

In: KSC-BC-2020-06
Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Trial Panel II
Judge Charles L. Smith III, Presiding
Judge Christoph Barthe
Judge Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr. Fidelma Donlon

Filing Participant: Counsel for Hashim Thaçi
Counsel for Kadri Veseli
Counsel for Rexhep Selimi
Counsel for Jakup Krasniqi

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Public Redacted Version of 'Joint Defence Response to Prosecution Third Motion for Admission of Evidence Pursuant to Rule 155 (F01804)'

Acting Deputy Specialist Prosecutor

Ward Ferdinandusse

Counsel for Victims

Simon Laws KC

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Kadri Veseli

Ben Emmerson KC

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

I. INTRODUCTION

1. The Defence for Messrs. Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi (“Defence”) hereby responds to the ‘Prosecution Third Motion for Admission of Evidence Pursuant to Rule 155’ (“Prosecution Motion”).¹ Once again, the Specialist Prosecutor’s Office (“Prosecution”) seeks to admit large volumes of unverified evidence. As stated in previous responses, the amount of untested evidence admitted onto the case record is becoming untenable. To permit the admission of evidence that has been found to lack credibility and probative value in other trials, without safeguards in the form of cross-examination from opposing parties, severely undermines the fair trial rights of the Accused.

2. Particularly acute, is the attempt to admit the evidence of a witness whose evidence was assessed in detail and found unreliable. It is clear that W04839 has lied repeatedly, suffered serious psychiatric issues or lied about the same, evinced a pronounced animosity to an alleged JCE member against whom he gave evidence, and provided various accounts that were *internally* irreconcilable, as well as with evidence from more reliable sources. His evidence fundamentally lacks probative value. Such evidence should not be admitted where it cannot be challenged by the Defence.

3. Pursuant to Rule 82(4) of the Rules of Procedure and Evidence on the Kosovo Specialist Chambers (“Rules”), this filing is submitted confidentially because it responds to a filing with the same classification.

¹ KSC-BC-2020-06, F01804, Specialist Prosecutor, *Prosecution Third Motion for Admission of Evidence Pursuant to Rule 155* (“Prosecution Motion”), 20 September 2023, confidential, with Annexes 1-4, confidential.

II. APPLICABLE LAW

4. The Defence relies upon its previous submissions regarding the applicable law.²

III. SUBMISSIONS

5. The Defence re-emphasises that the amount of untested evidence admitted through Rule 155³ and Bar Table Motions⁴ creates an unmanageable trial record and jeopardises the Accused's right to a fair trial. The Trial Panel has indicated that the large-scale admission of evidence would "clog the record with a great deal of evidential debris and make final submissions for the Parties and participants and the writing of the Judgment for the Panel very complicated."⁵ Such complications are heightened when the evidence under consideration is rife with credibility issues and is of a low probative value.

6. The Defence further urges the Trial Panel to recall the principle espoused under Rule 155(5) that if the evidence provided by an unavailable witness goes to proof of the acts and conduct of the Accused, this may be a factor against the admission of such evidence, in whole or in part. Whilst this Rule does not wholly prevent the introduction of such evidence, it must be read in conjunction with Rule 140(4)(a), which dictates that such evidence cannot be used to a decisive extent in determining

² KSC-BC-2020-06, F01391, Specialist Counsel, *Joint Defence Response to "Prosecution First Motion for Admission of Evidence pursuant to Rule 155"*, 22 March 2023, confidential, paras 6-29.

³ First Decision; KSC-BC-2020-06, F01864, Trial Panel II, *Decision on Prosecution Second Motion for Admission of Evidence Pursuant to Rule 155 ("Second Decision")*, 17 October 2023, confidential.

⁴ KSC-BC-2020-06, F01409, Trial Panel II, *Decision on Specialist Prosecutor's Bar Table Motion*, 31 March 2023, confidential; F01596, Trial Panel II, *Second Decision on Specialist Prosecutor's Bar Table Motion*, 9 June 2023, confidential; F01705, Trial Panel II, *Third Decision on Specialist Prosecutor's Bar Table Motion*, 27 July 2023, confidential; F01716, Trial Panel II, *Fourth Decision on Specialist Prosecutor's Bar Table Motion*, 8 August 2023, confidential; F01832, Trial Panel II, *Fifth Decision on Specialist Prosecutor's Bar Table Motion*, 3 October 2023, public.

⁵ KSC-BC-2020-06, F01380, Trial Panel II, *Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154*, 16 March 2023, confidential, para. 30.

culpability.⁶ Absent the ability to cross-examine and to challenge the veracity of information provided, admitting such evidence onto the record fundamentally conflicts with the Accused's fair trial rights.⁷

7. The Defence understands that, even if such material is admitted, the Trial Panel will approach it with great caution⁸ and will carefully assess the weight of the evidence at the close of the case.⁹ However, W04839's evidence – which is central to the Indictment¹⁰ - does not meet the threshold, even for admissibility. As set out below, W04839's credibility issues are insurmountable.

8. The Prosecution inaccurately suggests that the factual context of this case is so different from *Arben Krasniqi et al.* ("Kleçkë/Klečka case"), in which his evidence was not relied upon, that the outcome here should be different.¹¹ This is fundamentally misleading, for the reasons provided below.

W03875

9. With respect to W03875, the Defence notes that neither of the tendered statements were taken while the witness was under oath. There is no record that W03875 was subjected to cross-examination on the information provided in those statements.

⁶ First Decision, para. 90. *See also*, Rule 140(4)(a), (c).

⁷ Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), Articles 21(4)(e)-(f).

⁸ *See, inter alia*, First Decision, paras 91, 207, 217.

⁹ First Decision, para. 18.

¹⁰ KSC-BC-2020-06, F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Indictment"), 30 September 2022, confidential, paras 64, 77-79.

¹¹ Prosecution Motion, para. 36.

10. Regarding the interview dated 18 January 2011,¹² the Defence notes the absence of an acknowledgement that the statement is true to the best of W03875's recollection. While the English version of the statement contains the witness' signature, there is no indication that the witness was offered a read-back of his statement in Serbian prior to signing. Nor has a Serbian version of either statement been disclosed, suggesting that the witness had no opportunity to revise their contents. The Defence also identifies inconsistencies in the witness' account, in which W03875 denied knowing Shaban Shala, then later recalled that Shala took the witness back to his house following his release and that "[REDACTED]"¹³ These factors militate against the admission of W03875's proposed evidence.

W04828

11. The Prosecution seeks to admit the record of W04828's interview before a Belgrade District Court investigative judge, and documents related to that interview.¹⁴ The Prosecution case is that W04828 was a cameraman for the Tanjug news agency, who was flown into Kosovo during the conflict in 1998 to act as a cameraman alongside W03880.¹⁵

12. Evidence obtained by the Defence demonstrates that W04828's *modus operandi* in the wars in Croatia and Bosnia and Herzegovina was to act as a combatant under the guise of being a photographer for the Tanjug news agency. According to the ICTY Prosecution, W04828 was a suspected war criminal who participated in the massacre

¹² SITF00010859-00010877 RED2, pp. SITF00010875-00010877.

¹³ SPOE00078774-00078791, p. SPOE00078779.

¹⁴ Prosecution Motion, Annex 2.

¹⁵ *Idem*, para. 16. See also Indictment, para. 113; KSC-BC-2020-06, F01594/A03, Specialist Prosecutor, Lesser Redacted Version of 'Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief' ("Prosecution Pre-Trial Brief"), 9 June 2023, confidential, paras 470-471.

of civilians during the war in Croatia. The Prosecution does not appear to dispute this evidence.

13. None of this information is in W04828's witness statement, which the Prosecution seeks to admit. It is relevant to many issues, including whether W04828 was a civilian/non-combatant when he again was present in a conflict zone using Tanjug credentials, this time in Kosovo, and whether he was questioned through interpretation, which was denied by W03880,¹⁶ refuting the evidence of W04839 that Hashim Thaçi (who does not speak Serbian) questioned W04828 or W03880. Notably, evidence regarding Hashim Thaçi's alleged role in the questioning was not elicited by the Prosecution during the testimony of W03880, despite him being the only live witness that can allegedly testify about it. This may be because W03880 expressly denied this occurred.¹⁷ Where the Prosecution chose not to lead this evidence live, it cannot now be admitted through Rule 155, such that the Defence does not have the opportunity to cross-examine.

14. The prejudice of admitting W04828's evidence outweighs any probative value, and it is inadmissible pursuant to Rule 138(1), which applies to Rule 155 applications.¹⁸ Allowing the disputed evidence of a witness known to be a suspected war criminal – without cross-examination – is highly prejudicial. Furthermore, because the evidence of W04828 goes to proof of the acts and conduct of Mr. Thaçi as charged in the Indictment,¹⁹ the Trial Panel should invoke Rule 155(5) and reject its admission.

¹⁶ KSC-BC-2020-06, Transcript of Hearing (W03880 Testimony) ("Transcript of 10 October 2023"), 10 October 2023, confidential, p. 8629, lines 6-13.

¹⁷ 1D00054, p. 112749.

¹⁸ First Decision.

¹⁹ See Prosecution Pre-Trial Brief, para. 474; Prosecution Third Prosecution Motion, para. 7.

15. The Prosecution is correct that “the Defence is aware of the witness’ identity, and may investigate his motives and credibility”.²⁰ In fact, it was the Defence who informed the Prosecution about W04828’s identity, having investigated his motives and credibility.²¹ However, the Prosecution is aware that the Defence does not have access to Serbia’s intelligence and police files on W04828, and must rely on the Prosecution to obtain additional information from Serbia. The Prosecution, despite being aware of W04828’s true identity since opening statements, has not demonstrated any willingness to conduct further investigation into W04828’s activities in Croatia, Bosnia and Herzegovina, or Kosovo, despite not disputing W04828’s criminal activities. In this circumstance, the inability of the Defence to question W04828 about the true purpose of his activities in Kosovo – and the true purpose of the activities of W03880—is prejudicial and militates against admission of W04828’s statement.

16. The material presented by the Defence during opening statements, now shown to W03880,²² demonstrated that while W04828 posed as a photojournalist using media credentials, he was a radical nationalist and a combatant in both the Croatian and Bosnian wars. An ICTY Prosecution analyst, described W04828 as a “hard-core Chetnik”.²³ The Prosecution has produced no records of any reports filed by W04828 and W03880, or articles published by the Tanjug news agency based on their reporting in Kosovo. When questioned, W03880 was unable to name or describe any such articles.²⁴

²⁰ Prosecution Motion, para. 20.

²¹ KSC-BC-2020-06, Transcript of Hearing (Opening Statements) (“Thaçi Opening Statement”), 4 April 2023, public, pp. 2334-2338.

²² See cross-examination of W03880 on 9 and 10 October 2023: KSC-BC-2020-06, Transcript of Hearing (W03880 Testimony) (“Transcript of 9 October 2023”), 9 October 2023, confidential, pp. 8439-8530; Transcript of 10 October 2023, pp. 8548-8601.

²³ DHT02025-DHT02029, pp. DHT02028-DHT02029.

²⁴ Transcript of 10 October 2023, pp. 8556-8558.

17. There is an explanation for this. During opening statements, the Defence presented a document of the State Security Services of the Ministry of the Interior of the Republic of Srpska Krajina, which identified W04828 as having come to Croatia in October 1991 “with a group of volunteers from Serbia and Bosnia-Herzegovina”.²⁵ The report says he “claimed to be a newspaper journalist from a media organization and had a certified newspaper identification card. However, he expressed his wish to join the units of the Benkovac Territorial Defence as a volunteer”. The report provides that this group of volunteers gathered around W04828 “gained the reputation of criminals [...] who were abusing their participation in battles to carry out robberies and often, even murders”, and that “[d]ue to criminal activities and murders committed, especially in actions near Škabrnja, where they killed tens of civilians, it was decided that this unit be closed down”.²⁶ As such, W04828 was identified as having participated in one of the most brutal war crimes committed in Croatia in 1991.²⁷

18. The ICTY Prosecution analyst confirmed these reports, and identified W04828 as having reappeared in the region “in March 1992 trying to arrange arms supplies to the Serbs in Bosnia”.²⁸ This evidence finds contemporaneous corroboration General Ratko Mladić’s diaries, the commander of the VRS. General Mladić wrote about W04828 on 24 March 1992, on the eve of the war in Bosnia, that “Vladimir DOBRICIC - Kica, 46 years old from Benkovac 81-803 from Benkovac, ringleader in smuggling of weapons”.²⁹

²⁵ Thaçi Opening Statement, p. 2335, lines 15-21, referring to 1D00059_ET, p. DHT02031.

²⁶ 1D00059_ET, p. DHT02031.

²⁷ See Thaçi Opening Statement, p. 2336, lines 10-16. See also DHT02200-DHT02269, p. DHT02241, discussing a witness statement taken from Vojvoda Vasilije VIDOVIĆ aka “Vaske”, who identified Vladimir Dobričić, reporter of the Danube News Agency, as a member of his unit called “Vaske’s Platoon”; DHT02048-DHT02198, paras 111, 259-260: “JCE members, including MARTIĆ and MLADIĆ took steps to eliminate Croat institutions in Serb-claimed territories, such as Croatian police departments. Operations they carried out involved Šešeljevci, including Vojvoda Vasilije VIDOVIĆ aka “Vaske”. Paragraphs 259-260 explain the operations that VIDOVIĆ and his “Šešelj volunteers” carried out near Sarajevo.

²⁸ DHT02025-DHT02029, p. DHT02029.

²⁹ DHT02270-DHT02666, p. 121.

19. The Prosecution is now in possession of this information about W04828's real identity, motives and credibility. The fact that it continues to assert, without nuance, that W04828 was a captured photographer, reinforces the prejudice to the Defence from not being able to question W04828 on the basis of contemporaneous, corroborated information about what he was actually doing in Kosovo in 1998.

20. The Prosecution asserts that the probative value of W04828's evidence is not outweighed by "any prejudice", because it is "consistent with and corroborated by, *inter alia*, documentary evidence and the statements of other witnesses in the case".³⁰ Putting aside W03880, the other witnesses cited – W04408, [REDACTED], [REDACTED]³¹ – are being called to give evidence about W04828's release from detention, but have no independent knowledge about why he was detained or who he really was. W04408 was questioned on the basis of information about W04828's true identity, and had never heard these allegations, and took no steps to find out more.³² Instead, W04408 submitted that his sole focus, and that of Human Rights Watch, was on their detention, noting "[t]here's a distinction in my work between the charges and the evidence to substantiate those charges and due process. And our concern was with the latter."³³

21. The documents cited by the Prosecution as corroborative have the same problem; a video of their release;³⁴ a media report about a KLA statement about their conviction;³⁵ a collection of media reports,³⁶ and Human Rights Watch reports which reference the detention;³⁷ fail to address the questions the Defence is entitled to ask

³⁰ Third Prosecution Motion, para. 20.

³¹ *Idem*, fn. 60.

³² KSC-BC-2020-06, Transcript of Hearing (W04408 Testimony), 6 September 2023, confidential, pp. 7400-7402.

³³ *Idem*, p. 7403, lines 7-9.

³⁴ 061427-12.

³⁵ U003-8552-U003-8690, p. U003-8645.

³⁶ SPOE00213932-00213936.

³⁷ IT-05-87.1 P00741, p.93; IT-03-66 P212.4, pp. 24-25.

W04828 about what he was doing in Kosovo, and why. [REDACTED].³⁸ The KLA obviously had suspicions about the true identities of these “journalists”, and subsequent evidence demonstrates that these suspicions were justified. Moreover, if the “journalists” were actually participating in hostilities, they did not enjoy the protection afforded to civilians under international law, regardless of the KLA’s reasons for detaining them. It is the Prosecution’s burden to prove beyond reasonable doubt that they were civilians. Reading these documents and examining these witnesses is not a substitute for testing the evidence of W04828.

22. Nor can the prejudice be mitigated by the admission of material which establishes W04828’s true identity for assessment in deliberations.³⁹ The purpose of this material is to *impeach* W04828 during cross-examination, and gauge and assess his reaction on the stand, under oath. While testifying, W04828 may have accepted the overwhelming weight of the Defence material, and admitted that he was not a photojournalist who happened to be flown to Kosovo in the height of a conflict, but rather that he was (and remained) a rabid nationalist who had committed war crimes, thereby affecting the credibility of the Prosecution case. Conversely, he might have vigorously defended against all suggestions put to him without exception, in a manner that rendered him an unreliable witness. He might have confirmed his statement to Voice of America that he had been “treated fairly and correctly and not mistreated” while in detention,⁴⁰ and privately to William Walker that he had “not been mistreated”⁴¹ or may have said the opposite. The Defence, and the Trial Panel will never know. Where W04828’s testimony would have landed, however, is crucial for an assessment of his Rule 155 statement, which cannot simply now enter into the record untested.

³⁸ SPOE00225208-SPOE00225208-ET, p. 1.

³⁹ Third Prosecution Motion, para. 20.

⁴⁰ 083812-083824-ET.

⁴¹ 093402-093417 RED, para. 19.

23. The prejudice arising from the Defence's inability to ask W04828 about his real intentions in Kosovo, and his motivation for saying he was mistreated, is heightened by the purported ignorance of his co-detainee, W03880, who has now testified in this case. In the proposed Rule 155 statement, W04828 told the Belgrade investigative judge that he and W03880 spent 45 days together in Kosovo, and that they arrived together to Kosovo from Belgrade.⁴² During his testimony on 9 October 2023, W03880 said this was untrue.⁴³ W03880 conceded that they did spend time together, albeit not 45 days,⁴⁴ and that they vacationed together for a couple of weeks.⁴⁵ However, he denied any knowledge about W04828's past, identity, motivation or reason for being in Kosovo apart from being a Tanjug cameraman.⁴⁶

Q. The truth is that you and Mr. Dobricic went out on the day in question and were taking pictures for Serb intelligence and gathering information for Serb intelligence. Just as Mr. Dobricic had done in Croatia, just as Mr. Dobricic had done in Bosnia, he was using his Tanjug credentials as a photographer to hide his true identity as a combatant as were you. Isn't that a fact?

A. It's not a fact. It's not true. At least not in my case. **As for him, whatever.**

24. As such, questioning W03880 is not a substitute for testing the evidence of W04828. W03880 rejected the evidence raised by the Defence as to W04828's reasons for being in Kosovo, and did not address W04828's motivation and character – stating only that “he looked kind suspicious to me, and I did not like him.”⁴⁷ W03880 did confirm, however, that Tanjug was a “state run news agency” and said it was probably right that “the director was appointed by the Slobodan Milošević government at the time”.⁴⁸ This information affects the credibility of any suggestion that W04828 and

⁴² 083812-083824-ET, p. 083813.

⁴³ Transcript of 9 October 2023, pp. 8509-8510.

⁴⁴ *Idem*, pp. 8511-8513.

⁴⁵ *Idem*, p. 8506.

⁴⁶ *Idem*, p. 8525 (emphasis added).

⁴⁷ *Idem*, p. 8521.

⁴⁸ Transcript of 9 October 2023, p. 8482.

W03880 were independent journalists, and corroborates the documentary evidence, referenced above, that establishes reasonable doubt about W04828 and W03880's allegedly civilian status. W03880's self-serving insistence that he knew nothing about the real status of W04828, adds to the prejudice arising from the inability of the Defence to question W04828.

25. This prejudice is reinforced by the contradictions between W04828's Rule 155 statement and other evidence. [REDACTED].⁴⁹ In the Rule 155 statement, W04828 says he was beaten and kept in a cellar.⁵⁰ This is again contradicted by a contemporaneous account from Ambassador William Walker, that "[t]he released journalists rode with me back to Prishtine [...] when they were out of the control of the KLA and out of the glare of the cameras, I had asked them again what they experienced. Both confirmed that they had not been mistreated."⁵¹ W04828's Rule 155 statement alleges he was aware of other detainees being present at both Shalë (Sedllarë)/Sedlare and the second detention site.⁵² In the release video, W04828 is asked, "Did you see anyone else who was a detainee?" and he responds, "No, I didn't see anyone, any detainees on any side."⁵³ As such, W04828's proposed evidence is also inconsistent on key questions.

26. Admission of a deceased witness's statement under Rule 155(1) must comply with Rules 138 and 155(5). The probative value of W04828's proposed Rule 155 evidence, which is inconsistent, undermined by other evidence on the record, and remains affected by key questions as to his motivation, credibility, and character that can now never be answered, is outweighed by the prejudice caused to the Accused. Moreover, because the evidence goes to the alleged acts and conduct of Mr. Thaçi, it should be rejected pursuant to Rule 155(5).

⁴⁹ *Idem*, p. 8465, citing P00093.

⁵⁰ Prosecution Motion, para. 17, citing 083812-083822-ET RED, p. 4.

⁵¹ Transcript of 10 October 2023, pp. 8621-8622; 093402-093417 RED.

⁵² Prosecution Motion, para. 17, citing 083812-083822-ET RED, pp. 3-4.

⁵³ Transcript of 10 October 2023, p. 8580, citing P00093.

27. This Court should not admit into evidence the questionable, untested and disputed evidence of suspected war criminals who have concealed their criminal pasts in the very statements which the Prosecution seeks to admit. The Prosecution request should be denied. If the Panel admits the evidence of W04828 through Rule 155, the Defence reserves its right to tender additional material regarding the witness' credibility through the bar table, including items cited.

W04839

28. The Prosecution seeks to tender the testimony⁵⁴ and associated evidence⁵⁵ of W04839, to corroborate a number of incidents that allegedly occurred in Llapushnik/Lapušnik, Klečkë/Klečka, and Shalë (Sedllarë)/Sedlare. The Defence accepts that W04839 is unavailable.⁵⁶ However, it strongly contests the admission of any evidence associated with a witness so lacking in credibility. The Prosecution boldly states that the centrality of W04839's evidence to the Klečkë/Klečka case "coloured" the analyses of the chambers in question.⁵⁷ This proposition suggests that had W04839's evidence been of less importance, then the chambers concerned would have accepted the evidence that they had identified as downright lies as truthful, a suggestion that borders on the ridiculous. In addition, that proposition ignores the fact that the centrality of the evidence invited a more comprehensive analysis of the evidence by the chambers in question, as evidenced by, *inter alia*, the considerable expert evidence adduced in that case, which the Prosecution has not sought to confront with any expert evidence of its own.

⁵⁴ See Prosecution Motion, Annex 3, Items 1-14.

⁵⁵ *Idem*, Items 15-64.

⁵⁶ SITF00392249-00392313, p. 7, para. 21.

⁵⁷ Prosecution Motion, para. 38.

29. The Prosecution erroneously states that the larger pool of evidence in this case would support the assertions made by W04839, and that this should be sufficient to grant its admission.⁵⁸ However, the major issues in W04839's evidence are caused by:

- i. His own admissions that he has previously lied;
- ii. Other, unexplained inconsistencies within his own accounts; and
- iii. The incompatibility of his evidence with other, more reliable evidence in the case.

30. The SPO's argument is further defeated by the reconstituted Trial Panel's finding that even in that case, W04839's evidence was "substantially contradicted by other evidence" on the record.⁵⁹ They found that "his evidence was full of lies."⁶⁰ The Panel went on to find that, "[t]he inconsistencies and contradictions found by the court are not discrepancies that might be the product of an honest but imperfect recollection, observation or reconstruction of the events about which he gave evidence."⁶¹ It is misleading for the Prosecution to assert that the primary barrier to finding his evidence reliable in the Kleçkë/Klečka case was a sparse evidentiary record, which it has supposedly cured in the present case.⁶² In fact, the primary issue was that the evidentiary record made it impossible for the panel to accept W04839's account.⁶³ In addition, the alleged corroborating evidence professed by the SPO fails to address the most crucial aspects of W04839's evidence, namely the acts and conduct of the Accused.

⁵⁸ Prosecution Motion, paras 37-38.

⁵⁹ EULEX, *People v. A.K. et al.*, P 766/12, Basic Court of Prishtinë/Priština, *Judgment* ("Kleçkë/Klečka Re-Trial Judgment"), 17 September 2013, p. 129.

⁶⁰ *Ibid.*

⁶¹ *Idem*, p. 130.

⁶² Prosecution Motion, para. 38.

⁶³ Kleçkë/Klečka Re-Trial Judgment, p. 132.

a. W04839's Statements

31. The Prosecution seeks to admit statements provided by W04839 to the EULEX police in November 2009⁶⁴ and testimony during the Kleçkë/Klečka case.⁶⁵ The Defence strongly objects to the tendering of W04839's statements and requests that the Panel decline their admission because they are unreliable and have low probative value.

32. The Prosecution asserts that W04839's evidence was found by the Supreme Court of Kosovo to be admissible in the Kleçkë/Klečka case.⁶⁶ Nonetheless, the Prosecution ignores the fact that once this evidence was admitted and thoroughly assessed, the Re-Trial Judgment concluded that W04839 was "not a credible witness and that in consequence it would be unsafe to rely upon his evidence."⁶⁷ This is not simply a case of evidence being weighed and found to be possibly flawed; the evidence was held to be fundamentally unsafe, to the extent that it was not relied upon at all. The reconstituted Panel found that, it would be "simply absurd" to conclude that, because portions of W04839's evidence were borne out (*e.g.* mortal remains are found in a location where the witness has stated they would be) that this would then lend credence to other, completely different aspects of his evidence (identifying information of the deceased).⁶⁸

33. The Prosecution argues that the corroboration of W04839's mere *presence* in particular places by other witnesses,⁶⁹ somehow strengthens the veracity of W04839's

⁶⁴ Prosecution Motion, Annex 3, Items 1-2.

⁶⁵ *Idem*, Items 3-9.

⁶⁶ *Idem*, para. 32.

⁶⁷ Kleçkë/Klečka Re-Trial Judgment, p. 259.

⁶⁸ Kleçkë/Klečka Re-Trial Judgment, p. 136.

⁶⁹ Prosecution Third Motion, para. 39.

other claims as to what occurred at those sites, or actions undertaken by alleged subordinates of the Accused in those areas. This is, quite simply, a straw man argument. The Defence acknowledges that the witness was local to the area about which he provides evidence. In relation to his role, other witnesses who have testified *viva voce* in this trial have already attested that [REDACTED].⁷⁰ The acknowledgment that he was present does not change material inconsistencies, now on the record, about the most fundamental facts of his role. It cannot be automatically assumed that other witnesses who will testify later in this trial, will corroborate the information W04839 provides.

34. W04839's evidence is unreliable and lacking in probative value. First, W04839 admitted to lying to ICTY investigators,⁷¹ despite being told by the ICTY Prosecutor "the most important thing today is for you to tell the truth".⁷² He has a history of lying on record, which undermines the reliance that can be placed on his evidence.

35. Second, W04839's psychiatric condition was explored in the Kleçkë/Klečka case and there were strong indications that the witness's state of mind was adversely affected by difficulties with recall at best, and mental illness at worst.⁷³ For example, the witness claimed to have read the ICTY statements of Fatmir Limaj, and Isak Musliu when preparing his own statement. However, none had actually given statements to the court and during cross-examination, W04839's assertions were exposed as untrue.⁷⁴ Whether this was the result of altered recall or conscious fabrication on W04839's part, the result is the same: the witness cannot be taken at his word, and his credibility is fundamentally eroded. In addition, he repeatedly claimed that he had

⁷⁰ KSC-BC-2020-06, Transcript of Hearing, 15 August 2023, confidential, p. 6404, line 20 to p. 6405, line 3.

⁷¹ SITF00009996-00010122 RED, p. SITF00010019.

⁷² V000-4626-1-A-TR-ET, pp. 4-5.

⁷³ Kleçkë/Klečka Re-Trial Judgment, p. 88.

⁷⁴ SITF00009996-00010122 RED, p. SITF00010023.

provided a statement to KFOR, which intensified the animosity between him and Fatmir Limaj, when no record of such a statement was found to exist.⁷⁵ Furthermore, in a letter he purportedly wrote prior to his suicide, he admits to having signed testimonies without them being translated and reported that “I am stating that all my statements that are in front of you are worthless”, addressing the EULEX personnel involved in taking his statements.⁷⁶

36. Third, as exposed in detail in the Kleçkë/Klečka Re-Trial Judgment, W04839 had personal animosity towards Fatmir Limaj, which affected his evidence. This animosity is readily apparent from W04839’s diary entries,⁷⁷ which reveal that he was willing to leverage his testimony to secure an apology from Mr. Limaj.⁷⁸ The Kleçkë/Klečka Re-Trial Judgment suggested that this animosity may have resulted from flawed information that Mr. Limaj had been involved in the death of W04839’s uncle, Zenel Kastrari.⁷⁹ In this instance, W04839’s personal vendetta led him to level untrue accusations such as accusing Fatmir Limaj of personally engaging in torture,⁸⁰ of ordering murders,⁸¹ and of committing them himself.⁸² These allegations were rejected, and Mr. Limaj acquitted. The clear personal animosity of W04839 against Mr. Limaj infects all of his evidence related to Mr. Limaj and renders it unreliable. It also demonstrates the extent to which W04839 sought to manipulate court proceedings to his advantage in light of this animosity, thereby substantially undermining the reliability of his evidence.

⁷⁵ Kleçkë/Klečka Re-Trial Judgment, p. 118.

⁷⁶ DJK00159-DJK00161-ET, p. DJK00160.

⁷⁷ Although this page is not tendered into evidence, note the entry at SPOE00248974-00249180, p. SPOE00249061, in which the witness states “[REDACTED].” [sic]

⁷⁸ *Idem*, p. SPOE00249060: “I told them that if Fatmir Limaj apologizes me I can change the previous statement.”

⁷⁹ Kleçkë/Klečka Re-Trial Judgment, p. 130.

⁸⁰ 050951-050965, para. 12.

⁸¹ *Idem*, para. 18.

⁸² *Idem*, para. 13.

37. W04839 gives limited relevant evidence about the Accused. Importantly, however, on one of the rare occasions on which W04839 references the Accused, it was to clarify that he had lied about [Hashim Thaçi and Jakup Krasniqi] wanting to kill him, as a ploy to be admitted to a psychiatric facility.⁸³ This example of W04839's willingness to lie to achieve his personal goals, highlights the unreliability and low probative value of this evidence.

38. The information that W04839 provides about the Accused is also largely tangential, indicating that he was unaware of the roles and responsibilities of the General Staff. He was unable to identify the exact nature of Hashim Thaçi's role.⁸⁴ He stated regarding Kadri Veseli, "[REDACTED]."⁸⁵ W04839 further alleged that Mr. Veseli told him to treat well a detainee, who had been brought to Kleçkë/Klečka as a deserter.⁸⁶ W04839 claimed that Rexhep Selimi was [REDACTED].⁸⁷ W04839 claimed that Jakup Krasniqi stayed at Rame Zogaj's house in Novo Selo⁸⁸ and alleged that he saw Jakup Krasniqi in Kleçkë/Klečka.⁸⁹ This evidence has no probative value since W04839 was not asked to confirm when he saw Jakup Krasniqi, where precisely he was or what he was doing there. Presence in a location does not establish knowledge of events taking place in that location at different times.⁹⁰ As an allegation of acts and conduct of the Accused, it should not be admitted because it cannot be fairly confronted by the Defence. Indeed, all of these claims are vague and unsupported; they have minimal probative value, particularly in relation to the allegations in this case.

⁸³ SITF00009578-00009648 RED, p. SITF00009585.

⁸⁴ SITF00009996-00010122 RED, p. SITF00010010.

⁸⁵ 050966-051004 RED, p. 050978, para. 75.

⁸⁶ 051032-051055 RED, p. 0510404.

⁸⁷ SITF00009996-00010122 RED, p. SITF00010010.

⁸⁸ 050966-051004 RED, p. 050973.

⁸⁹ SITF00009996-00010122 RED, p. SITF00010000.

⁹⁰ See, for example, KSC-BC-2020-06, F01051/CONF/RED, Krasniqi Defence, *Public Redacted Version of Pre-Trial Brief of Jakup Krasniqi* KSC-BC-2020-06-F01051, dated 21 October 2022, 8 May 2023, public, para. 137.

39. More specifically related to Rexhep Selimi, the SPO Pre-Trial Brief that “[REDACTED].”⁹¹ The only supporting evidence the SPO cites in support of this allegation is W04839’s SPRK hearing dated 11 February 2010.⁹² This allegation is therefore completely uncorroborated.

40. In that hearing, W04839 confirmed that Nexhmedin Krasniqi informed him of an order to kill an individual named “Islam” who lived in Shtime/Štimlje, and that he subsequently met Mr. Selimi, who confirmed that he had issued the order yet requested that the individual in question be released. However, in another interview, W04839 is shown an entry from a duty report he allegedly authored⁹³ where an individual by the name of “Sami Duga” is listed as having been detained between the 22nd and 27th of April 1999, with the word “Tenth” written as a remark. W04839 confirmed that it was this individual that he previously referred to by the name “Islam”.⁹⁴ It is unclear whether W04839 identified the surname of the individual as “Duga”, or whether it reflects that he is from the village with the same name. The contradictions inherent in this evidence renders it devoid of probative value.

41. There is no evidence disclosed by the SPO corroborating, or contextualising, the allegation in question. Nor are Nexhmedin Krasniqi or Sabit Shala SPO witnesses, thus the Defence would not be in a position to test the evidence in question. While the latter was interviewed by the SPO and agreed to answer questions, he stated that he had never heard of anyone being detained in Klečka.⁹⁵ The Defence notes that the Panel previously denied admission of very similar evidence related to acts and conduct of the Accused “in light in particular of the inability of the Defence to cross-examine this witness, of the absence of corroboration of the matter in question, and

⁹¹ Prosecution Pre-Trial Brief, para. 513.

⁹² 051032-051055 RED.

⁹³ SITF00009578-SITF00009648, p. SITF00009590.

⁹⁴ SITF00009578-SITF00009648, p. SITF00009579.

⁹⁵ 065286-TR-ET Part 2, p. 18.

the potentially incriminating nature of the evidence on that point,”⁹⁶ determining that the probative value of such evidence would be outweighed by its prejudicial effect.⁹⁷ The same arises with respect to the allegations made by W04839 against Mr. Selimi, as the admission of this evidence requires the Defence to challenge an allegation concerning Mr. Selimi’s acts and conduct that is unverifiable, uncorroborated and undefined.⁹⁸

42. This vagueness is heightened with respect to the allegation that Mr. Selimi hired the son of one of the detainees referred to as “Adem” as a bodyguard after the conflict so that “Adem would not testify against anybody.”⁹⁹ The witness subsequently stated that he doesn’t know “Adem’s” surname.¹⁰⁰ Not only is this allegation non-specific, it is uncharged and falls outside the Indictment period. There is no evidence corroborating this allegation, and even W04839 admitted that the allegation in question was a guess.¹⁰¹ It constitutes yet another attempt on the part of the SPO to introduce evidence blackening the character of the Accused, whose probative value is severely outweighed by its prejudicial effect, and which the Defence is in no position to refute.

43. W04839’s statements are also contradicted by other evidence in a manner that inherently reduce their reliability. As one example, W04839 alleged that KLA soldiers were conducting unofficial interviews of detainees and beating them with their fists and batons filled with sand.¹⁰² This was contradicted by other witnesses, who stated that they were, in fact, treated well as detainees¹⁰³ and did not see others being

⁹⁶ Second Decision, para. 47.

⁹⁷ *Ibid.*

⁹⁸ See also KSC-BC-2020-06, In Court – Oral Order, Order on Selimi Defence Motion for Exclusion of Evidence (F01438), 17 April 2023, public.

⁹⁹ 050951-050965, p. 050956.

¹⁰⁰ SITF00009503-00009529, p. SITF00009508.

¹⁰¹ *Idem*, p. SITF00009524.

¹⁰² SITF00009653-00009681 RED, p. SITF00009674.

¹⁰³ SITF00010665-00010706 RED, pp. SITF00010667-SITF00010668.

mistreated.¹⁰⁴ W04839 gave evidence that he allowed detainees to go out of their cells for fresh air,¹⁰⁵ or even that he freed detainees of his own accord to return to their families for the night and return to the detention site in the morning.¹⁰⁶ This is inconsistent with the evidence of those detained, who stated that their cells were kept locked at night¹⁰⁷ or that they were never let out of their cells at all.¹⁰⁸ Crucially, W04839 lied about the killing of two Serb detainees, claiming that he released these two detainees and put responsibility on [REDACTED] and three other individuals, while subsequently stating that he actually killed them.¹⁰⁹ As the Appeals Panel in the Kleçkë/Klečka case recognized, W04839 “failed to explain the obvious contradiction in his evidence. Those contradictions, and also the constant involvement of Limaj in every offence which was reported by him, makes his statements not credible and unreliable.”¹¹⁰

44. W04839 further claimed that he had witnessed [REDACTED], which W04839 had procured for him.¹¹¹ W04839 alleged that, following the murder, he and Arben Krasniqi were ordered to bury the body.¹¹² There were at least four problems with this account: first, expert evidence showed that it would have been almost impossible for one single person to inflict the [REDACTED] injuries;¹¹³ second on W04839’s account, this victim should have been at the top of the grave, yet his body was found at the bottom; third, Arben Krasniqi could not have buried the body with him as he was seriously injured on the day in question¹¹⁴; lastly, W04839’s evidence regarding the

¹⁰⁴ SPOE00078043-00078050, p. SPOE00078047.

¹⁰⁵ SITF00009653-00009681 RED, p. SITF00009671.

¹⁰⁶ *Ibid.*

¹⁰⁷ SITF00010327-00010381 RED, p. SITF00010329.

¹⁰⁸ SITF00010251-SITF00010260 RED, p. SITF00010254.

¹⁰⁹ SITF00009996-00010122, p. SITF00010019.

¹¹⁰ EULEX, *People v. A.K. et al.*, PAKR 266/14, Court of Appeals of Kosovo, *Judgment* (“Kleçkë/Klečka Appeals Judgment”), 26 January 2016, p. 69.

¹¹¹ 050951-050965, paras 65-74.

¹¹² *Idem*, para. 71.

¹¹³ Kleçkë/Klečka Re-Trial Judgment, p. 110.

¹¹⁴ *Idem*, p. 104.

[REDACTED] was not provided until eight weeks *after* the relevant forensic report was issued. As such, the Panel could not exclude the possibility that he had become aware of this evidence as a consequence of the exhumation.¹¹⁵

45. There are additional issues with the timeline and specific evidence W04839 provides concerning the killing of four Serbian soldiers. His evidence is that he witnessed the killing of these four Serbian prisoners around the middle of March 1999. As the Court noted in the Re-trial Judgment, “he provided a very graphic account of the killing of the four Serbian prisoners and even took investigators to the place where their bodies were found.”¹¹⁶ These Serbian officers were reported missing by the MUP on 11 April 1999.¹¹⁷ When W04839 was asked specifically about the four Serbian officers by name he later gave completely contradictory evidence that the Serb officers were released on 18 April 1999.¹¹⁸ This version of events is corroborated by W04839’s diary. However, he then gave an additional version of events stating that he had heard that these individuals might have been civilians working for the electric company, not military officers, and that he only heard they were killed. He indicated that there may have been two groups of four Serbs brought to Klečkë/Klečka.¹¹⁹ There is no evidence that a second group of four Serbs was detained at Klečkë/Klečka. W04839’s account of this event contradicts itself and cannot be relied upon.

46. Furthermore, the Supreme Court determined that any questioning by the Defence did not amount to an adequate cross-examination.¹²⁰ Nor was any relevant cross-examination informed by circumstances pertinent to the present case, as evidenced by the fact that W04839 was largely not cross-examined in relation to his

¹¹⁵ *Idem*, p. 106.

¹¹⁶ *Idem*, p. 91.

¹¹⁷ Klečkë/Klečka Re-Trial Judgment, para. 91.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ SITF00392412-00392450, p. SITF00392431.

allegations *vis-à-vis* the four Accused. As the heightened reliability risks were not adequately mitigated, this militates against the admission of this evidence.

47. In summary, W04839 has lied before, had significant psychiatric issues, evinced clear animosity towards Mr. Limaj, an alleged JCE member in this case, which affected his evidence, and his testimony is full of inconsistencies. After a careful assessment, his evidence was found in the Klečkë/Klečka Re-Trial to be fundamentally unreliable. It is fanciful to contend that a different outcome should be reached here. The evidence is unreliable, it lacks probative value and the prejudicial effect of being unable to cross-examine the witness outweighs and limited probative value it possesses. It should be excluded.

b. Associated Exhibits

i. KLA Military Court Documents

48. The Prosecution wishes to admit documents associated with the KLA Military Court, both procedural documents signed by the witness (duty reports and requests)¹²¹ and legal ordinances.¹²² Regarding the legal ordinances and judgments, W04839 was not questioned about the specifics of the ordinances in his statements or testimony, and he is unavailable to authenticate them.

49. It appears that W04839's knowledge of the KLA's legal department was grossly overstated. When W04839 was asked about the Investigative Judge, [REDACTED],¹²³ he claimed that he had been introduced to [REDACTED] 2-3 times, describing him as

¹²¹ Prosecution Motion, Annex 3, Items 35-41.

¹²² *Idem*, Items 42-47.

¹²³ SITF00009578-00009648 RED, pp. SITF00009605, SITF00009607, SITF00009616-SITF00009617.

being of 30-35 years of age.¹²⁴ In fact, [REDACTED],¹²⁵ this being an alias he used to conceal his identity,¹²⁶ and at the time of these supposed meetings, he was [REDACTED].¹²⁷ This is particularly perplexing because W04839 described W04264 as being “like a father” to him.¹²⁸ W04264, [REDACTED].¹²⁹ These documents should not be admitted as associated exhibits on paper. They should be tendered through a *viva voce* witness who could speak to them, there being three witnesses from the General Staff Legal Department on the Prosecution’s witness list.¹³⁰

50. In relation to the document purportedly signed by [REDACTED],¹³¹ W04839 does not speak specifically to this document in his statements, nor does he address any incident allegedly involving [REDACTED].¹³² For this reason, W04839 is not an appropriate witness through whom to tender this document, as he does not appear to have authored the document, signed it, or mentioned it in his testimony.

ii. W04839’s Handwritten Diary¹³³

51. The Prosecution seeks to submit extracts of W04839’s diary pages, which it alleges focus on prisoners and guards at the detention sites at which he was based.¹³⁴ Once again, fundamental issues have been found with the diary itself, meaning that none of the information contained therein, can be said to be wholly credible. In the

¹²⁴ SITF00009996-00010122 RED, p. SITF00010030.

¹²⁵ SITF00010487-SITF00010508 RED, p. SITF00010488.

¹²⁶ *Ibid.*

¹²⁷ According to SITF00010487-SITF00010508 RED, p. SITF00010488, [REDACTED].

¹²⁸ SITF00009996-00010122 RED, p. SITF00010030.

¹²⁹ Klečkë/Klečka Re-Trial Judgement, p. 117.

¹³⁰ [REDACTED], W03898, and W04264 are all on the Prosecution’s list of witnesses. See KSC-BC-2020-06, F01594/A02, Specialist Prosecutor, *Confidential Redacted Version of ‘Amended List of Witnesses’*, 9 June 2023, confidential, pp. 220-221, 243-244.

¹³¹ Prosecution Third Motion, Annex 3, Item 44.

¹³² SITF00009578-00009648 RED, p. SITF00009612.

¹³³ Prosecution Motion, Annex 3, Items 17-20.

¹³⁴ *Ibid.*

absence of the witness and without the ability to cross-examine, the diary as a whole should be considered inadmissible.

52. The Klečkë/Klečka Re-Trial Judgment analysed W04839's "diary" in detail. The Panel concluded that it was not a diary at all, but rather a "collection of records to which other persons had contributed" and that there could be "no certainty about the actual date diary entries were made."¹³⁵ Two handwriting experts whose evidence was considered both concluded that the diaries had been written by at least two – and possibly more - hands.¹³⁶ The Panel observed that, even to a layman, it was "obvious" that certain parts of the diary were not written in the same hand as the majority. It concluded that the diary had been written by at least three different authors,¹³⁷ and that some entries appeared to have been inserted after the fact, in order to establish a false chronology.¹³⁸ This is particularly troubling since the diaries are presented by the Prosecution as corroboration of W04839's testimony.

53. More pertinently, this provides a further indication that W04839's word cannot be trusted. The Klečkë/Klečka Re-Trial Judgment indicates that W04839 lied when stating "I was taking notes but they were my personal notes. No one knew I was writing in my diaries."¹³⁹ He also stated that he had hidden his diaries and that nobody else had access to them.¹⁴⁰ Not only were others aware of the diaries; they had in fact contributed to them. As such, the claim that this was his secret war diary was "simply a lie."¹⁴¹

¹³⁵ Klečkë/Klečka Re-Trial Judgment, p. 76.

¹³⁶ Klečkë/Klečka Re-Trial Judgment, pp. 74-76.

¹³⁷ *Idem*, p. 75.

¹³⁸ *Idem*, p. 77.

¹³⁹ SITF00009653-00009681 RED, p. SITF00009674.

¹⁴⁰ *Idem*, p. SITF00009675.

¹⁴¹ Klečkë/Klečka Re-Trial Judgment, p. 76.

iii. W04839's Psychiatric Assessment¹⁴²

54. When the Kleçkë/Klečka case reached the Supreme Court of Kosovo, the Court stated that the psychiatric records related to W04839 "have not necessarily been of any relevance for the examination of the witness, since during the whole course of investigations and interrogations he allegedly has not shown any signs of mental health problems."¹⁴³ This can no longer be said to be true. Absent the ability to conduct a cross-examination, and given the totality of Mr. Zogaj's evidence and the myriad inconsistencies therein, the psychiatric discharge papers paint a crucial picture of an unstable individual whose mental state was disorientated and said to be altered, in the view of three qualified medical professionals.¹⁴⁴

55. The Kleçkë/Klečka Re-Trial Judgment determined that W04839's mental condition was indicative of severe anxiety, while still recognising that it was "impossible to be certain [...] because of the relative paucity of clear clinical descriptions of his mental state in medical records."¹⁴⁵ The judgment further notes that the decline in W04839's mental state is corroborated by his diary entries¹⁴⁶ - entries which the Prosecution has sought to keep from the Panel by not including them as associated exhibits.

56. In later testimony, W04839 claimed to have falsified his mental condition, to protect his safety.¹⁴⁷ That W04839 *had* falsified his mental condition, as the witness himself later claimed, was the case theory pursued by the Prosecution in the Kleçkë/Klečka case. The re-trial chamber concluded that, if that theory was correct,

¹⁴² Prosecution Motion, Annex 3, Item 48.

¹⁴³ SITF00392412-SITF00392450, p. SITF00392435.

¹⁴⁴ SITF00009578-00009648 RED, p. SITF00009621.

¹⁴⁵ Kleçkë/Klečka Re-Trial Judgment, p. 83.

¹⁴⁶ *Idem*, p. 86.

¹⁴⁷ SITF00009578-00009648 RED, p. SITF00009585.

then W04839 is a “manipulative liar” who faked a medical condition to, as the Appeals Panel determined, either (a) to inflate a damages claim following a road traffic accident; (b) to provide himself with a partial defence to the [intended] killing of Fatmir Limaj; (c) to discredit a statement that he said he had given to KFOR, albeit there is no evidence of such statement having ever been given.¹⁴⁸ All the identified motives showcase a glaring propensity for dishonesty.

57. If that theory was wrong, then W04839 experienced serious mental illness and lied about it. Either way, his evidence suffers from insurmountable credibility issues. In the period leading to his suicide, W04839’s paranoia was such that he believed that his life was at risk from EULEX, accusing them of committing a “psychological massacre” against his family.¹⁴⁹ That W04839 was determined by German authorities to have committed suicide suggests that he was mentally unstable.¹⁵⁰

iv. Remaining Documents

58. The remaining documents contained in Annex 3¹⁵¹ either relate to facts that are materially evident (as with W04839’s participation in the KLA and with Brigade 121)¹⁵² or are discussed in W04839’s statement.¹⁵³ The Defence recognises that these documents meet the standards required for authenticity, but nevertheless argues that if the statements of W04839 are not admitted, these documents also should not be permitted to enter the case record.

¹⁴⁸ Klečkë/Klečka Appeals Judgment, pp. 33-34.

¹⁴⁹ DJK00159-DJK00161-ET, p. DJK00159.

¹⁵⁰ *Idem*.

¹⁵¹ Prosecution Motion, Annex 3, Items 50-61.

¹⁵² SITF00009578-00009648 RED, pp. SITF00009625; SITF00009627; which corresponds to Items 50-51.

¹⁵³ *Idem*, p. SITF00009587, which corresponds to Items 52-61.

IV. CONCLUSION

59. In conclusion, the tendered materials should not be admitted. A complete analysis of the evidence indicates that, absent the Defence's ability to conduct thorough cross-examinations, to admit these materials would obfuscate the record with under-clarified or even wholly untrue information, which holds no probative value and has been provided by witnesses lacking in credibility.

60. For the reasons set out above, the Defence asks that the Trial Panel dismiss the Prosecution Motion.

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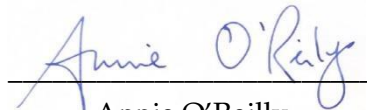
Respectfully submitted on 17 October 2023,



Gregory W. Kehoe
Counsel for Hashim Thaçi



Ben Emmerson, CBE KC
Counsel for Kadri Veseli



Annie O'Reilly
Co-Counsel for Kadri Veseli



Geoffrey Roberts
Counsel for Rexhep Selimi



Eric Tully
Co-Counsel for Rexhep Selimi



Rudina Jasini
Co-Counsel for Rexhep Selimi



David Young
Co-Counsel for Rexhep Selimi



Venkateswari Alagenda
Counsel for Jakup Krasniqi



Aidan Ellis
Co-Counsel for Jakup Krasniqi



Victor Băieșu
Co-Counsel for Jakup Krasniqi