



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: 1 April 2025

Language: English

Classification: Public

Decision on Prosecution Request to Amend the Exhibit List and Admit Items

Specialist Prosecutor
Kimberly P. West

Counsel for Hashim Thaçi
Luka Mišetić

Counsel for Victims
Simon Laws

Counsel for Kadri Veseli
Rodney Dixon

Counsel for Rexhep Selimi
Geoffrey Roberts

Counsel for Jakup Krasniqi
Venkateswari Alagendra

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), 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 28 November 2024, the Specialist Prosecutor's Office ("SPO") tendered portions of Volume 1 of the *Liridon Kosova* study¹ ("Study"),² which it had put to W04401 during his examination-in-chief.³

2. On 4 December 2024, the Panel denied admission of Volume 1 of the Study without prejudice, finding that the portions of the Study used with the witness were relevant but there were insufficient indicia of the Study's *prima facie* authenticity.⁴

3. On 13 January 2025, the SPO requested the Panel to amend the Exhibit List⁵ to include: (i) Emrush Xhemajli's ("Mr Xhemajli") media interview ("Xhemajli Interview")⁶; and (ii) the cover pages of the other three volumes of the Study⁷ ("Cover Pages"; collectively "Requested Additions") ("Request").⁸ The SPO also sought the admission into evidence of the Requested Additions along with the

¹ P01879 MNA (0189-1161-0189-1309_extracts_P01879). The extracts are: (i) P01879.1_ET MNA (0189-1161-0189-1163-ET); (ii) P01879.2_ET MNA (0189-1172-0189-1197-ET); (iii) P01879.3_ET MNA (0189-1212-0189-1224-ET); (iv) P01879.4_ET MNA (0189-1235-0189-1247-ET); (v) P01879.5_ET MNA (0189-1251-0189-1256-ET); (vi) P01879.6_ET MNA (0189-1260-0189-1261-ET); and (vii) P01879.7_ET MNA (0189-1286-0189-1287-ET).

² Transcript of Hearing, 28 November 2024, pp. 23011-23012.

³ Transcript of Hearing, 28 November 2024, pp. 23003-23011.

⁴ Transcript of Hearing, 4 December 2024, pp. 23298-23299.

⁵ F03047, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 21 March 2025, with Annex 1 ("Exhibit List"), confidential.

⁶ SPOE00361031-SPOE00361044 (both English and Albanian versions). See Request, para. 1, footnote 4.

⁷ 0189-1611-0189-1613-ET; 0189-1863-0189-1865-ET; 0189-2127-0189-2129-ET. See Request, para. 1, footnote 4.

⁸ F02827, Specialist Prosecutor, *Prosecution Request to Amend the Exhibit List and Admit Items*, 13 January 2025, paras 1, 16.

portions of Volume 1 of the Study which it had put to W04401 during his examination-in-chief (collectively, “Tendered Items”).⁹

4. On 24 January 2025, the Defence for Kadri Veseli (“Defence”) responded to the Request (“Response”).¹⁰

5. On 24 January 2025, the SPO replied to the Response (“Reply”).¹¹

II. SUBMISSIONS

6. The SPO submits that the Request is timely because the Requested Additions all arise directly from the examination of W04401, who completed his evidence prior to the winter recess.¹² According to the SPO, the evidentiary value of the Requested Additions meaningfully changed in the course of W04401’s examination, giving good cause to seek their addition now.¹³ The SPO further submits that good cause exists for the Request as: (i) the Xhemajli Interview bolsters the *prima facie* authenticity of Volume 1 of the Study, which itself indicates that it is ‘Volume 1’ of a larger work and contains an oath in its introduction;¹⁴ and (ii) the Cover Pages show that Volume 1 of the Study is part of a four-volume study and is an authentic document.¹⁵ Finally, the SPO submits that the Tendered Items meet the test for admissibility as they are relevant, *prima facie* authentic, and have probative value that is not outweighed by any prejudice.¹⁶

7. The Defence argues the following in regards to the Requested Additions: (i) the SPO has failed to demonstrate timely notice or good cause to justify their

⁹ Request, paras 2, 16.

¹⁰ F02857, Specialist Counsel, *Veseli Defence Response to Prosecution Request to Amend the Exhibit List and Admit Items (F02827)*, 24 January 2025.

¹¹ F02862, Specialist Prosecutor, *Prosecution Reply to F02857*, 24 January 2025.

¹² Request, para. 6.

¹³ Request, para. 6.

¹⁴ Request, para. 7.

¹⁵ Request, para. 8.

¹⁶ Request, paras 9-15.

late addition;¹⁷ (ii) none of the witnesses that were shown the Study during SPO interviews recognised it or gave evidence that would assist in confirming its authenticity;¹⁸ (iii) since the SPO disclosed the Xhemajli Interview to the Defence pursuant to Rule 102(3) on 15 November 2024, in advance of W04401's testimony, it cannot be said that the need to rely on this document only arose as a result of W04401's examination;¹⁹ (iv) the Xhemajli Interview dates from 2017 and could have been added to the Exhibit List at a much earlier date;²⁰ and (v) since the different volumes of the Study were disclosed to the Defence in 2021 and 2022, failure to add these pages to the Exhibit List was a result of an oversight by the SPO.²¹ The Defence further argues the following in regards to the admissibility of the Tendered Items: (i) the Xhemajli Interview's author and the source of the information are unknown, unsubstantiated and cannot be said to be reliable;²² (ii) the SPO interviewed Mr Xhemajli in 2020 and did not ask him about the Xhemajli Interview, or about the Study;²³ (iii) it cannot be asserted with any certainty that the document being referred to in the Xhemajli Interview is in fact the same Study the SPO have sought to tender;²⁴ (iv) the Xhemajli Interview was already brought to the attention of the Panel ahead of its finding rejecting the admission of portions of Volume 1 of the Study into evidence;²⁵ (v) the Study lacks authenticity as it was allegedly drafted in 1993 but depicts an event that took place in February 1995;²⁶ (vi) W04583, one of the founders of the People's Movement of Kosovo ("LPK"), told the SPO he has never seen the Study before and W04749, an early member of the LPK, said that the Study was not a document approved by the

¹⁷ Response, para. 8. *See also* Response, para. 9.

¹⁸ Response, para. 10.

¹⁹ Response, para. 11.

²⁰ Response, para. 12.

²¹ Response, para. 13. *See also* Response, para. 14.

²² Response, para. 17.

²³ Response, para. 18.

²⁴ Response, para. 19.

²⁵ Response, para. 20.

²⁶ Response, para. 22.

LPK;²⁷ and (vii) the SPO has failed to provide any additional evidence that would bolster the Study's authenticity to a *prima facie* standard.²⁸

8. The SPO in its Reply submits the following arguments: (i) the Defence's response was filed out of time and should be dismissed *in limine*;²⁹ (ii) the relief sought by the SPO did arise as a result of W04401's examination, specifically the Panel's ruling that further indicia of authenticity was needed to admit Volume 1 of the Study; (iii) the first page of the Xhemajli Interview and its content make clear that its words belong to Mr Xhemajli; (iv) the name of the Study is provided in this item; (v) the asserted date discrepancy changes nothing about the SPO's prior submission that Volume 1 of the Study is an LPK document dated from before the charged Indictment timeframe; and (vi) any consideration of purportedly contrary (and unadmitted) witness statements goes well beyond an inquiry of *prima facie* admissibility.³⁰

III. APPLICABLE LAW

9. 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.³¹ 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

²⁷ Response, para. 23.

²⁸ Response, para. 24.

²⁹ Reply, para. 2.

³⁰ Reply, para. 3.

³¹ 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 Decision"), 22 August 2024, confidential, para. 23.

to the Defence as a result.³² 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.³³

10. The applicable law regarding the admission of evidence is set out, in particular, in Article 40(6)(h) and Rule 138(1), and has been laid out extensively in the Panel's prior decisions.³⁴ The Panel will apply these standards to the present decision.

IV. DISCUSSION

A. LATE FILING OF RESPONSE

11. At the outset, the Panel notes that the Request was filed on 13 January 2025. The Response was filed on 24 January 2025 and thus after the expiry of the ten days provided for in Rule 76. The Panel is of the view that the Defence has not shown good cause for the untimely filing of the Response. However, the Panel will exercise its discretion and consider the Defence's submissions put forward in the Response.

B. AMENDMENT OF THE EXHIBIT LIST

12. Regarding the issue of timeliness, the Panel notes the SPO's submission that the Requested Additions acquired new significance in light of the Panel's 4 December 2024 ruling,³⁵ in the last week prior to the winter judicial recess, denying admission of Volume 1 of the Study without prejudice for lack of *prima*

³² 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, confidential, paras 15-17 (a public redacted version was issued on 10 November 2023, F01785/RED). *See also* 8 December 2023 Decision, para. 9.

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

³⁴ *See e.g.* F01409, Panel, *Decision on Specialist Prosecutor's Bar Table Motion*, 31 March 2023, confidential, paras 8-13.

³⁵ Transcript of Hearing, 4 December 2024, pp. 23298-23299.

facie authenticity.³⁶ The Panel further notes that the Request was filed in the first week after the winter judicial recess. Bearing in mind that a certain degree of flexibility must be maintained in the context of a complex multi-accused trial,³⁷ the Panel considers the notice provided by the SPO in respect of the Requested Additions to be timely.

13. Regarding good cause and the question of the relevance and importance of the Requested Additions, the Panel observes that the Requested Additions seek to bolster the authenticity of Volume 1 of the Study.³⁸ The Panel notes that the Xhemajli Interview indicates that the LPK made a four-volume work on its strategy and tactics on war entitled *Liridon Kosova*, which contained an oath at the beginning of each volume.³⁹ The Panel further notes that the Cover Pages suggest that Volume 1 of the Study is part of a four-volume study mentioned in the Xhemajli Interview.⁴⁰ In the Panel's view, there is good cause to amend the Exhibit List to add the Requested Additions in order to potentially bolster the authenticity of Volume 1 of the Study.

14. Regarding prejudice to the Defence by amending the Exhibit List, the Panel finds that: (i) the Xhemajli Interview was disclosed to the Defence on 15 November 2024 under Rule 102(3),⁴¹ and Serbian translations of the Cover Pages were disclosed to the Defence on 31 August 2021,⁴² 25 July 2021⁴³ and 8 December 2022,⁴⁴ respectively; (ii) the Requested Additions are of limited length; and (iii) the

³⁶ Request, para. 3.

³⁷ 8 December 2023 Decision, para. 14; F01902, Panel, *Decision on Prosecution Request to Amend the Exhibit List (F01858)*, 3 November 2023, para. 7.

³⁸ Request, paras 7-8.

³⁹ Request, para. 7.

⁴⁰ Request, para. 8.

⁴¹ See Disclosure Package 1493.

⁴² See Disclosure Package 73.

⁴³ See Disclosure Package 36.

⁴⁴ See Disclosure Package 615.

SPO does not seek to rely on the contents of the Cover Pages.⁴⁵ As such, the Panel finds that no prejudice is caused to the Defence by amending the Exhibit List.

15. In light of the above, the Panel grants the SPO leave to add the Requested Additions to the Exhibit List. The Panel orders the SPO to file its amended Exhibit List no later than Tuesday, 8 April 2025.

C. ADMISSION OF EVIDENCE

1. Requested Additions

16. As regards the relevance of the Requested Additions, the Panel recalls its previous findings that the Requested Additions are relevant insofar as they seek to bolster the authenticity of Volume 1 of the Study.⁴⁶ In this regard, the Panel further recalls that it found that the portions of Volume 1 of the Study put to W04401 during his examination-in-chief are relevant.⁴⁷ The Panel is therefore satisfied that the Requested Additions are *prima facie* relevant.

17. As regards authenticity, the Panel notes that: (i) the Xhemajli Interview is dated and its source identified, refers directly to the Study also tendered for admission and includes information which overlaps with relevant parts of the Study;⁴⁸ and (ii) the Cover Pages are dated, indicate place of issuance, are clearly marked as LPK documents, and corroborate each other. The Panel is therefore satisfied that the Requested Additions bear *prima facie* indicia of authenticity.

18. Regarding the Defence's argument that the Xhemajli Interview's author and the source of the information are unknown, unsubstantiated and cannot be said to be reliable,⁴⁹ the Panel recalls that proof of provenance or authorship of the

⁴⁵ Request, para. 8.

⁴⁶ See above para. 13.

⁴⁷ Transcript of Hearing, 4 December 2024, p. 23298, lines 18-23.

⁴⁸ SPOE00361031-SPOE00361044-ET, pp. SPOE000361034, SPOE000361043.

⁴⁹ Response, para. 17.

tendered items is not required when assessing *prima facie* authenticity and reliability under Rule 138(1), as such proof pertains to the evidentiary weight of the tendered items rather than to their admissibility and, as such, will be duly assessed by the Panel at the end of trial, having regard to the entire body of evidence.⁵⁰

19. Having found the Requested Additions to be relevant and *prima facie* authentic, the Panel is satisfied that these items also bear *prima facie* probative value regarding facts and circumstances relevant to this case as outlined above at paragraph 13. The Panel is also satisfied that the *prima facie* probative value of the Requested Additions is not outweighed by any prejudice to the Accused, considering that the Defence will be able to make submissions in respect of the weight and probative value of these items and could, if it so chooses, challenge the content of these items through the presentation of evidence, although it bears no onus to do so.

20. Regarding the Defence's argument that it cannot be asserted with any certainty that the document being referred to in the Xhemajli Interview is in fact the same Study the SPO have sought to tender,⁵¹ the Panel notes that the Xhemajli Interview specifically references a four-volume work on the LPK strategy entitled *Liridon Kosova*, containing an oath at the beginning of each volume.⁵² The Study contains the same title and Volume 1 of the Study indicates that it is 'Volume 1' of a larger work and also contains an oath in its introduction.⁵³ The Panel is therefore satisfied on a *prima facie* basis and for the purpose of deciding its admission, that

⁵⁰ F01596, Panel, *Second Decision on Specialist Prosecutor's Bar Table Motion*, 9 June 2023, confidential and *ex parte*, para. 84 (a confidential redacted version was issued on the same day, F01596/CONF/RED; the *ex parte* marking of the decision was lifted on 22 June 2023, F01596/CONF; the decision was reclassified as public on 15 November 2023, F01596).

⁵¹ Response, para. 19.

⁵² SPOE00361031-SPOE00361044-ET, pp. SPOE000361034, SPOE000361043.

⁵³ P01879.1_ET MNA, pp. 0189-1161-0189-1163.

the document being referred to in the Xhemajli Interview is in fact the same Study the SPO have sought to tender.

21. Regarding the Defence's argument that the Xhemajli Interview was already brought to the attention of the Panel ahead of its finding rejecting the admission of Volume 1 of the Study into evidence,⁵⁴ the Panel notes that it does not consider documents for corroboration or as supporting provenance and authenticity, if not admitted or tendered for admission.⁵⁵ Although the Xhemajli Interview was brought to the attention of the Panel, the Panel did not consider this item when ruling on Volume 1 of the Study.⁵⁶

22. In light of the above, the Panel is satisfied that the Requested Additions are admissible pursuant to Rule 138(1).

2. Volume 1 of the Study

23. As regards the relevance of Volume 1 of the Study, the Panel recalls its previous findings that Volume 1 of the Study is deemed to be relevant.⁵⁷ The Panel also notes that the SPO intends to rely on Volume 1 of the Study as it purports to concern LPK tactics towards intelligence and counterintelligence, in particular: (i) publicising that collaborators would not be spared or remain undiscovered; (ii) the responsibility of intelligence to collect information on suspicious persons; (iii) making lists of collaborators to target; (iv) the role of intelligence in purging liberated areas of collaborators; and (v) the authorisation to kill collaborators.⁵⁸ The Panel is therefore satisfied that Volume 1 of the Study is *prima facie* relevant.

⁵⁴ Response, para. 20.

⁵⁵ See e.g. F01603, Panel, *Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 155*, 14 June 2023, confidential, para. 50 (a public redacted version was issued on 8 September 2023, F01603/RED).

⁵⁶ See Transcript of Hearing, 28 November 2024, p. 23020, lines 3-4.

⁵⁷ Transcript of Hearing, 4 December 2024, p. 23298, lines 18-23.

⁵⁸ Motion, para. 10.

24. As regards authenticity, the Panel notes that Volume 1 of the Study: (i) is dated; (ii) indicates its place of issuance; and (iii) is clearly marked as an LPK document. The Panel further notes that: (i) the Cover Pages indicate that Volume 1 of the Study is part of a four-volume LPK work; (ii) the Xhemajli Interview makes direct reference to the Study, providing further indication of the origin and source of this material;⁵⁹ and (iii) Volume 1 of the Study includes information that overlaps with a portion of W04401's testimony.⁶⁰ The Panel is therefore satisfied that Volume 1 of the Study bears *prima facie* indicia of authenticity.

25. Regarding the Defence's argument that the Study lacks authenticity as it was allegedly drafted in 1993 but depicts an event that took place in February 1995,⁶¹ the Panel recalls that its determination on authenticity and reliability is conducted *prima facie* only. Factors and circumstances that go beyond that threshold could be relevant to the Panel's determination regarding the weight and probative value to be attributed to that evidence at the end of the case.⁶² The same applies in relation to the Defence's argument that W04583, one of the LPK founders, told the SPO he has never seen the Study before and W04749, an early member of the LPK, said that the Study was not a document approved by the LPK.⁶³

26. Having found Volume 1 of the Study to be relevant and *prima facie* authentic, the Panel is satisfied that this item also bears *prima facie* probative value regarding facts and circumstances relevant to this case as outlined above at paragraph 23. The Panel is also satisfied that the *prima facie* probative value of Volume 1 of the Study is not outweighed by any prejudice to the Accused, considering that the Defence will be able to make submissions in respect of the weight and probative

⁵⁹ SPOE00361031-SPOE00361044-ET, pp. SPOE000361034, SPOE000361043.

⁶⁰ Transcript of Hearing, 28 November 2024, pp. 23003-23011.

⁶¹ Response, para. 22.

⁶² Decision F02328, para. 33.

⁶³ Response, para. 23.

value of these items and could, if it so chooses, challenge the content of these items through the presentation of evidence, although it bears no onus to do so.

27. In light of the above, the Panel is satisfied that Volume 1 of the Study is admissible pursuant to Rule 138(1).

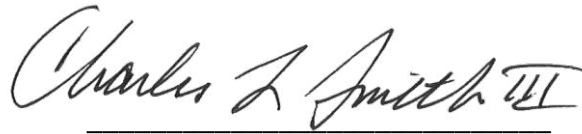
28. Having found Volume 1 of the Study to be admissible, the Panel instructs the Registry to reflect the evidentiary status of P01879 MFI as admitted.

V. DISPOSITION

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

- a) **GRANTS** the Request;
- b) **GRANTS** the SPO leave to add the Requested Additions to the Exhibit List;
- c) **ORDERS** the SPO to file its amended Exhibit List no later than **Tuesday, 8 April 2025**;
- d) **ADMITS** the Tendered Items, including any translations thereof, into evidence pursuant to Rules 138(1);
- e) **INTRUCTS** the Registry to reflect the evidentiary status of P01879 MFI, as admitted;
- f) **DIRECTS** the Registry to assign exhibit numbers to the remaining admitted items; 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, 18 April 2025. Any response thereto shall be filed no later than

Friday, 25 April 2025. No reply will be entertained.

A handwritten signature in black ink, reading "Charles L. Smith, III". The signature is written in a cursive style with a horizontal line underneath.

Judge Charles L. Smith, III
Presiding Judge

Dated this Tuesday, 1 April 2025

At The Hague, the Netherlands.