



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-06

**The 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: Fidelma Donlon

Date: 31 January 2025

Language: English

Classification: Public

**Public Redacted Version of
Decision on Prosecution Request to Amend the Exhibit List and Admit Video
following W04410's Testimony**

Specialist Prosecutor

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TRIAL PANEL II (“Panel”), pursuant to Articles 21 and 40 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 102(1)(b), 118(2), 137 and 138 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. Between 4 and 6 June 2024, the Panel heard the evidence of W04410.¹ On 5 June 2024, during the Defence cross-examination of W04410, the Panel admitted DKV01213-01213 as 2D00022, which is a video depicting civilians and wounded persons being transported from Baicë/Banjica (Drenica Zone) on 8 April 1999.²
2. On 21 June 2024, the Specialist Prosecutor’s Office (“SPO”) requested the Panel to amend the Exhibit List³ to include 121386-01 – a recently published video (“Video”), and tendered the Video for admission into evidence, asserting that the Video depicts the same events, but is more probative, despite its partial overlap with 2D00022 (“Request”).⁴
3. On 3 July 2024, the Defence for all four Accused (collectively, “Defence”) responded jointly to the Request requesting the Panel to reject the Request (“Response”).⁵

¹ Transcript of hearing of W04410, 4 June 2024, pp. 16599-16709; Transcript of hearing of W04410, 5 June 2024, pp. 16712- 16845; Transcript of Hearing of W04410, 6 June 2024, pp. 16858-16914.

² Transcript of hearing of W04410, 5 June 2024, p. 16835; Transcript of Hearing of W04410, 5 June 2024, pp. 16822-16825. *See also* 2D00022, from 00:00 to 01:55 (“Today is 8 April 1989. We are transporting the wounded from Baice valley to Vucak”).

³ F02254, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 19 April 2024, strictly confidential and *ex parte*, with Annex 1 (“Exhibit List”), strictly confidential and *ex parte*, and Annex 2, confidential.

⁴ F02399, Specialist Prosecutor, *Prosecution Request to Amend the Exhibit List and Admit Video Following W04410’s Testimony*, 21 June 2024, confidential, paras 1-2 (a public redacted version was filed on the same day, F02399/RED).

⁵ F02422, Specialist Counsel, *Joint Defence Response to Prosecution Request to Amend the Exhibit List and Admit Video Following W04410’s Testimony*, 3 July 2024, confidential (a public redacted version was filed on 9 July 2024, F02422/RED).

4. On 8 July, the SPO replied to the Response (“Reply”).⁶

II. SUBMISSIONS

5. The SPO submits that the Request is timely because the Video was published on 10 June 2024 following the completion of W04410’s testimony on 6 June 2024.⁷ The SPO further submits that good cause exists for the Request as the Video: (i) is relevant to W04410’s testimony; (ii) depicts the same events and partially overlaps with 2D00022 which was admitted during W04410’s testimony without any objection; and (iii) depicts Rexhep Selimi (“Mr Selimi”) which is relevant to [REDACTED].⁸ Furthermore, the SPO submits that the Video meets the test for admissibility as it is *prima facie* authentic, relevant, and has probative value that is not outweighed by any prejudice.⁹

6. The Defence argues that the SPO failed to demonstrate: (i) good cause for the addition of the Video to the Exhibit List pursuant Rule 118(2),¹⁰ and (ii) the *prima facie* relevance and authenticity of the Video pursuant Rule 138(1).¹¹ The Defence argues that the SPO erroneously avers that the Video is relevant to [REDACTED].¹² The Defence further argues that: (i) the Video is an edited clip rather than uninterrupted and continuous footage; (ii) there is no evidence supporting the conclusion that the Video and 2D00022 depict the same events; and (iii) the SPO fails to provide any evidence as to the authorship of the Video and the article from which the Video originates.¹³

7. The SPO in its Reply submits that the Defence challenges the relevance of the Video based on arguments equally applicable to the admitted exhibit 2D00022,

⁶ F02432, Specialist Prosecutor, *Prosecution Reply to Response F02422*, 8 July 2024, confidential (a public redacted version was filed on the same day, F02432/RED).

⁷ Request, para. 3.

⁸ Request, para. 2.

⁹ Request, paras 4-5.

¹⁰ Joint Response, para. 1.

¹¹ Joint Response, paras 1, 2-17.

¹² Joint Response, paras 3, 7, 9-12.

¹³ Joint Response, paras 4-6.

namely: (i) 2D00022 is an edited video with multiple pieces of footage combined together; (ii) no witness, including W04410, explained who filmed 2D00022; and (iii) the Defence gave no information as to the provenance of 2D00022.¹⁴ The SPO further replies that (i) the Defence misstates the evidence while presenting the Video as completely disconnected from 2D00022;¹⁵ (ii) 2D00022 and the Video both depict the same kinds of activities described by [REDACTED] at around the same place and time and, as such, the Video provides meaningful corroboration of [REDACTED]'s account;¹⁶ (iii) it would be unreasonable to expect the SPO to re-examine W04410 as to the author of 2D00022 in anticipation of an extended version of the footage being published later;¹⁷ (iv) all sequences in the Video have matching weather, topography, and overall circumstances;¹⁸ and (v) [REDACTED] further bolsters the authenticity of the Video by confirming that Mr Veseli and Mr Selimi were escorting wounded from the Drenica Zone in April 1999.¹⁹

III. APPLICABLE LAW

8. Pursuant to Rule 118(2), the Panel may permit, upon timely notice and a showing of good cause, the amendment of the lists of witnesses and exhibits filed pursuant to Rule 95(4)(b) and (c). As proceedings advance, any further requests to amend the Exhibit List will be subject to greater scrutiny.²⁰ As previously stated, the Panel needs to satisfy itself that the proposed item is *prima facie* relevant and of sufficient importance to justify the late addition and no undue prejudice is caused

¹⁴ Reply, para. 2.

¹⁵ Reply, para. 3.

¹⁶ Reply, para. 4.

¹⁷ Reply, para. 5.

¹⁸ Reply, para. 3.

¹⁹ Reply, para. 5.

²⁰ See, amongst many, F01995, Panel, *Decision on Prosecution Request to Amend the Exhibit List* ("8 December 2023 Decision"), 8 December 2023, confidential, para. 9 (a public redacted version was issued on the same day, F01995/RED); F02167, Panel, *Decision on Prosecution Request to Amend the Exhibit List (F02099)* ("7 March 2024 Decision"), 7 March 2024, confidential, para. 10 (a public redacted version was issued on the same day, F02167/RED); F02501, Panel, *Decision on Prosecution Request to Amend the Exhibit List (F02279) and on Thaçi Defence Motion for Exclusion of Materials in Limine*, 22 August 2024, confidential, para. 23 ("22 August 2024 Decision").

to the Defence as a result.²¹ Lastly, the Panel makes the assessment mindful of the current stage of proceedings and the fact that the Exhibit List is, by any standards, quite voluminous.²²

IV. DISCUSSION

A. AMENDMENT OF THE EXHIBIT LIST

9. As regards the issue of timeliness, the Panel observes that the Video was published in a *Nacionale* article on 10 June 2024, following the completion of W04410's testimony on 6 June 2024.²³ As such, the Panel is satisfied that the SPO Request for the amendment of the Exhibit List is timely.

10. As regards relevance and importance of the Video, the Panel recalls that: (i) W04410 described the scene in 2D00022 as a civilian population leaving Kosovo; (ii) 2D00022 is dated 8 April 1999; (iii) 2D00022 depicts civilians and wounded leaving/being transported from Baicë/Banjica (Drenica Zone);²⁴ and (iv) W04410 identified, in 2D00022, Kadri Veseli ("Mr Veseli") as the person in the Kosovo Liberation Army ("KLA") uniform overseeing the scene.²⁵ The Panel notes that the title of the Video specifically refers to Mr Veseli and Mr Selimi being depicted in the video footage.²⁶ In the Panel's view, for the purposes of amending of the Exhibit List, it suffices that the Video is not "obviously irrelevant".²⁷ The Panel is satisfied that the Video is *prima facie* relevant and important.

²¹ F01656, Panel, *Decision on Prosecution Request to Add Intercepted Communications to the Exhibit List*, 7 July 2023, confidential, para. 11 (a public redacted version was issued on 14 November 2023, F01656/RED); F01785, Panel, *Decision on Prosecution Requests to Amend the Exhibit List* ("12 September 2023 Decision"), 12 September 2023, confidential, paras 15-17 (a public redacted version was issued on 10 November 2023, F01785/RED). *See also* 8 December 2023 Decision, para. 9.

²² 7 March 2024 Decision, para. 10; 22 August 2024 Decision, para. 23.

²³ Request, para. 3.

²⁴ Transcript of Hearing of W04410, 5 June 2024, pp. 16822-16825. *See also* 2D00022, from 00:00 to 01:55 ("Today is 8 April 1989. We are transporting the wounded from Baice valley to Vucak").

²⁵ Transcript of hearings of W04410, 5 June 2024, pp. 16822-16825. *See also* 2D00022, from 02:02 to 02:07.

²⁶ "Rare footage: Kadri Veseli and Rexhep Selimi as they remove civilians and wounded from war zones"; *See* Request, para. 4. *See also* metadata of 121386-01.

²⁷ *See* F01544, Panel, *Decision on Prosecution Request to Add Five Items Relating to Expert Witness to the Exhibit List*, 23 May 2023, para. 11 (with other references).

11. As regards prejudice to the Defence by amending the Exhibit List, the Panel finds that the Defence heard [REDACTED] regarding Mr Selimi's alleged presence in the Drenica Zone in April 1999 which led [REDACTED]. The Defence was able to question the witness on this point. As such, the Panel finds that no prejudice is caused to the Defence by amending the Exhibit List.

12. The Panel therefore finds that there is a good cause and grants leave to add the Video (121386-01) to the Exhibit List.

B. ADMISSION IN EVIDENCE

13. The Panel recalls that admissibility of videos generally requires information regarding their origin and integrity, and that the relevance of the material is to be assessed based on whether they relate to locations, people, and/or events that form part of the case.²⁸ The Panel recalls its previous finding that evidence is deemed to be relevant, if it is connected, directly or indirectly, to elements of the offence(s) or mode(s) of liability pleaded in the Indictment or other facts or circumstances material to the case of the Parties.²⁹ In the present instance, the Panel refers to its findings in para. 10 above, and recalls that the identification of Mr Selimi by [REDACTED] was allegedly based on [REDACTED] seeing Mr Selimi transporting the wounded [REDACTED].³⁰ The Panel notes that the involvement of Mr Selimi in various aspects of a transfer, detention, and/or release of detainees held at [REDACTED] is an allegation that is pleaded in the Indictment.³¹ In conclusion, the Panel is satisfied that the Video is *prima facie* relevant.

14. As regards authenticity, the Panel notes that (i) the Video was published in a *Nacionale* article and there is no other information about the Video's authorship or provenance;³² and (ii) the authorship of admitted exhibit 2D00022, which partially

²⁸ First Bar Table Decision, para. 10 (with other references).

²⁹ First Bar Table Decision, para. 10 (with other references).

³⁰ [REDACTED].

³¹ Indictment, para. 49.

³² Metadata of 121386-01. *See also* Request, para. 3.

overlaps with the Video, is also unknown.³³ The Panel recalls its previous finding that admissibility of videos generally requires information regarding of their origin and integrity.³⁴ The Panel observes that the Video does not bear any logo and a time or date stamp and there is no available information regarding the production of the Video. W04410 provided very limited comments on 2D00022, which partially overlaps with the Video.³⁵ The Panel further observes that it is not readily apparent from the Video whether or how the sequences before and after the one allegedly depicting Mr Selimi are linked to each other. The Panel is also not persuaded by the SPO's proposal, offered without any further details, that the weather, topography and overall circumstances match throughout the sequences in the Video. The Panel also notes the SPO's arguments regarding the alleged lack of relevance and authenticity of 2D00022. However, the Video is claimed to be an extended version of 2D00022 and objections to the demonstration of admissibility requirements to 2D00022 inherently undermine admissibility of the Video. The Panel is also not persuaded by the SPO's submission that [REDACTED] is bolstering the authenticity of the Video by confirming that Mr Veseli and Mr Selimi were escorting wounded from the Drenica Zone in April 1999.³⁶ The Panel finds that the testimony of [REDACTED] partially corroborates [REDACTED], but does not have any effect on the authenticity of the Video.

15. The Panel is therefore not satisfied that the Video is *prima facie* authentic. Accordingly, the Panel will exercise its discretion not to admit the Video into the Evidence.

³³ Transcript of 5 June 2024, pp. 16822-16823. *See also* Joint Response, para. 14.

³⁴ First Bar Table Decision, para. 26.

³⁵ Transcript of Hearing of W04410, 5 June 2024, pp. 16822-16825. *See also* Request, para. 4.

³⁶ [REDACTED]. *See also* Reply, para. 5.

V. DISPOSITION

16. For the above-mentioned reasons, the Panel hereby:

- a) **GRANTS** the Request, in part;
- b) **GRANTS** the SPO leave to add the Video (121386-01) to the Exhibit List;
- c) **ORDERS** the SPO to file its amended Exhibit List no later than **Friday, 7 February 2025**;
- d) **FINDS** the Video not to be appropriate for admission, for reasons set out in paragraph 14;



Judge Charles L. Smith, III
Presiding Judge

Dated this Friday, 31 January 2025

At The Hague, the Netherlands.