



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

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
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

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Prosecution request to amend the Exhibit List and admit items

Specialist Prosecutor's Office

Kimberly P. West

Counsel for Victims

Simon Laws

Counsel for Hashim Thaçi

Luka Mišetić

Counsel for Kadri Veseli

Rodney Dixon

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

I. INTRODUCTION

1. Pursuant to Article 40 of the Law¹ and Rule 118(2) of the Rules,² the Specialist Prosecutor's Office ('SPO') requests leave to amend the Exhibit List³ to include the following documents related to W04401's recent examination: (i) Emrush XHEMAJLI's media interview about, amongst other topics, the four volume *Liridon Kosova* study ('XHEMAJLI Interview'); and (ii) the cover pages of the other three volumes of that same study (collectively, 'Requested Additions').⁴

2. The SPO then requests the admission of these items, along with the translated pages of volume one of the *Liridon Kosova* study ('LK Volume 1')⁵ (with Requested Additions, 'Tendered Items').

3. The Requested Additions acquired new significance in light of the Panel's 4 December 2024 ruling denying admission of LK Volume 1 without prejudice for lack of *prima facie* authenticity.

II. PROCEDURAL HISTORY

4. On 28 November 2024, the SPO used several portions of LK Volume 1 with W04401.⁶ W04401 acknowledged similarities between the information in the study and his own evidence, but made clear he had not seen the study before. The SPO

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). Unless otherwise indicated, all references to 'Rule' or 'Rules' are to the Rules.

³ Annex 1 to Prosecution submission of amended exhibit list with strictly confidential and *ex parte* Annex 1 and confidential Annex 2, KSC-BC-2020-06/F02807/A01, 19 December 2024, Strictly Confidential and *Ex Parte* ('Exhibit List').

⁴ The Requested Additions are: (i) SPOE00361031-SPOE00361044 (both English and Albanian versions) (XHEMAJLI Interview); and (ii) 0189-1611-0189-1613-ET (Volume 2 cover pages), 0189-1863-0189-1865-ET (Volume 3 cover pages), and 0189-2127-0189-2129-ET (Volume 4 cover pages).

⁵ P01879 MNA (0189-1161-0189-1309_extracts). The extracts are: (i) P01879_ET.1 MNA / 0189-1161-0189-1163, (ii) P01879_ET.2 MNA / 0189-1172-0189-1197; (iii) P01879_ET.3 MNA / 0189-1212-0189-1224-ET; (iv) P01879 ET.4 MNA / 0189-1235-0189-1247; (v) P01879 ET.5 MNA / 0189-1251-0189-1256-ET; (vi) P01879 ET.6 MNA / 0189-1260-0189-1261-ET; and (vii) P01879 ET.7 MNA / 0189-1286-0189-1287.

⁶ Transcript of Hearing, 28 November 2024, T.23003-23011.

tendered *LK* Volume 1 for admission and, following Defence objections, it was marked for identification.⁷

5. On 4 December 2024, the Panel denied admission of *LK* Volume 1 without prejudice.⁸ The Panel found that the portions of the item used with the witness were relevant, but denied admission on grounds that there were insufficient indicia of *prima facie* authenticity.⁹

III. SUBMISSIONS

A. THE REQUESTED ADDITIONS ARE TIMELY AND MADE WITH GOOD CAUSE

6. Exhibit List amendments should be treated with a degree of flexibility in a complex multi-Accused case involving a considerable amount of evidence, provided that there is adequate protection of the Accused's rights.¹⁰ The Requested Additions all arise directly from the examination of W04401, who completed his evidence in the last week of hearings prior to the winter recess. The SPO files the present application timely, doing so in the first week of hearings following that recess. The evidentiary value of the Requested Additions meaningfully changed in the course of W04401's examination, giving good cause to seek their addition now.

⁷ See Transcript of Hearing, 28 November 2024, T.23011-23021.

⁸ Transcript of Hearing, 4 December 2024, T.23298-23299.

⁹ Transcript of Hearing, 4 December 2024, T.23299 ('[i]n the present circumstances, however, the Panel is of the view that the fact that the LPK study allegedly bears certain similarities with the witness's understanding of the KLA anti-collaborator efforts is not sufficient to establish its *prima facie* authenticity. The Panel therefore finds that the SPO has failed to establish sufficient *prima facie* indicia of authenticity of the LPK study, and admission of the document is therefore not warranted at this stage. This is without prejudice to the SPO seeking to offer the item once the Rule 138(1) requirements have been fully met.').

¹⁰ See Decision on Prosecution Request to Amend the Exhibit List and Related Matters, KSC-BC-2020-06/F01352, 8 March 2023, Confidential, paras 29, 31; Decision on Thaçi's Appeal against "Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures", KSC-BC-2020-06/IA019/F00006, 12 July 2022, para.21; Decision on Prosecution Requests to Amend the Exhibit List (F01689 and F01747), KSC-BC-2020-06/F01785, 12 September 2023, Confidential, para.16.

7. *XHEMAJLI Interview*. Emrush XHEMAJLI is the former General Secretary of the LPK,¹¹ and was responsible for the LPK history document admitted through W04401.¹² The XHEMAJLI Interview is accessible via open source, dated (7 July 2017), and includes the publication the interview appeared in. In this article, XHEMAJLI indicates that the LPK made a four-volume work on its strategy entitled *Liridon Kosova*, which contained an oath at the beginning of each volume.¹³ This interview bolsters the *prima facie* authenticity of *LK Volume 1*, which itself indicates that it is 'Volume 1' of a larger work and contains an oath in its introduction.¹⁴ That the Panel did not consider *LK Volume 1* to be *prima facie* authentic following W04401's examination necessitates the addition of this item in order to provide the additional context required.

8. *Other Liridon Kosova Cover Pages*. To make it clearer that *LK Volume 1* is part of the four volume study referred to by XHEMAJLI, the SPO also seeks the addition of the cover pages of the other three *Liridon Kosova* study volumes (each disclosed in full to the Defence previously). The cover material is similar in formatting and style to *LK Volume 1* – complete with an oath at the beginning of each – further demonstrating that *LK Volume 1* is part of the study described in the XHEMAJLI Interview. The SPO does not seek to rely on the contents of these other three volumes, but there is good cause to add their cover material so as to make clear that *LK Volume 1* is an authentic document.

¹¹ XHEMAJLI Interview, SPOE00361031-SPOE00361044-ET, p.SPOE000361044.

¹² P01874, p.074633.

¹³ XHEMAJLI Interview, SPOE00361031-SPOE00361044-ET, pp.SPOE000361034 (emphasis added: '[i]n the 4th General Meeting of the LPK which took place in Kodra e Trimave in Prishtina on 26 to 27 July 1993 (6) the Program envisaged the armed struggle in addition to the political one as a form of achieving the goal. This program change paved the way for the LPK general direction towards the armed struggle. *The theoretical work on the LPK strategy and tactic of this war is reflected in a 4-volume body of work put together by military experts overseen by the LPK Leadership. The introduction of each volume has the oath of the LPK fighter which became the oath of the KLA fighter later on (7).* Thus, the LPK military program in 1994 had the platform of national unification in its political section. The unification of all Albanian territories in former Yugoslavia – 8 with Albania was embodied in the KLA goal and expressed through the oath of the KLA soldier'), SPOE000361043 (footnote 8).

¹⁴ *LK Volume 1*, P01879_ET.1 MNA , pp.0189-1161-0189-1163.

B. THE TENDERED ITEMS ARE ADMISSIBLE

9. For the same reasons why there is good cause to make the Requested Additions to the List of Exhibits, they are *prima facie* relevant and probative. They should be admitted accordingly.

10. As concerns *LK* Volume 1, the item should now be declared admissible in light of the Requested Additions. *LK* Volume 1 was an item seized by the Serbian authorities and provided to the ICTY in 2001. It purports to concern LPK tactics towards 'Intelligence and Counterintelligence', and many parts of this strategy reflect the charged JCE in this case, including:

- (i) Publicising that collaborators would not be spared or remain undiscovered;¹⁵
- (ii) The responsibility of intelligence to collect information on suspicious persons;¹⁶
- (iii) Making lists of collaborators to target;¹⁷

¹⁵ *LK* Volume 1, P01879_ET.5 MNA, p.0189-1252 ('[a]t the appropriate time it should be made clear to the entire population that no one should think that the criminals will be spared or that they would remain undiscovered').

¹⁶ *LK* Volume 1, P01879_ET.5 MNA, p.0189-1252 ('[t]he intelligence service gathers news from the people about the main people of the reaction; for example, about the officers, commanders, schismatics of the movement, police wardens, judges, and other people to be handed over to the national-liberation combat units. Investigations are also conducted into those elements suspected of having collaborated with the reaction, in order to discover the camouflaged traitors and spies').

¹⁷ *LK* Volume 1, P01879_ET.5 MNA, p.0189-1252 ('[t]he intelligence services should focus its surveillance on all those who openly or clandestinely have carried out, and continue to carry out, enemy activity. SHIQ /?Central Intelligence Service/ make lists of all the criminals beginning with the zones of the partisan regions (villages), the local commands, and then up to the regional commands, the zone. These lists should include those distinguished as killers in every region of the cities or that have carried out acts of terror on the people, as well as those who joined the liberation units late (deserters from the enemy's ranks), as well as reactionary elements who escaped from prison before finishing their sentences').

- (iv) The role of intelligence in purging liberated areas of collaborators,¹⁸ and
- (v) The authorisation to kill collaborators.¹⁹

11. W04401's evidence about the KLA General Staff's approach towards collaborators is remarkably similar to what is set out in *LK* Volume 1.²⁰ The overlap is also significant in light of further evidence of the LPK being a kind of predecessor of the KLA²¹ and Kadri VESELI's remarks that intelligence was a collective endeavour from 1992-1998²² (covering the period when the study was published).

12. *LK* Volume 1 is an exposition of a violent anti-collaborator policy expressed by a clandestine LPK movement. The evidence heard throughout this trial on collaborator targeting, practices, lists, etc. shows continuity between these methods and what the Accused orchestrated within the KLA during the Indictment timeframe. The Panel has indeed already concluded that portions of *LK* Volume 1 were *prima facie* relevant, and nothing has happened since to justify changing this assessment. But not all relevant parts of the item were shown to W04401, and the LPK strategy can only be properly understood if sufficient context around the pages cited is admitted. The SPO has narrowly tailored its tender by only tendering the translated pages necessary to provide this context (amounting to under half of the volume itself).

13. *LK* Volume 1 is clearly marked as being an LPK document dated from before the charged Indictment timeframe.²³ Part of *LK* Volume 1 makes reference to three

¹⁸ *LK* Volume 1, P01879_ET.6 MNA, p.0189-1260 ('[a]fter liberating the zones, regions, villages and cities, the intelligence service devotes itself intensively to the work of seeking out, finding, pursuing, and eliminating the criminals, spies, and traitors').

¹⁹ *LK* Volume 1, P01879_ET.2 MNA, p.0189-0188 ('[t]he clandestine squads can carry out various actions such as the killing of spies and traitors, officers and policemen, they can snatch weapons and transport them to secret bases, destroy military buildings with explosives, organise ambushes against police and "secret post" vehicles, cut telephone lines etc.').

²⁰ See Transcript of Hearing, 28 November 2024, T.23003-23011.

²¹ See e.g. P00545; P00793, p.U016-2175; Transcript of Hearing, 24 April 2024, T.14861.

²² Transcript of Hearing, 28 November 2024, T.22984-22987 (in relation to SPOE00052992-SPOE00053035, p.SPOE00053010).

²³ *LK* Volume 1, P01879_ET.1 MNA, p.0189-1162.

alternatives for national liberation,²⁴ which is in reference to the three 'forms of a national liberation struggle' in the admitted 1993 LPK program.²⁵ The XHEMAJLI Interview now confirms - from someone well positioned to speak to the history of the LPK - that *LK* Volume 1 was indeed a real study.²⁶ This is mutually reinforced by the other *Liridon Kosova* volumes' cover materials, demonstrating that the previously tendered item is part of a four volume set as XHEMAJLI claims.

14. Noting that *LK* Volume 1 was denied without prejudice, the additional evidence provided now establish the item's authenticity to a *prima facie* standard. Exactly how the document was obtained or who authored it are not pre-requisites to *prima facie* admissibility, as has been the practice of the Panel during trial.²⁷ The item should be admitted at this time.

²⁴ *LK* Volume 1, P01879_ET.2 MNA, p.0189-1185 ('[t]he establishment of the LPK and its program of three alternatives for the liberation and national unification marks a new stage of the war, that of its organisation and implementation by violent means.').

²⁵ W04401 understood this part of the 1993 LPK program as setting out three alternatives. Transcript of Hearing, 28 November 2024, T.22955-22957 (commenting on 1D00203 (DHT04456-DHT04470), DHT04462 - 'I am not able to make a clear distinction between the word "democratic," comma, then "peaceful and political." That results to me to be three'). This connection is in line with the XHEMAJLI Interview, which indicated that the *Liridon Kosova* study followed in the wake of the program adopted at the 4th General Meeting of the LPK in 1993. SPOE00361031-SPOE00361044-ET, pp.SPOE000361034.

²⁶ The Taçi Defence misrepresented the SPO's interview with Emrush XHEMAJLI in claiming that 'he did not say he had knowledge of this document'. Transcript of Hearing, 28 November 2024, T.23020. XHEMAJLI did not deny knowing about the *Liridon Kosova* study - a plain reading of the interview instead shows that XHEMAJLI refused to engage with nearly all SPO questioning on LPK matters. See 074634-TR-ET (four parts). XHEMAJLI never commented one way or the other about the *Liridon Kosova* study in his SPO interview, meaning that nothing in that interview is inconsistent with his affirmative comment on its existence in the XHEMAJLI Interview.

²⁷ Transcript of Hearing, 4 December 2024, T.23298-23299 ('the Panel recalls that proof of authorship or provenance of a document is not a prerequisite to its admission into evidence, provided that the tendering party has otherwise established its *prima facie* authenticity and reliability.'). As an example, P01109 was a set of meeting notes shown to W04401 during his examination. W04401 admitted to writing many of these notes himself (Transcript of Hearing, 2 December 2024, T.23036-23040), but at the point of P01109's actual admission this was not yet confirmed. All that could be said about the item's authenticity at that point in time was that it was obtained by the Serbian authorities during the war, but it was still admitted on a *prima facie* assessment. See T.14165-T.14167.

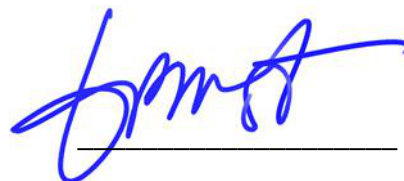
C. THERE IS NO UNDUE PREJUDICE

15. No undue prejudice would result from granting the Requested Additions or admitting the Tendered Items. The Defence had a full opportunity to question W04401 about *LK* Volume 1 during cross-examination,²⁸ and *LK* Volume 1 has been on the Exhibit List since well before the commencement of trial.²⁹ The additional items related to this volume merely bolster its *prima facie* authenticity.

IV. RELIEF REQUESTED

16. For the foregoing reasons, the SPO requests that the Panel: (i) authorise the Requested Additions to the Exhibit List; and (ii) admit the Tendered Items.

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Kimberly P. West

Specialist Prosecutor

Monday, 13 January 2025

At The Hague, the Netherlands.

²⁸ The SPO also highlighted the potential significance of the XHEMAJLI Interview on the record prior to the beginning of cross-examination. Transcript of Hearing, 28 November 2024, T.23019-23020.

²⁹ *LK* Volume 1 was disclosed pursuant to Rule 102(1)(b) in Disclosure Package 64 of 11 August 2021.