of discretion in deciding not to admit statements of a co-defendant in circumstances where doing so would create undue prejudice.<sup>613</sup> This being said, the Panel has found all of the statements to be probative of important issues in the case. The Panel also notes that all four Accused gave statements and testified voluntarily and repeatedly over a long period of time, thereby underlining their wish and intention to give their own account of relevant matters. None of the Accused sought to exercise his right against self-incrimination during any of these interviews, but rather demonstrated a willingness to give their own account of relevant facts and circumstances. The Panel notes in this context that the Accused received, at various stages, the assistance and advice of counsel. This did not alter their willingness to engage in such processes. What weight or probative value the Panel will be prepared to give to any of these accounts is to be determined at the end of the proceedings, in light of all relevant evidence, in particular corroborating evidence. The Panel also reiterates that the Defence will have the opportunity to challenge any aspect of the admitted statements through

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<sup>611</sup> See e.g. ICTY, [Prlić et al. Appeal Decision](#), para. 62; *Prosecutor v. Gotovina et al.*, IT-06-90-T, Trial Chamber I, [Judgement](#), 15 April 2011, para. 44; *Prosecutor v. Kvočka et al.*, IT-98-30/1, Trial Chamber, [Decision on the Admission of the Record of Interview of the Accused Kvočka](#), 16 March 2001.

<sup>612</sup> F01380, Panel, *Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154*, 16 March 2023, confidential, para. 50.

<sup>613</sup> See e.g. ICTY, [Prlić et al. Appeal Decision](#), para. 62; *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-T, Trial Chamber II, [Decision on Prosecution’s Motion for Admission into Evidence of Documents MFI P251, P379 and P435](#), 7 December 2007, paras 19, 46, 65(B)(i)-(ii); ICC, *Prosecutor v. Katanga and Ngudjolo Chui*, ICC-01/04-01/07-2635, Trial Chamber II, [Decision on the Prosecutor’s Bar Table Motions](#), 17 December 2010, para. 53.

relevant witnesses and/or to call evidence in respect of such issues. On that basis, the Panel is satisfied that the probative value of the Accused's Statements and Associated Exhibits is not outweighed by their prejudicial effect.<sup>614</sup> The Panel is satisfied that this finding applies to Accused and co-Accused equally, and that the admission of an Accused's Statements and Associated Exhibits is not *per se* prejudicial to the Accused or to the co-Accused. For these reasons, the Panel rejects the Defence's submissions that the statements of the Accused may solely be admitted against the Accused who provided them.

218. Under the jurisprudence of the ECtHR, a conviction based solely, or in a decisive manner, on a deposition of a witness or co-accused that the accused was not given the opportunity to examine or have examined during the investigation or at trial infringes upon the rights of the defence to an extent that is incompatible with the guarantees provided by Article 6 of the European Convention.<sup>615</sup> Accordingly, Rule 140(4)(a) provides that a conviction may not be based solely or to a decisive extent on the statement of a witness whom the Defence had no opportunity to examine.<sup>616</sup> The Panel notes that the Accused may elect not to testify and cannot be compelled to do so under the SC legal framework. No adverse finding may be drawn from an Accused's decision not to testify. The Panel is therefore aware that the co-Accused might not be in a position to fully explore the content of statements provided by co-defendants, which might contain information that they regard as false, unreliable and/or incriminating. This calls for particular caution on the part of the Panel to decide what weight, if any, to attach to such statements. In this context, the Panel will pay particular attention

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<sup>614</sup> See *above* paras 65-67, 74-76, 80-82, 88-91, 114-115, 120-122, 129-130, 132-133, 135-137, 141-142, 144-145, 147-148, 150-151, 153-154, 156-157, 159-164, 168-169, 171-172, 174-175, 177-178, 180-182, 188-189, 191-192, 194-198, 200-202, 204-207.

<sup>615</sup> ECtHR, *Lucà v. Italy*, Application no. 33354/96, [Judgment](#), 27 February 2001, paras 39-45; *Al-Khawaja and Tahery v. the United Kingdom*, Application nos. 26766/05 and 22228/06, [Judgment \[GC\]](#), 15 December 2011, paras 126-147. See also Rule 155 Decision, para. 18, and references cited therein.

<sup>616</sup> See *above* para. 14.

to the existence or otherwise of corroborating tested evidence before relying upon the statement of an Accused in respect of a co-Accused, in particular in relation to any critical or material aspect of the Prosecution case.<sup>617</sup>

219. Based on the above, the Panel is of the view that there is no bar in admitting the Accused's Statements and Associated Exhibits against the four Accused. The Panel nonetheless stresses that it will exercise the utmost caution when assessing the Accused's statements in light of the totality of the evidence, in particular in respect of any critical or material aspect of the Prosecution case.

## V. CLASSIFICATION

220. The Panel notes that the Selimi Response (F01473), the Thaçi Response (F01474), the Krasniqi Response (F01475), the Veseli Response (F01476), the Reply to the Selimi Response (F01510), the Reply to the Thaçi Response (F01511), and the Reply to the Veseli Response (F01512) were filed confidentially. The Panel also notes that the SPO requested the reclassification of the Reply to the Selimi Response (F01510), the Reply to the Thaçi Response (F01511), and the Reply to the Veseli Response (F01512) as public.<sup>618</sup> The Panel therefore: (i) directs the Registry to reclassify the Reply to the Selimi Response (F01510), the Reply to the Thaçi Response (F01511), and the Reply to the Veseli Response (F01512) as public; and (ii) orders the Defence to file public redacted versions of the Responses by Friday, 24 November 2023.

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<sup>617</sup> ICTY, *Prlić et al. Appeal Decision*, paras 40, 57-61; *Prosecutor v. Popović et al.*, IT-05-88-T, Trial Chamber II, [Decision on the Admissibility of the Borovčanin Interview and the Amendment of the Rule 65 ter Exhibit List](#), 25 October 2007, paras 77-80 (excluding use in respect of "acts and conduct" of a co-accused); ICC, *Prosecutor v. Katanga and Ngudjolo Chui*, ICC-01/04-01/07-2635, Trial Chamber II, [Decision on the Prosecutor's Bar Table Motions](#), 17 December 2010, paras 53-54 (excluding reliance upon such statements as "proof of any fact involving" a co-accused). See also STL, *Prosecutor v. Merhi and Oneissi*, STL-11-01/A-2/AC, Appeals Chamber, [Appeal Judgment](#), 10 March 2022, para. 202, referring to ICTY, *Prosecutor v. Popović et al.*, IT-05-88-A, Appeals Chamber, [Judgement](#), 30 January 2015, para. 1226.

<sup>618</sup> F01665, Specialist Prosecutor, *Prosecution Request for Reclassification of Filings F01510, F01511, and F01512*, 11 July 2023.

## VI. DISPOSITION

221. In light of the above, the Panel hereby:

- a) **GRANTS**, in part, the Request;
- b) **ADMITS** into evidence the following items and translations thereof:
  - (i) the January 2020 SPO Interview with Mr Thaçi<sup>619</sup> and its Associated Exhibits;<sup>620</sup>
  - (ii) the July 2020 SPO Interview with Mr Thaçi<sup>621</sup> and its Associated Exhibits;<sup>622</sup>
  - (iii) the November 2019 SPO Interview with Mr Selimi<sup>623</sup> and its Associated Exhibit;<sup>624</sup>
  - (iv) the February 2020 SPO Interview with Mr Selimi<sup>625</sup> and its Associated Exhibits;<sup>626</sup>
  - (v) the May 2016 SPRK Interview with Mr Thaçi;<sup>627</sup>
  - (vi) the December 2013 SPRK Interview with Mr Krasniqi;<sup>628</sup>
  - (vii) the Thaçi Witness Statements;<sup>629</sup>
  - (viii) the Selimi Witness Statements and Testimony<sup>630</sup> and their Associated Exhibits;<sup>631</sup>
  - (ix) the Veseli Witness Statements and Testimony;<sup>632</sup>
  - (x) the Krasniqi Witness Statements and Testimony<sup>633</sup>

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<sup>619</sup> 071840-TR-ET Parts 1-9.

<sup>620</sup> 071793-071793-ET; 071794-071839.

<sup>621</sup> 076563-TR-ET Parts 1-21.

<sup>622</sup> 076565-076565-ET; 076565-076705; 076603-076603-ET; 076630-076630-ET; 076642-076642-ET.

<sup>623</sup> 068933-TR-ET Parts 1-14.

<sup>624</sup> 068932-068932-ET.

<sup>625</sup> 074459-TR-ET Parts 1-9.

<sup>626</sup> 074439-074439-ET; 074440-074458A.

<sup>627</sup> 051716-051719-ET.

<sup>628</sup> SITF00364476-00364497; 031024-05-TR-ET Part 1 ; 031024-05.

<sup>629</sup> SITF00009007-00009016; SPOE00213717-SPOE00213719-ET; U008-1957-U008-1967.

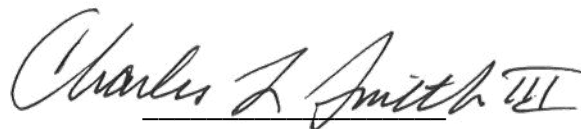
<sup>630</sup> SITF00009289-00009298; SITF00371392-00371396; SPOE00067168-SPOE00067174-ET; SPOE00213583-SPOE00213586; SPOE00068075-SPOE00068087-ET; T000-2344-T000-2345; IT-03-66 T6583-T6589; IT-03-66 T6590-T6679; IT-03-66 T6680-T6699; IT-03-66 20050527; IT-03-66 20050530 Parts 1-3; IT-03-66 20050531.

<sup>631</sup> IT-03-66 P1.7; IT-03-66 P24; IT-03-66 P248.

<sup>632</sup> SITF00398137-SITF00398157; SITF00009124-00009133; SPOE00213660-SPOE00213662-ET; SITF00398181-00398216; SITF00253817-00253819.

<sup>633</sup> SPOE00213595-SPOE00213597-ET; SPOE00068088-SPOE00068094-ET; IT-04-84 P00328, pp. 1-9; IT-03-66 T3285-T3365; IT-03-66 T3366-T3447; IT-03-66 T3448-T3540 (pp. 1-46); IT-03-66 10 February 2005 Jakup KRASNIQI Parts 1-3; IT-03-66 14 February 2005 Jakup KRASNIQI Parts 1-3; IT-03-66

- and Associated Exhibits IT-04-84 P00328, pp. 10-94, IT-03-66 P49, IT-03-66 P138, IT-03-66 P139, IT-03-66 P140, and IT-04-84 D00037;
- c) **DENIES** without prejudice the admission into evidence of the following items: IT-03-66 P1.5, IT-03-66 P147, IT-03-66 P148, IT-03-66 P150, and U003-8552-U003-8690;
- d) **DIRECTS** the Registrar to assign exhibit numbers to the items referred to in paragraph 221(b), linking the admitted Associated Exhibits with the relevant Statements as indicated in paragraphs 61, 68, 77, 83, 138, 183, and related footnotes;
- e) **DIRECTS** the Registry to reclassify the Reply to the Selimi Response (F01510), the Reply to the Thaçi Response (F01511), and the Reply to the Veseli Response (F01512) as public;
- f) **ORDERS** the Defence to file public redacted versions of the Responses by **Friday, 24 November 2023**; and
- g) **ORDERS** the SPO to file any application seeking to maintain the confidential nature of any of the admitted material by no later than **Friday, 24 November 2023**. Any response thereto shall be filed no later than **Friday, 1 December 2023**. No reply will be entertained.



**Judge Charles L. Smith, III**

**Presiding Judge**

Dated this Thursday, 9 November 2023

At The Hague, the Netherlands.

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15 February 2005 Jakup KRASNIQI Parts 1-2; IT-04-84bis P00064; IT-04-84bis P00063 Confidential; IT-04-84 T5000-T5086 unredacted Parts 1-3 Confidential; IT-04-84 T5087-T5185 Parts 1-2 Confidential; IT-04-84 29 May 2007 Jakup KRASNIQI Parts 1-2; IT-04-84 30 May 2007 Jakup KRASNIQI Parts 1-3; IT-04-84 31 May 2007 Jakup KRASNIQI Parts 1-2.