



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

**The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi,
and Jakup Krasniqi**

Before: Trial Panel II

Judge Charles L. Smith III, Presiding Judge

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 12 September 2023

Language: English

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**Public Redacted Version of
Decision on Prosecution Requests to Amend the Exhibit List (F01689 and F01747)**

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TRIAL PANEL II (“Panel”), pursuant to Articles 21(4)(c) and (6) and 40 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 95(4)(c), 102(1)(b), and 118(2) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 25 January 2023, the Panel issued the Order on the Conduct of Proceedings.¹
2. On 3 April 2023, the trial proceedings started.²
3. On 30 May, 10 and 12 July 2023, and 25 August 2023 upon authorisation from the Panel,³ the Specialist Prosecutor’s Office (“SPO”) amended its list of exhibits (“Exhibit List”).⁴
4. On 20 July 2023, the SPO filed its request to amend the Exhibit List (“Request”).⁵

¹ F01226, Panel, *Order on the Conduct of Proceedings*, 25 January 2023, with Annex 1 (“Order on the Conduct of Proceedings”).

² Transcript of Hearing, 3 April 2023.

³ F01352, Panel, *Decision on Prosecution Request to Amend the Exhibit List and Related Matters* (“8 March 2023 Decision”), 8 March 2023, confidential; F01544, Panel, *Decision on Prosecution Request to Add Five Items Relating to Expert Witness to the Exhibit List* (“23 May 2023 Decision”), 23 May 2023; Transcript of Hearing, 12 July 2023, p. 5551, line 9 to p. 5553, line 19; F01656, Panel, *Decision on Prosecution Request to Add Intercepted Communications to the Exhibit List* (“Intercepts Decision”), 7 July 2023, confidential; F01739, Panel, *Decision on Prosecution Request to Amend the Exhibit List (F01728)* (“24 August 2023 Decision”), 24 August 2023, confidential.

⁴ F01562, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 30 May 2023, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential; F01662, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 10 July 2023, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential; F01669, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 12 July 2023, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential; F01744, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 25 August 2023, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential.

⁵ F01689, Specialist Prosecutor, *Prosecution Request to Amend the Exhibit List*, 20 July 2023, with Annexes 1-12, confidential, and Annexes 13-15.

5. On 31 July 2023, the Defence for Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi (collectively, the “Defence”) responded to the Request (“Response”).⁶
6. The SPO did not reply to the Request.
7. On 29 August 2023, the SPO filed an additional request to amend the Exhibit List (“W03880 Request”).⁷
8. On 31 August 2023, the Defence filed a joint response to the W03880 Request (“W03880 Response”).⁸
9. On 4 September 2023, the SPO replied to the W03880 Response (“W03880 Reply”).⁹

II. SUBMISSIONS

10. In the Request, the SPO requests to amend the Exhibit List to include 15 additional items (“Requested Amendments”), which it would wish to tender or use during the examination of certain witnesses.¹⁰ The SPO argues that the Request is limited in scope, allows timely and effective Defence preparations, and concerns relevant material, probative of the charges.¹¹ The SPO further argues that the Requested Amendments appropriately balance the rights of the Accused and the SPO’s duty to present available evidence to prove its case.¹² The SPO avers that

⁶ F01712, Specialist Counsel, *Joint Defence Response to Prosecution Request to Amend the Exhibit List*, 31 July 2023, confidential.

⁷ F01747, Specialist Prosecutor, *Prosecution Request to Amend the Exhibit List*, 29 August 2023, confidential, with Annex 1, confidential (a public redacted version was filed the same day, F01747/RED).

⁸ F01753, Specialist Counsel, *Joint Defence Response to Prosecution Request to Amend the Exhibit List (F01747)*, 31 August 2023, confidential.

⁹ F01763, Specialist Prosecutor, *Prosecution Reply Relating to its Request to Amend the Exhibit List (F01747)*, 4 September 2023.

¹⁰ Request, paras 1, 4.

¹¹ Request, para. 1.

¹² Request, para. 2.

there is minimal prejudice, if any, since: (i) all Requested Amendments relate to known aspects of the SPO's case; (ii) only five of them relate to witnesses who were anticipated to testify in the next set of twelve witnesses and, amongst these, none in the August 2023 evidentiary block; and (iii) the remainder relate to witnesses who are not among the first 40 witnesses.¹³

11. In the Response, the Defence asks the Panel to dismiss the Request¹⁴ as the SPO has failed to provide timely notice or good cause.¹⁵ The Defence avers that the majority of the Requested Amendments arise due to the oversight of the SPO,¹⁶ and that review or reassessment of proposed evidence cannot constitute good cause for its late addition.¹⁷ The Defence argues that addition of new material to the Exhibit List is prejudicial at this stage of the trial proceedings.¹⁸ The Defence further argues that requests to amend the Exhibit List should be exceptional at this stage of the proceedings.¹⁹ The Defence submits that the SPO should not be permitted to add items that are relevant to witnesses who have already testified, particularly items that could have been added earlier, as this would violate the Defence's right to cross-examine these witnesses on the matters raised in these items.²⁰ The Defence rejects: (i) the SPO's submission that no prejudice arises for items previously disclosed under Rules 102(3) and/or 103;²¹ and (ii) the SPO's characterisation of the "limited nature and scope" of the Requested Amendments as the cumulative effect of the SPO's applications to add items to the Exhibit List force the Defence to adapt to a "moving target".²²

¹³ Request, para. 5.

¹⁴ Response, paras 2, 49.

¹⁵ Response, paras 2, 17.

¹⁶ Response, para. 2.

¹⁷ Response, paras 23-24.

¹⁸ Response, paras 2, 27.

¹⁹ Response, para. 18.

²⁰ Response, para. 23.

²¹ Response, paras 25-26.

²² Response, para. 28.

12. In W03880 Request, the SPO seeks authorisation to add one additional item to the Exhibit List which, if authorised, it intends to use during W03880's testimony.²³ The SPO submits that notice of the requested amendment is timely, there is good cause, and it causes limited prejudice to the Defence, if any.²⁴

13. The Defence opposes W03880 Request.²⁵ The Defence argues that the SPO failed to provide timely notice or good cause justifying the late addition of the requested amendment.²⁶ It submits that the requested amendment is prejudicial to the Defence.²⁷

14. The SPO replies that the Defence fails to substantiate its argument requesting the Panel to deny W03880 Request noting, *inter alia*, that unexpected developments have necessitated to postpone W03880's testimony for a number of weeks.²⁸

III. DISCUSSION

15. At the outset, the Panel recalls that, pursuant to Rule 118(2), it 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). The Panel further recalls that, as proceedings advance, any further requests to amend the Exhibit List will be subject to greater scrutiny.²⁹ In this regard, the Panel communicated its views to the SPO during the SPO preparation conference:

PRESIDING JUDGE SMITH: Well, surely after all these years, and having claimed to be ready for trial for more than two years, you must be confident and ready to go to trial with your list of witnesses and your exhibits, and yet

²³ W03880 Request, paras 1, 10.

²⁴ W03880 Request, paras 4-8.

²⁵ W03880 Response, paras 1, 10.

²⁶ W03880 Response, paras 4-7.

²⁷ W03880 Response, paras 8-9.

²⁸ W03880 Reply, paras 1-3.

²⁹ See F00727, Pre-Trial-Judge, *Confidential Redacted Version of Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures*, 8 March 2022, para. 30 (a strictly confidential and *ex parte* versions were filed on the same day, F00727/SCONF).

we get a new list now. We don't want to have a new list next week. We don't want -- the next time you get 12 more witnesses, we don't want to be told there are some more exhibits you forgot. We want your assurance that you're finished, that you've found everything there is to find. It's your file. Those are your files. Nobody else owns them.

MR. QUICK: Yes, that is totally understood, Your Honour. And we understand that there is a procedure in the Rules and in the Conduct of Proceedings for amending the exhibit list, and there is a higher threshold as we move along, and we acknowledge that.³⁰

16. Twenty-two witnesses for the prosecution have now testified in the present trial. The Panel has admitted in evidence, through those witnesses and from the bar table, a significant quantity of documentary evidence proposed by the SPO. The amended SPO Exhibit List contains 19,669 items.³¹ Even accounting for the fact that this figure includes both original documents and their translations, the Exhibit List is, by any standards, voluminous. With this in mind, the Panel will assess whether, at the current stage of proceedings, the SPO has provided timely notice and shown good cause for the Requested Amendments, and that no prejudice is caused to the Defence by the amendment of the Exhibit List.³² In this regard, the Panel notes that “where the material concerns already known witnesses, the Defence is not presented with a new aspect of the SPO case and, accordingly, no undue prejudice is caused to it in these circumstances”.³³ It also takes guidance from the Court of Appeal’s finding that:

when determining whether certain materials may be added to the prosecution’s exhibit list, the prosecution’s duty to present the available evidence to prove its case should be balanced with the right of the accused to have adequate time and facilities to prepare a defence and to be tried without undue delay. In striking such a balance in the context of a complex multi-

³⁰ Transcript of Hearing, 15 February 2023, pp. 2017-2018.

³¹ See F01744/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of Amended Exhibit List*, 25 August 2023, strictly confidential and *ex parte* (a confidential version was filed on the same day, F01744/A02)

³² See *similarly* 23 May 2023 Decision, para. 8; *Intercepts Decision*, para. 10.

³³ IA019/F00006, Court of Appeals Panel, *Decision on Thaçi’s Appeal against Decision on Specialist Prosecutor’s Request to Amend its Exhibit List and to Authorise Related Protective Measures* (“Appeal Decision”), 12 July 2022, para. 22.

accused trial in which a considerable amount of evidence is presented by the prosecution, a certain level of flexibility must be maintained, although the adequate protection of the accused's rights remains the primary concern. (footnotes omitted)³⁴

17. The Panel recalls that the primary purpose of the Exhibit List is to give notice to the Defence of the documents the SPO intends to use as part of its case. This, in turn, should allow timely and effective Defence preparation and ensure the efficient presentation of evidence during trial.³⁵ In deciding whether to grant the addition of an item to a Party's exhibit list, the Panel need not assess whether the proposed item is admissible.³⁶ The Panel only needs to satisfy itself that the proposed item is *prima facie* relevant and of sufficient importance to justify the late addition.³⁷ Accordingly, a decision authorising the addition of an item to a Party's exhibit list is without prejudice to the Panel's subsequent decision on whether that item should be admitted in evidence.³⁸

18. As regards the timeliness of the notice, the Panel is mindful that: (i) the Pre-Trial Judge set a time limit for the submission of the SPO's exhibit list and

³⁴ Appeal Decision, para. 21. See similarly ICTY, *Prosecutor v. Đordjević*, IT-05-87/1-T, [Decision on Prosecution's Motion to Amend the Rule 65ter Exhibit List with Annexes A and B](#), 4 March 2009, paras 20, 22 (treating the addition of exhibits at early stages of trial proceedings with flexibility).

³⁵ Intercepts Decision, para. 11; 8 March 2023 Decision, para. 28.

³⁶ Intercepts Decision, para. 11; 8 March 2023 Decision, para. 29.

³⁷ Intercepts Decision, para. 11; 8 March 2023 Decision, para. 29.

³⁸ Intercepts Decision, para. 11; 8 March 2023 Decision, para. 29.

authorised numerous amendments thereof;³⁹ and (ii) the Panel has already authorised the amendment of the SPO's list of exhibits on five occasions.⁴⁰

19. Prior to addressing the Requested Amendments individually, the Panel will address three general arguments advanced by the Defence.

20. First, the Panel notes the Defence's challenge to the SPO's submission that no prejudice would arise for items that were previously disclosed to the Defence under Rules 102(3) and/or 103.⁴¹ The Panel recalls that Rules 102(3) or 103 disclosure of an item does not put the Defence on notice of the fact that the SPO intends to use such material as evidence in the proceedings.⁴² In that sense, previous disclosure of an item under Rules 102(3) or 103 is insufficient, on its own, to negate the potential prejudice that could be caused to the Defence arising from the late addition of that item to the Exhibit List. However, previous Rules 102(3) or 103 disclosure of an item indicates that the Defence has had the opportunity to

³⁹ Transcript of Hearing, 29 October 2021, pp. 752-753; F00667, Pre-Trial Judge, *Decision on Specialist Prosecutor's Request for Extension of Time*, 31 January 2022, confidential, para. 13 (a public redacted version was filed on the same day, F00667/RED). See also F00727, Pre-Trial Judge, *Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures*, 8 March 2022, strictly confidential and *ex parte*, para. 54 (a confidential redacted version was filed on the same day, F00727/CONF/RED); F00779, Pre-Trial Judge, *Decision on Specialist Prosecutor's Rule 102(2) and Related Requests*, 22 April 2022, confidential, para. 55; F00876, Pre-Trial Judge, *Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures*, 8 July 2022, strictly confidential and *ex parte*, para. 107 (a confidential redacted version was filed on the same day, F00876/CONF/RED); F00957, Pre-Trial Judge, *Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures*, 6 September 2022, strictly confidential and *ex parte*, para. 107 (a confidential redacted version was filed on 7 September 2022, F00957/CONF/RED); F01057, Pre-Trial Judge, *Decision on Prosecution Rule 102(2) Submission and Related Requests*, 27 October 2022, strictly confidential and *ex parte*, para. 58 (a confidential redacted version was filed on the same day, F01057/CONF/RED); F01058, Pre-Trial Judge, *Decision on Prosecution Request to Add Two Witnesses and Associated Materials*, 27 October 2022, strictly confidential and *ex parte*, para. 47 (a confidential redacted version was filed on the same day, F01058/CONF/RED); F01142, Pre-Trial Judge, *Decision on Prosecution Request to Amend the Exhibit List and for Protective Measures*, 6 December 2022, strictly confidential and *ex parte*, para. 304 (a confidential redacted version was filed on 7 December 2022, F01142/CONF/RED).

⁴⁰ See 8 March 2023 Decision, para. 36; 23 May 2023 Decision, para. 16; Intercepts Decision, para. 25; Transcript of Hearing, 12 July 2023, pp. 5551, line 9 to p. 5553, line 19; 24 August 2023 Decision, para. 18(d).

⁴¹ Response, paras 25-26 referring to Request, para. 5.

⁴² See similarly 8 March 2023 Decision, para. 33.

review and acquaint itself with the item.⁴³ In that sense, previous disclosure of an item, considered along with other factors, could satisfy the Panel that the Defence has been provided with a degree of notice of the content of the item and that an amendment to the Exhibit List in respect of that item would not adversely affect the Defence's ability to prepare for trial.⁴⁴ In other words, previous disclosure is one of a number of factors that the Panel can take into account when assessing, holistically, whether the late addition of an item would prejudice the Defence.⁴⁵

21. Second, the Panel is not persuaded by the Defence's argument⁴⁶ that the addition of any new material to the Exhibit List is prejudicial at this stage of the trial proceedings. Requests for amendments to the Exhibit List have been and will be assessed on their own merit in accordance with the legal test provided for in Rule 118(2).⁴⁷ The stage of the proceedings is only one factor of relevance to the Panel's assessment. In the present case, the Panel notes that the application is made at a relatively early stage of the trial and that the Parties have the opportunity to both conduct investigations relevant to these items (if necessary) and put the content of the items to witnesses during their examinations of the relatively large pool of witnesses who are yet to testify.

22. Third, the Panel notes the Defence's argument⁴⁸ that the SPO should not be permitted to add documents to its Exhibit List that relate or are relevant to witnesses that have already testified as this would deny the Defence an

⁴³ See similarly 8 March 2023 Decision, para. 33.

⁴⁴ 8 March 2023 Decision, para. 31.

⁴⁵ See similarly ICTY, *Prosecutor v. Dragomir Milošević*, IT-98-29/1-T, [Decision on Prosecution's Third Motion for Leave to Amend Its Rule 65 ter Exhibit List](#) ("Milošević Decision"), 23 April 2007, p. 3. See also ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, [Decision on Prosecution's Motion for Leave to Amend its Exhibit List](#), 19 October 2011, paras 9, 14. See e.g. Intercepts Decision, paras 16, 18; 23 May 2023 Decision, paras 11, 13-14; 8 March 2023 Decision, paras 31, 33. See also KSC-BC-2020-07, F00321, Trial Panel II, *Decision on Prosecution's Request for Leave to Amend its List of Exhibits*, 23 September 2021, para. 16 and fn. 18.

⁴⁶ Response, paras 2, 27.

⁴⁷ 24 August 2023 Decision, para. 15.

⁴⁸ Response, para. 23 and fn. 28 referring to W04746 would have been in a position to comment on SITF40008582-40008582 and W02153 on SPOE00116852-00116852 and SPOE00116730-00116733.

opportunity to cross-examine those witnesses in relation to newly-added documents. The Panel will assess this submission *in concreto* where raised in relation to specific Requested Amendments.⁴⁹ This consideration is one of the reasons why, as proceedings advance, requests for amendments to the Exhibit List are subject to greater scrutiny.⁵⁰

A. ADDITIONAL MATERIAL REGARDING W04018

23. The Panel has already ruled on the part of the Request pertaining to the additional item regarding W04018 (SITF00429643-SITF00429647),⁵¹ denying the addition of this item by way of oral order on 4 September 2023.⁵²

B. ADDITIONAL MATERIAL REGARDING W02161

24. SITF40008582-40008582 is a one-page memo from the Organisation for Security and Cooperation in Europe (“OSCE”) from W02161 to Ambassador Everts dated 11 July 1999 and regarding the existence of Kosovo Liberation Army (“KLA”) detention facilities.⁵³

25. The SPO submits that, although this item was inadvertently omitted and could have been added earlier, no prejudice would arise from its addition to the Exhibit List.⁵⁴ The Defence responds that: (i) inadvertence does not constitute good cause for late addition on the Exhibit List; (ii) the SPO was in possession of the

⁴⁹ See paras 28 and 34 below.

⁵⁰ See F00727, Pre-Trial-Judge, *Confidential Redacted Version of Decision on Specialist Prosecutor’s Request to Amend its Exhibit List and to Authorise Related Protective Measures*, 8 March 2022, para. 30 (a strictly confidential and *ex parte* versions were filed on the same day, F00727/SCONF).

⁵¹ Request, paras 10- 11; Annex 5 to the Request.

⁵² See Provisional Transcript of Hearing, 7 September 2023, p 7159, line 12 to p. 7160, line 18.

⁵³ See Annex 1 to the Request.

⁵⁴ Request, para. 7.

item since at least November 2022; and (iii) the importance of the item is questionable if it only became apparent after several reviews.⁵⁵

26. As regards the timeliness of notice, the Panel notes the SPO's admission that the item could have been added earlier and that the notice provided by the SPO was not as prompt as it should have been. However, considering that: (i) the SPO notified the Defence of its intent to add the item to the Exhibit List on 28 June 2023;⁵⁶ and (ii) W02161 is not scheduled to testify during the current and next block of hearings,⁵⁷ the Panel finds the notice provided by the SPO to be timely.

27. As regards good cause and the question of the relevance and importance of this material, the Panel is not satisfied that inadvertent omission, on its own and at this stage of the proceedings, constitutes good cause.⁵⁸ However, while a Party's late realisation of an item's importance alone is insufficient to demonstrate good cause, the Panel acknowledges that the relevance and importance of certain items may become more apparent to a Party as the trial proceeds. The Panel notes that the memo relates, *inter alia*, to the existence of KLA detention facilities, which W02161 personally verified in February 1999. The relevance and importance of this item became apparent to the SPO during its preparations for the testimony of this witness. The existence of KLA detention facilities and the level of awareness of their existence are issues material to this case. The Panel is therefore satisfied that the memo is *prima facie* relevant and of sufficient importance and that there is good cause for its late addition to the Exhibit List.

⁵⁵ Response, para. 30.

⁵⁶ F01630, Specialist Prosecutor, *Prosecution Submission of List of the Next 12 Witnesses, Reserve Witnesses and Associated Information*, 28 June 2023, with Annex 1 ("Next 12 Witnesses List"), confidential, Annex 2 ("Reserve Witnesses List"), confidential, and Annex 3, strictly confidential and *ex parte*. See Next 12 Witnesses List, fn. 16.

⁵⁷ Correspondences 285 and 318.

⁵⁸ 8 March 2023 Decision, para. 30.

28. As regards prejudice, the Panel recalls that: (i) the SPO disclosed this one-page item to the Defence in November 2022;⁵⁹ (ii) the Defence has been on notice of the SPO's intent to rely on it since 28 June 2023;⁶⁰ and (iii) W02161 is not scheduled to testify during the current or the next block of hearings.⁶¹ In addition, the Panel notes that the Defence has been on notice that W02161's proposed testimony includes the topic covered in the proposed item since November 2022.⁶² Lastly, with regard to the Defence's argument that W04746 could have been in a position to comment on SITF40008582-40008582,⁶³ the Panel observes that the Defence had received SITF40008582-40008582 prior to W04746's testimony and could have therefore questioned W04746 on this item. Should the Defence take the view that, having heard the evidence of W02161 in respect of this document, it should have raised questions about it with W04746, it can apply to the Panel to recall this witness for further cross-examination. In addition, the Panel observes that W02161 authored the report. For this reason, although W04746 may have been in a position to comment on this item, the Panel is of the view that W02161 is equally or better placed to comment upon it. To this extent, and insofar as W02161 is yet to testify, the Panel does not consider that the Defence's right to elicit evidence in respect of this item has been denied or unfairly prejudiced. Accordingly, the Panel is satisfied that the Defence will have sufficient time to adequately prepare before W02161's testimony and that the effectiveness of the rights of the Accused is being preserved. In turn, the Panel is also satisfied that no prejudice is caused by the addition of this item to the Exhibit List.

⁵⁹ Disclosure Package 595.

⁶⁰ Next 12 Witnesses List, p. 83, fn. 16.

⁶¹ See Next 12 Witnesses List and Correspondences 285 and 318.

⁶² See Next 12 Witnesses List, pp. 70-71; F01380, Panel, *Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154*, 16 March 2023, confidential, fn. 125; F01117/A02, Specialist Prosecutor, *Annex 2 to Prosecution Submission of Provisional List of First 40 Witnesses to be Called at Trial* ("First 40 Witnesses List"), 18 November 2022, confidential, p. 2, no. 7; F01594, Specialist Prosecutor, *Annex 2 to Prosecution Submission of Updated Witness List and Confidential Lesser Redacted Version of Pre-Trial Brief* ("Amended List of Witnesses"), 9 June 2023, confidential, pp. 4, 134-135.

⁶³ Response, para. 23 and fn. 28.

29. The Panel therefore grants leave to add SITF40008582-SITF40008582 to the Exhibit List.

C. ADDITIONAL MATERIAL REGARDING W03724

30. SPOE00116852-SPOE00116852 and SPOE00116730-SPOE00116733 are five pages of OSCE Kosovo Verification Mission (“KVM”) reports from January 1999 concerning missing and alleged detained persons as well as military activities (“KVM Reports”).⁶⁴

31. The SPO submits that, while the KVM Reports could have been added earlier, minimal prejudice, if any, would arise from their addition.⁶⁵ The Defence responds that the SPO failed to show good cause as the KVM Reports were in the SPO’s possession for years and should have been added earlier. The Defence argues that the SPO did not provide notice of its intention to add them to the Exhibit List, and that that this indicates that further requests to amend the Exhibit List are to be expected along with each next set of witnesses.⁶⁶

32. As regards the timeliness of notice, the Panel notes the SPO’s admission that the KVM Reports could have been added earlier.⁶⁷ The Panel notes that W03724 will testify imminently, and observes that the Defence has been on notice of the SPO’s intent to use the KVM Reports upon the filing of this Request (*i.e.* 20 July 2023). Bearing in mind that a certain degree of flexibility must be maintained in the context of a complex multi-accused trial,⁶⁸ and considering the very limited size of the Reports, the Panel considers that notice of the KVM

⁶⁴ See Annexes 2-3 to the Request.

⁶⁵ Request, para. 9.

⁶⁶ Response, para. 32.

⁶⁷ Request, para. 9.

⁶⁸ Appeal Decision, para. 21.

Reports is timely. As indicated below, the Panel will address any objections concerning timeliness if and when the SPO offers them for admission.

33. As regards good cause and the question of the relevance and importance of this material, the Panel observes that the SPO provides no justification as to why it seeks addition of the KVM Reports at this stage. That said, the Panel observes that the KVM Reports are from January 1999 and concern, *inter alia*, missing and detained persons, as well as military operations during that time. The Panel is therefore satisfied that the KVM Reports are *prima facie* relevant and of sufficient importance and that there is good cause for their late addition to the Exhibit List.

34. As regards prejudice, the Panel noted earlier that W03724 is due to testify imminently. The Panel observes: (i) the limited size of the KVM Reports (five pages only); and (ii) that the KVM Reports were previously disclosed to three of the four Defence teams between December 2021 and September 2022.⁶⁹ With regard to the Defence's argument regarding W02153,⁷⁰ the Panel accepts that W02153 would have been in a position to comment on the KVM Reports. That said, the Panel notes that the SPO has included on its List of Witnesses summaries of several other SPO witnesses which indicate that, if they are called to testify, they will be in a position to give evidence on the KVM. The SPO may use the KVM Reports with W03724 and with those other witnesses. The Defence will be able to cross-examine W03724 and other KVM-related witnesses on the KVM Reports, as well as KVM activities and methodologies generally. The Panel will stay its decision on the admission of the KVM Reports until it has received submissions from the Defence on any prejudice arising from the late addition of the KVM Reports to the Exhibit List. For these reasons, the Panel is satisfied that no prejudice is caused by the addition of the KVM Reports to the Exhibit List.⁷¹

⁶⁹ Disclosure Packages 141, 147, 245, 401, 405, 421 to the Krasniqi, Veseli and Selimi Defence teams.

⁷⁰ Response, para. 23 and fn. 28.

⁷¹ See *similarly* Appeals Decision, para. 22.

35. The Panel therefore grants leave to add the KVM Reports (*i.e.* SPOE00116852-SPOE00116852 and SPOE00116730-SPOE00116733) to the Exhibit List.

D. ADDITIONAL MATERIAL REGARDING W04769

36. SPOE00226630-SPOE00226631 is a hand-written list of names including KLA members in Kosovo and Albania,⁷² which was among the items seized from the residence of Rexhep Selimi (“Mr Selimi”).⁷³

37. The SPO avers that, though the list could have been added earlier, there is no prejudice.⁷⁴ The Defence responds that: (i) the notice is untimely as the list, seized in November 2020, should have been added sooner to the Exhibit List; (ii) re-evaluation of evidence does not constitute good cause; (iii) preparation for the first 40 witnesses should have been done earlier; and (iv) the legality of the seizure at Mr Selimi’s residence remains in dispute.⁷⁵

38. As regards the timeliness of notice, the Panel notes that the SPO acknowledges that the document should have been added earlier. The Panel observes that: (i) the document was disclosed to the Defence on 31 January 2023;⁷⁶ and (ii) W04769 is not scheduled to testify in the next evidentiary block, and under the current projections, not before October 2023.⁷⁷ Mindful of the flexibility to be maintained in the context of a complex multi-accused trial in which a considerable amount of evidence is presented by the prosecution,⁷⁸ the Panel is satisfied that timely notice has been provided to the Defence.

⁷² See Annex 5 to the Request.

⁷³ See Request, para. 12, fn. 42.

⁷⁴ Request, para. 13.

⁷⁵ Response, para. 34.

⁷⁶ Disclosure Package 660.

⁷⁷ Correspondence 285; Next 12 Witnesses List. See also Reserve Witnesses List.

⁷⁸ Appeals Decision, para. 21.

39. As regards good cause and the question of the relevance and importance of this material, the Panel observes that: (i) the significance of the item and its link to W04769 was only reassessed during the preparation of W04769's testimony; and (ii) the list contains references to, *inter alia*, [REDACTED]. The Panel is therefore satisfied that the item is *prima facie* relevant and of sufficient importance and that there is good cause for its late addition to the Exhibit List.

40. As regards prejudice, the Panel notes that: (i) all Defence teams received disclosure of the list;⁷⁹ (ii) the list is a one-page document; and (iii) W04769 is not anticipated to testify in the next evidentiary block and, under the current projections, unlikely to testify before October 2023.⁸⁰ The Panel is therefore satisfied that the Defence has sufficient time to adequately review the document and prepare for W04769's testimony, and that the addition of this item to the Exhibit List would cause no prejudice to the Defence.

41. Lastly, regarding the Defence's argument in relation to the disputed legality of the seizure at Mr Selimi's residence,⁸¹ the Panel notes that the Court of Appeals Panel recently denied the Defence's appeal regarding whether the inventories of seized items met the requisite level of detail and the Defence argument is now moot.⁸²

42. The Panel therefore grants leave to add SPOE00226630-SPOE00226631 to the Exhibit List.

⁷⁹ Disclosure Packages 135, 139, 149, 165, 210, 249.

⁸⁰ See Correspondence 285; Next 12 Witnesses List. See also Reserve Witnesses List.

⁸¹ Response, para. 34.

⁸² IA029/F00005, Court of Appeals Panel, *Decision on Veseli and Krasniqi Appeal against Second Decision on Specialist Prosecutor's Bar Table Motion*, 23 August 2023, confidential and *ex parte*, paras 32, 36-38 (a public redacted version was filed on the same day).

E. ADDITIONAL MATERIAL REGARDING W00207

43. U000-0017-U000-0021 is a statement of deceased witness W00207 given to the International Criminal Tribunal for the former Yugoslavia (“ICTY”) and dated 14 August 2001.⁸³

44. The SPO submits that its notice is timely as it only recently received the statement in its unredacted form and was only provided clearance by IRMCT on 28 April 2023.⁸⁴ The Defence responds that the SPO fails to articulate when it initially received the statement in redacted form and when it requested the unredacted version, as well as why it awaited two months after receiving clearance to request its addition to the Exhibit List.⁸⁵

45. As regards the timeliness of notice, the Panel observes that the SPO disclosed the unredacted version of the statement on 19 May 2023.⁸⁶ The Panel is of the view that: (i) the three weeks which elapsed between the receipt of the unredacted version of the statement and its disclosure to the Defence; and (ii) the subsequent two months for the filing of the Request, are not unreasonable periods of time. The Panel is therefore satisfied that the SPO provided timely notice of its intention to rely upon this item at trial.

46. As regards good cause and the relevance and importance of this item, the Panel recalls that the SPO received relatively recently: (i) the unredacted version of the statement; and (ii) the authorisation to use it in judicial proceedings before the Specialist Chambers.⁸⁷ The Panel also observes that, in [REDACTED] statement, W00207 provided detailed evidence concerning the abduction, by KLA soldiers, of [REDACTED], who is a named victim in the Indictment. The proposed item provides additional evidence regarding this matter and provides a relevant

⁸³ See Annex 6 to the Request.

⁸⁴ Request, para. 15.

⁸⁵ Response, para. 35.

⁸⁶ Disclosure Package 795.

⁸⁷ See *supra*, para. 45.

indication of the consistency of the witness's account in relation to those evidence. The Panel is therefore satisfied that this statement is *prima facie* relevant and of sufficient importance and that there is good cause for its late addition to the Exhibit List.

47. As regards prejudice, the Panel recalls that: (i) the Defence has already received the unredacted version of the statement;⁸⁸ (ii) the statement is only three pages long in substance; and (iii) it relates to a known aspect of the SPO's case, a witness on the Witness List, and a victim listed in the Indictment.⁸⁹ Furthermore, since the document pertains to a Rule 155 witness, its late addition to the exhibit list does not raise additional difficulties for the Defence. The Panel is therefore satisfied that adding the statement to the Exhibit List causes no prejudice to the Defence.

48. The Panel therefore grants leave to add U000-0017-U000-0021 to the Exhibit List.

F. ADDITIONAL MATERIAL REGARDING W03873

49. The SPO seeks to add four items relating to W03873 to the Exhibit List.⁹⁰ The SPO submits that there is no prejudice due to: (i) the limited nature and scope of the items; (ii) their previous related disclosure and notice; and (iii) the fact that W03873 is not amongst the next 12, first 40 or identified reserve witnesses.⁹¹ The Defence responds that the sought additions amount to 87 pages and the fact that W03873 is not in the next 12, first 40 or identified reserve witnesses neither constitutes good cause, nor alleviates the prejudice that their late addition will cause to the Defence. Since W03873 is not scheduled to testify soon, the Defence

⁸⁸ Disclosure Package 795.

⁸⁹ Amended List of Witnesses, p. 33. *See also* Indictment, paras [REDACTED].

⁹⁰ *See* Annexes 7-10 to the Request.

⁹¹ Request, para. 17.

fears that more requests will come as SPO's preparation progresses.⁹² The Panel will address these four items in turn.

1. 069929-069967

50. 069929-069967 is an SPO official note dated [REDACTED] 2019 containing screenshots of photographs and two documents from [REDACTED]'s Facebook page ("Screenshots").⁹³

51. The SPO submits that, while it could have been added the Screenshots earlier, it promptly proposed their addition after reassessing their importance and sufficiently in advance of W03873's testimony to enable adequate Defence preparation.⁹⁴ The Defence responds that the Screenshots should have been added earlier to the Exhibit List.⁹⁵

52. As regards the timeliness of notice, the Panel notes that the SPO acknowledges that the Screenshots could have been added earlier. That said, the Panel notes that the Screenshots are intended to be used with W03873 who is not yet scheduled to testify. The Panel is therefore satisfied that the Defence received timely notice in relation to this item.

53. As regards good cause and the relevance and importance of this material, the Panel observes that the Screenshots are composed of: (i) contemporaneous photographs and a handwritten excerpt from the records of [REDACTED] meeting on [REDACTED] 1999;⁹⁶ and (ii) an appeal from the KLA General Staff dated 28 March 1999.⁹⁷ Regarding the contemporaneous photographs, it is not readily apparent to the Panel how W03873 or W04679's physical appearances or how the

⁹² Response, para. 36.

⁹³ See Annex 7 to the Request.

⁹⁴ Request, para. 20.

⁹⁵ Response, para. 37.

⁹⁶ Annex 7 to the Request, pp. 2-23 (069929-069951), 25-39 (069953-069967), 41-43 (069959-ET, 069965-ET, 069966-ET).

⁹⁷ Annex 7 to the Request, pp. 24 (069952), 40 (069952-ET).

handwritten document allegedly summarising parts of a meeting of the [REDACTED] would be evidentially important to these proceedings. The SPO has therefore failed to establish that these parts of the Screenshots are *prima facie* relevant and of sufficient importance to warrant their addition to the Exhibit List.

54. The Panel is of the view that the two-page appeal from the KLA General Staff dated 28 March 1999⁹⁸ could be relevant to establishing the nature and scope of the General Staff's involvement, its powers and location, which are relevant to the case and of sufficient importance to warrant its late addition. The Panel is therefore satisfied that this part of the Screenshots⁹⁹ is *prima facie* relevant and of sufficient importance and that there is good cause for its late addition to the Exhibit List.

55. As regards prejudice, the Panel observes and/or recalls that: (i) all Defence teams received disclosure of the item concerned under Rule 102(3) between August and September 2022;¹⁰⁰ (ii) the document is short; and (iii) W03873 is yet to be scheduled to testify. The Panel is therefore satisfied that the Defence will have sufficient time to adequately prepare for W03873's testimony in respect of that part of the document and, in turn, that there is no undue prejudice to the Defence from its addition to the Exhibit List.

56. The Panel therefore grants leave to add the appeal from the KLA General Staff dated 28 March 1999 (*i.e.* 069952 and its translation 069952-ET) to the Exhibit List. The Panel denies leave to add the remainder of the Screenshots to the Exhibit List.

2. 113623-02

57. 113623-02 is a video of a Kosovo media broadcast on [REDACTED], containing an interview with W03873 ("Interview").

⁹⁸ Annex 7 to the Request, pp. 24 (069952), 40 (069952-ET).

⁹⁹ Annex 7 to the Request, pp. 24 (069952), 41 (069952-ET).

¹⁰⁰ Disclosure Packages 374, 390, 404, 427.

58. The SPO submits that the request to add this item is timely as the Interview was broadcast on [REDACTED], and causes no prejudice.¹⁰¹ The Defence responds that, given its limited nature, the Interview should have been added earlier.¹⁰²

59. As regards the timeliness of notice, the Panel notes that the Interview was broadcast in [REDACTED]. When accounting for the time needed to identify, process, translate and review the Interview as well as to prepare and submit the Request, the Panel considers that the time between the broadcast of the Interview and the filing of the Request is not unreasonable. In addition, W03873 is yet to be scheduled to testify. The Panel is thus satisfied that the SPO has provided timely notice of the Interview.

60. As regards good cause and the relevance/importance of the item, the Panel recalls that the time the SPO took to file the Request following the broadcast of the Interview [REDACTED] is not unreasonable. The Panel further observes that, in the Interview, W03873 discusses, *inter alia*, his role and functions within the KLA during the Indictment period. The Panel is of the view that this could be relevant and provide evidential context to the testimony of this witness. The Panel is therefore satisfied has been shown and that that the Interview is *prima facie* relevant and of sufficient importance and that there is good cause for its late addition to the Exhibit List.

61. As regards prejudice, the Panel observes that: (i) the Defence received disclosure of the Interview on 20 July 2023;¹⁰³ (ii) the Interview relates to noticed aspects of W03873's proposed testimony;¹⁰⁴ (iii) W03873 is not yet scheduled to testify; and (iv) the Interview is of limited size (17 pages). The Panel is therefore satisfied that the Defence will have sufficient time to adequately prepare before

¹⁰¹ Request, para. 22.

¹⁰² Response, para. 38.

¹⁰³ Disclosure Package 873.

¹⁰⁴ Amended List of Witnesses, pp. 208-209.

W03873's testimony and, in turn, that no prejudice arises from the addition of the Interview to the Exhibit List.

62. The Panel therefore grants leave to add the Interview (113623-02) to the Exhibit List.

3. SPOE00144684-00144687

63. SPOE00144684-00144687 is a report from the United Nations Mission in Kosovo dated [REDACTED] containing a list of names.¹⁰⁵

64. The SPO submits that there is no undue prejudice to the Defence as the report is limited in nature and scope, is four pages long only, and has already been disclosed under Rule 102(3) to three of the Defence teams.¹⁰⁶ The Defence responds that no timely notice has been provided. It argues that the report was part of the initial Rule 102(3) notice and should have therefore been added earlier.¹⁰⁷

65. As regards the timeliness of notice, the Panel notes that: (i) the report was listed on the initial Rule 102(3) notice;¹⁰⁸ and (ii) W03873 is not yet scheduled to testify. Accordingly, and in light of the flexibility required by the complexity and size of the case,¹⁰⁹ the Panel is satisfied that the notice is timely.

66. As regards good cause and the relevance and importance of the material, the Panel notes that the SPO fails to justify why it did not submit this report earlier. That said, the Panel observes that the report includes a list of persons identified, *inter alia*, as "paramilitary", "ex-police", "soldier", "army" or "spy". The Panel further observes that W03873 commented upon similar lists during his

¹⁰⁵ See Annex 9 to the Request.

¹⁰⁶ Request, paras 23-25.

¹⁰⁷ Response, para. 39.

¹⁰⁸ See F00241/A01, Specialist Prosecutor, *Annex 1 to Prosecution Rule 102(3) Notice ("Rule 102(3) Notice")*, 31 July 2021, confidential, p. 2301, item no. 53666.

¹⁰⁹ Appeal Decision, para. 21.

[REDACTED] 2001 interview.¹¹⁰ The Panel is therefore satisfied that the report is *prima facie* relevant and of sufficient importance and that there is good cause for its late addition to the Exhibit List.

67. As regards prejudice, the Panel observes that the report: (i) is of limited size (four pages long); (ii) was listed on the Rule 102(3) Notice; (iii) was disclosed to three of the Defence teams between May and August 2022;¹¹¹ and (iv) relates to a witness who is yet to be scheduled to testify. The Panel is therefore satisfied that the Defence will have sufficient time to prepare adequately and, in turn, that no prejudice will arise from the addition of the report to the Exhibit List.

68. The Panel therefore grants leave to add SPOE00144684-00144687 to the Exhibit List.

4. SITF00069370-SITF00069375

69. SITF00069370-SITF00069375 is a report by the [REDACTED], dated [REDACTED] 2000 and signed by W03873.¹¹²

70. The SPO submits that, although this report could have been added earlier, its importance was only determined when preparing for W03873's testimony. The SPO avers that there would be no undue prejudice to the Defence if the item was to be added to the Exhibit List.¹¹³ The Defence responds that the report should have been added earlier. The Defence also argues that the SPO failed to demonstrate the *prima facie* relevance of the report.¹¹⁴

¹¹⁰ See e.g. SPOE00070007-SPOE00070010 RED, p. SPOE00070009.

¹¹¹ Rule 102(3) Notice, p. 2301, item no. 53666; Disclosure Packages 266 (Selimi Defence), 267 (Krasniqi Defence), 385 (Thaçi Defence).

¹¹² See Annex 10 to the Request.

¹¹³ Request, paras 26-28.

¹¹⁴ Response, para. 40.

71. As regards the timeliness of notice, the Panel observes that: (i) the report is part of a collection of documents disclosed pursuant to Rule 102(3) to all Accused in September 2022;¹¹⁵ and that (ii) W03873 is yet to be scheduled to testify. Bearing in mind the flexibility required in light of the nature of the case,¹¹⁶ the Panel considers that the notice of the report is timely.

72. As regards good cause and the item's relevance and sufficient importance, the Panel notes that the SPO only determined the importance of this item while preparing for the witness's testimony. As noted earlier, a late realisation of an item's importance alone is insufficient at this stage of the trial to demonstrate good cause, the Panel acknowledges that the relevance and importance of certain items may become apparent to a Party as the trial proceeds. The Panel notes that this report pertains primarily to the situation in Prizren and TMK around [REDACTED] 2000. The Panel also notes that it is signed by W03873 who refers, *inter alia*, to the "[REDACTED]" as "[REDACTED]" and its forces, [REDACTED], as "[REDACTED]". Insofar as it discusses events during the indictment period, the Panel is satisfied that the report is *prima facie* relevant and of sufficient importance to justify its late addition to the Exhibit List. It provides indications of the views not just of its author but also of the KLA regarding those belonging to other political and military forces. The SPO should explore these issues more fully when it offers this document in evidence. The Panel is therefore satisfied of the *prima facie* relevance and importance of the report and that there is good cause for its late addition to the Exhibit List.

73. As regards prejudice, the Panel recalls that: (i) the item is only three pages long; (ii) all Defence teams received disclosure of the item in September 2022;¹¹⁷ and (iii) the witness is yet to be scheduled to testify. The Panel is thus satisfied

¹¹⁵ See SITF00069242-00069631 RED in Disclosure Packages 503, 512, 522, 536.

¹¹⁶ Appeal Decision, para. 21.

¹¹⁷ Disclosure Packages 503, 512, 522, and 536.

that the Defence will have adequate time to prepare and that no prejudice arises from the addition of the item to the Exhibit List.

74. Accordingly, the Panel grants the SPO leave to add SITF00069370-SITF00069375 to the Exhibit List.

G. ADDITIONAL MATERIAL REGARDING W04691

75. 067205-01 is a video taken in [REDACTED] 1999 in Prizren showing several high-ranking KLA members.¹¹⁸

76. The SPO submits that it determined, upon further review, that this video was an associated exhibit to W04691's SPO interview. The SPO argues that no prejudice would arise for the Defence from its addition to the Exhibit List.¹¹⁹ The Defence responds that the SPO appears to have failed to include the video on the Exhibit List and that oversight cannot constitute good cause for its late addition.¹²⁰

77. As regards timely notice, the Panel notes that the SPO was in possession of the video since at least October 2020.¹²¹ The video could have therefore been added sooner to the Exhibit List. However, the Panel observes that W04691 has not been scheduled to testify and is listed neither in the second 12 witnesses, nor in the first 40, nor in the identified reserve witnesses. In that light, and bearing in mind the flexibility required by the nature of the case,¹²² the Panel considers that notice of the video is timely.

78. As regards good cause and the relevance and importance of the video, the Panel notes that notes that the SPO determined that the video was an associated

¹¹⁸ The Panel notes the SPO's indication that no transcript was made. *See* Request, fn. 67.

¹¹⁹ Request, paras 30-31.

¹²⁰ Response, para. 41.

¹²¹ *See* 082154-TR-ET, Part 7 RED, pp. 1-9.

¹²² Appeal Decision, para. 21.

exhibit to W04691's SPO interview only upon conducting further reviews for its case. While this, in itself, does not suffice to establish good cause, the Panel observes that: (i) in the course of his SPO interview, W04691 identified several individuals visible on the video, including KLA commanders and sub-commanders;¹²³ and (ii) without this video, the relevant portion of W04691's SPO interview would become incomprehensible and of lesser probative value. The Panel is therefore satisfied that the video is *prima facie* relevant and of sufficient importance and that there is good cause for its late addition to the Exhibit List.

79. As regards prejudice, the Panel observes that: (i) the Defence received disclosure of the video under Rule 102(3) between December 2021 and August 2022;¹²⁴ (ii) the video is discussed in detail in W04691's SPO interview, which was also disclosed to the Defence in August 2021;¹²⁵ and (iii) W04691 is yet to be scheduled to testify. The Panel is therefore satisfied that the Defence will have sufficient time to adequately prepare before W04691's testimony. Accordingly, the Panel is also satisfied that adding the video to the Exhibit List would not cause prejudice to the Defence.

80. The Panel therefore grants leave to add 067205-01 to the Exhibit List.

H. ADDITIONAL MATERIAL REGARDING W02540 AND W04734

81. 072508-01 is a video-clip showing German KFOR soldiers disarming KLA soldiers in the former Prizren MUP building on 18 June 1999.¹²⁶

82. The SPO submits that the video could have been added earlier but was inadvertently omitted until preparations for the testimony of W02540 and W04734

¹²³ See 082154-TR-ET, Part 7 RED, pp. 1-9.

¹²⁴ Disclosure Packages 141, 244, 255, 382.

¹²⁵ Disclosure Package 68.

¹²⁶ See Annex 11 to the Request.

were undertaken.¹²⁷ The SPO avers that no undue prejudice would arise from its addition to the Exhibit List.¹²⁸ The Defence responds that: (i) inadvertence does not constitute good cause for the late addition on the Exhibit List as the video was in the SPO's possession since at least July 2021; (ii) the fact that W02540 and W04734 are not among the next 12, first 40, or identified reserve witnesses neither mitigates the prejudice that the addition of the item will cause to the Defence, nor constitutes a safeguard against future requests.¹²⁹ The Defence also argues that: (i) the video has little probative value as other videos already on the Exhibit List contain similar content; and (ii) its addition is unnecessary given that W02540 and W04734 were able to provide evidence regarding Xhemshit Krasniqi's alleged role and presence at the former MUP building based on other photographic evidence.¹³⁰

83. As regards timely notice, the Panel notes the SPO's admission that the video could have been added earlier. Considering that the video pertains to W02540 and W04734, who are not yet scheduled to testify, the Panel considers the notice as timely.

84. As regards good cause and the importance and relevance of the video, the Panel notes that the SPO explanation for the belated nature of its application in respect of this item is a generic reference to its preparations for two witnesses. This provides no indication of good cause and does not explain why, in the diligent exercise of its responsibilities, the relevance and importance of this item should not have become apparent earlier. Furthermore, the SPO has failed to establish the *prima facie* evidential importance of this item. In those circumstances, the Panel finds that the SPO has failed to establish good cause for the addition of the video to the Exhibit List.

¹²⁷ Request, para. 34.

¹²⁸ Request, para. 34.

¹²⁹ Response, para. 42.

¹³⁰ Response, para. 43.

85. Accordingly, the Panel denies leave to the SPO to add this item (072508-01) to the Exhibit list.

I. OTHER REQUESTED AMENDMENTS

1. SPOE00330184-00330188 and SPOE00331224-00331233

86. SPOE00330184-00330188 are two notes from Jakup Krasniqi's seized mobile phone.¹³¹ SPOE00331224-00331233 is a Facebook post attributed to Jakup Krasniqi.¹³²

87. The SPO submits that, although these items could have been added earlier, their significance were only recently assessed. The SPO avers that no undue prejudice would arise from their addition to the Exhibit List.¹³³ The Defence responds that: (i) re-assessment of the evidence as relevant does not constitute good cause justifying its late addition; (ii) the SPO fails to show *prima facie* relevance; and (iii) the legality of the seizure remains under dispute.¹³⁴

88. As regards timely notice, the Panel observes that the notes were in the SPO's possession since the seizure of Mr Krasniqi's phone in November 2020.¹³⁵ However, the Panel notes that the SPO's explanation that, following the reassessment of the significance of the notes, it discovered the Facebook post in late June 2023 as corroborative information of the phone items.¹³⁶ The Panel is prepared to accept that the evidential importance of these items might only have become fully apparent once they could be combined in June 2023. The Panel is also

¹³¹ See Annex 12 to the Request.

¹³² See Annex 13 to the Request.

¹³³ Request, paras 36-37.

¹³⁴ Response, paras 44-45.

¹³⁵ F00125/A03, Specialist Prosecutor, *Annex 3 to Request for Reclassifications (Redacted Versions of Annexes 2 and 4 to Prosecution Report on Search and Seizure Pursuant to KSC-BC-2020-06-F00031-COR)*, 8 December 2020, confidential and *ex parte*.

¹³⁶ See Request, para. 37.

satisfied that there is no indication that the SPO lacked diligence in the manner in which it conducted its investigation of this matter. There is therefore no indication that, in the exercise of its diligence, it should have recognised the importance of these items at an earlier stage. Considering the flexibility required in light of the circumstances of the case,¹³⁷ the Panel is therefore satisfied that the notice is timely.

89. As regards good cause and relevance/importance of the item, the Panel observes that the notes and the post contain the same text, *i.e.* Mr Krasniqi's observations on Mr Thaçi's position, views and attitude towards the KLA or its members. These observations were made around June 2014, *i.e.* long after the Indictment period, and do not relate to any of the crimes charged. Accordingly, the Panel is not satisfied of the *prima facie* relevance and/or sufficient importance of these items. Therefore, the Panel is not satisfied that there is good cause for the late addition of these items to the Exhibit List.

90. In light of the above, the Panel denies leave to add SPOE00330184-00330188 and SPOE00331224-00331233 to the Exhibit List.

2. 114010-114011

91. 114010-114011 is a statement from the former United States Secretary of State, Madeleine K. Albright, to the Contact Group Ministerial on Kosovo, dated 9 March 1998.¹³⁸

92. The SPO submits that it identified this statement when assessing the opening statement of the Thaçi Defence. The SPO argues that no undue prejudice would arise from its late addition to the Exhibit List.¹³⁹ The Defence responds that the addition of the statement should have been sought earlier and that, in any event, the SPO fails to show its *prima facie* relevance.¹⁴⁰

¹³⁷ Appeal Decision, para. 21.

¹³⁸ See Annex 14 to the Request.

¹³⁹ Request, paras 38-40.

¹⁴⁰ Response, paras 46-47.

93. As regards the timeliness of the notice, the Panel notes that the SPO identified the statement while reviewing the opening statement of the Thaçi Defence and does not intend to use this item with any of the witnesses it has scheduled thus far. There is no indication before the Panel that the SPO knew of this statement and/or had a record of it in its possession prior to that time. The Panel is therefore satisfied that the notice is timely.

94. As regards good cause and relevance/importance of this item, the Panel observes that the US Secretary of State states that she has “no sympathy for a so called liberation movement that judges, tries and execute the ethnic Serbs and Albanians it does not like”. This item could, therefore, be said to be relevant insofar as it might provide a limited degree of corroboration to one aspect of the SPO case. However, the basis of her belief and claim on that point is unknown. It is not apparent from the SPO’s submissions how this item would be sufficiently important to warrant its addition at this point to the SPO list.

95. In light of the above, the Panel denies leave to add 114010-114011 to the Exhibit List.

3. SPOE00332260-00332263

96. SPOE00332260-00332263 is a report dated 3 January 2000 from the Central Intelligence Agency discussing the KLA’s history.¹⁴¹

97. The SPO submits that it only determined the importance of this report after review of the Thaçi Defence opening statement. The SPO argues that there will be minimal prejudice if any from its addition.¹⁴² The Defence responds that addition of this report should have been sought earlier.¹⁴³

¹⁴¹ See Annex 15 to the Request.

¹⁴² Request, paras 42-43.

¹⁴³ Response, para. 48.

98. As regards the timeliness of notice, the Panel notes that the SPO identified the report while reviewing the opening statement from the Thaçi Defence. It follows that the content of this document has been brought to the knowledge of all Defence teams in April 2023 at the latest. There is no indication that the SPO had prior knowledge or access to this item before. In addition, the SPO does not intend to use this item with any of the identified witnesses scheduled thus far. The Panel is therefore satisfied that the notice is timely.

99. As regards good cause and the relevance and importance of the item, the Panel notes the SPO's submission that it only determined the importance of this report upon review of the Thaçi Defence opening statement. This, in itself, is insufficient to justify good cause. Turning to the nature of the document, insofar as it suggests a general awareness of some of the crimes charged in the case, the Panel finds that the report could be said to have some relevance to the case. However, in light of the very general nature of the document and the absence of an indication of the basis of the claims made therein, the Panel is not persuaded that it is of sufficient importance to justify its late addition to the Exhibit List at this stage of the proceedings.

100. In light of the above, the Panel denies leave to add SPOE00332260-00332263 to the Exhibit List.

J. ADDITIONAL MATERIAL REGARDING W03880

101. The Panel will now address the W03880 Request.

102. The SPO seeks leave to add 114275-114289, which is a 15-page interview of W03880 that appeared in [REDACTED] on or around [REDACTED] (“[REDACTED] Interview”).¹⁴⁴ The content of the [REDACTED] Interview

¹⁴⁴ See Annex 1 to W03880 Request.

encompasses many events that W03880 also discussed in his prior statements that have been provisionally admitted pursuant to Rule 154.¹⁴⁵

103. The SPO submits that: (i) the W03880 Request is timely as it was made promptly after the [REDACTED] Interview was collected, translated, assessed, and processed;¹⁴⁶ (ii) good cause exists as the [REDACTED] Interview is *prima facie* relevant to W03880's testimony and of sufficient importance to justify its addition to the Exhibit List;¹⁴⁷ and (iii) no prejudice will arise from the addition of the [REDACTED] Interview to the Exhibit List, as all Parties have been aware of the interview since it was referenced in the transcript of W03880's interview with the SPO, disclosed in December 2020, and the [REDACTED] Interview is publicly available.¹⁴⁸ The Defence responds that: (i) the SPO has failed to provide timely notice or good cause that would justify the current amendment to the Exhibit List,¹⁴⁹ and (ii) permitting the amendment would cause undue prejudice to the Defence.¹⁵⁰ In its Reply, the SPO noted that scheduling matters have developed in such a way as to postpone W03880's testimony, further limiting any potential prejudice on the Defence.¹⁵¹

104. As regards the timeliness of notice, the SPO acknowledges that it could have acted more expeditiously.¹⁵² The SPO has been aware of the [REDACTED] Interview since at least 2 December 2019, as evidenced by the fact that the SPO brought up the [REDACTED] Interview in its meeting with W03880 on that date.¹⁵³

¹⁴⁵ W03880 Request, paras 1, 4 (*citing* F01700, Trial Panel, Decision on Prosecution Motion for Admission of Evidence of W03724, W03832, W03880, W04368, W04566, and W04769 Pursuant to Rule 154 ("154 Decision"), 24 July 2023, confidential, paras 38, 92); *See* SPOE00078810-00078819, SITF00009201-00009206 and 070725-TR-ET Parts 1-3 RED

¹⁴⁶ W03880 Request, para. 6.

¹⁴⁷ W03880 Request, paras 7-8.

¹⁴⁸ W03880 Request, para. 8.

¹⁴⁹ W03880 Response, para. 4.

¹⁵⁰ W03880 Response, paras 8-9.

¹⁵¹ W03880 Reply, para. 3.

¹⁵² W03880 Request, para. 4.

¹⁵³ *See* 070725-TR-ET Part 1 RED2, p. 14

However, considering that: (i) the SPO notified the Defence of its intent to add the item to the Exhibit List on 29 August 2023;¹⁵⁴ and (ii) W03880 is not scheduled to testify for several weeks,¹⁵⁵ the Panel finds the notice provided by the SPO to be timely.

105. As regards good cause and the relevance and importance of the item, the Panel observes that SPO does not provide any justification for its late request in relation to the [REDACTED] Interview.¹⁵⁶ However, the Panel notes that in the [REDACTED] Interview, W03880 discusses events related to W03880's detention.¹⁵⁷ These events are referred to in the Indictment.¹⁵⁸ Documents containing details of these events have been provisionally admitted pursuant to Rule 154,¹⁵⁹ and the [REDACTED] Interview complements W03880's account of his time in detention and the surrounding events.¹⁶⁰ The Panel is therefore satisfied that the [REDACTED] Interview is *prima facie* relevant and of sufficient importance and that there is good cause for its addition to the Exhibit List.

106. As regards prejudice, the Panel recalls that: (i) the SPO notified the Defence of its intent to add the item to the Exhibit List on 29 August 2023;¹⁶¹ and (ii) W03880 is not scheduled to testify for several weeks.¹⁶² The Panel also notes that the [REDACTED] Interview is limited in scope and covers the same events which are also discussed in previously disclosed and provisionally admitted material

¹⁵⁴ See generally, W03880 Request.

¹⁵⁵ W03880 Reply, para. 3.

¹⁵⁶ See generally, W03880 Request.

¹⁵⁷ See generally [REDACTED] Interview.

¹⁵⁸ F00999/A01, Specialist Prosecutor, Annex 1 to Submission of Confirmed Amended Indictment, 30 September 2022, strictly confidential and *ex parte* (reclassified as confidential on 26 January 2023), paras 112-113.

¹⁵⁹ 154 Decision, paras 38, 92.

¹⁶⁰ W03880 Request, para. 5.

¹⁶¹ See generally, W03880 Request.

¹⁶² W03880 Reply, para. 3.

regarding W03880.¹⁶³ Given these circumstances, the Panel does not foresee a need for the Accused to expend significant additional resources or time in preparing for their examination of W03880 based on the addition of the [REDACTED] Interview. The Panel therefore finds that the Accused would suffer no undue prejudice should the SPO's Request be granted.

107. The Panel therefore grants leave to add 114275-114289 to the Exhibit List.

IV. CLASSIFICATION

108. The Panel notes that the Request (F01689), the Response (F01712), and W03880 Response (F01753) were filed confidentially and no public redacted versions were filed to date. The Panel therefore orders the Parties to submit public redacted versions of the abovementioned filings or request the reclassification thereof, by no later than **Wednesday, 27 September 2023**.

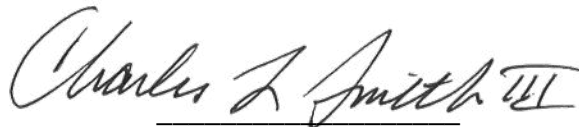
V. DISPOSITION

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

- a) **DECLARES** the part of the Request relating to W04018 moot;
- b) **GRANTS** the Request, in part;
- c) **GRANTS** the W03880 Request;

¹⁶³ Compare SPOE00078810-00078819, SITF00009201-00009206 and 070725-TR-ET Parts 1-3 RED with [REDACTED] Interview.

- d) **GRANTS** the SPO leave to add SITF40008582-SITF40008582; SPOE00116852-SPOE00116852 and SPOE00116730-SPOE00116733; SPOE00226630-SPOE00226631; U000-0017-U000-0021; ERN 069952, and its translation ERN 069952-ET; 113623-02; SPOE00144684-00144687; SITF00069370-SITF00069375; 067205-01; 114275-114289 to the Exhibit List;
- e) **ORDERS** the SPO to: (i) file its amended Exhibit List by no later than **Wednesday, 20 September 2023**; and (ii) disclose, if it has not already done so, the Requested Amendments granted to the Defence and Victims' Counsel by no later than **Friday, 15 September 2023**;
- f) **ORDERS** the Parties to submit public redacted versions or request the reclassification of the Request and the Response by no later than **Wednesday, 27 September 2023**; and
- g) **REJECTS** the remainder of the Request.



Judge Charles L. Smith, III
Presiding Judge

Dated this Tuesday, 12 September 2023

At The Hague, the Netherlands.