



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

**In:** KSC-BC-2020-07  
**Specialist Prosecutor v. Hysni Gucati and Nasim Haradinaj**

**Before:** **Pre-Trial Judge**  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor

**Date:** 29 June 2021

**Language:** English

**Classification:** Public

---

**Prosecution response to Defence submissions on the reclassification of filings**  
**with Confidential Annex 1**

---

**Specialist Prosecutor's Office**  
Jack Smith

**Counsel for Mr Gucati**  
Jonathan Elystan Rees

**Counsel for Mr Haradinaj**  
Toby Cadman

## I. SUBMISSIONS

1. The Pre-Trial Judge should reject the Defence request<sup>1</sup> to reclassify F00199<sup>2</sup> as public. Reclassification of F00199 is inappropriate since in this filing the Gucati Defence: (i) refers to the names of several persons contacted by the Specialist Prosecutor's Office ('SPO') during its investigation;<sup>3</sup> (ii) refers to the names of several SPO staff members;<sup>4</sup> (iii) specifically identifies an organization with which the SPO cooperates in a number of proceedings;<sup>5</sup> and (iv) reproduces excerpts of documents and information disclosed to the Defence on a confidential basis.<sup>6</sup>

2. First, publicly revealing the names of persons contacted by the SPO during its investigation, whom the SPO does not intend to call to testify at trial, could unnecessarily put such persons at risk. Second, revealing the names of SPO staff members to the public when not strictly necessary and without prior approval violates a Practice Direction,<sup>7</sup> as specifically recalled by the Pre-Trial Judge.<sup>8</sup> Third, publishing the identity of an organization with which the SPO cooperates in this and other proceedings is unnecessary and may jeopardize such cooperation. Fourth, the

---

<sup>1</sup> Defence Response to Order for Submissions on the Reclassification of Filings, KSC-BC-2020-07-F00247, 25 June 2021, para.1.

<sup>2</sup> Response to Confidential Redacted Version of 'Prosecution requests and challenges pursuant to KSC-BC-2020-07/F00172', KSC-BC-2020-07/F00190 dated 26 April 2020, KSC-BC-2020-07/F00199, 10 May 2021, Confidential ('F00199').

<sup>3</sup> F00199, KSC-BC-2020-07/F00199, para.27.

<sup>4</sup> F00199, KSC-BC-2020-07/F00199, paras 8, 10, 19-20, 24, 27, 39-44, fn.5.

<sup>5</sup> F00199, KSC-BC-2020-07/F00199, para.14.

<sup>6</sup> F00199, KSC-BC-2020-07/F00199, fn.5, paras 24, 39, 40-45, 49(i); *See also* F00199, KSC-BC-2020-07/F00199, fn.2, reproducing information which the SPO redacted in Public Redacted Version of 'Prosecution requests and challenges pursuant to KSC-BC-2020-07/F00172', dated 26 April 2021, KSC-BC-2020-07/F00190/RED, 18 May 2021, para.9.

<sup>7</sup> *See* KSC Registry Practice Direction 'Files and Filings before the Kosovo Specialist Chambers', KSC-BD-15, 17 May 2019, Article 33(3) ('Practice Direction').

<sup>8</sup> The Pre-Trial Judge has noted that 'regardless of whether the name of Specialist Chambers or SPO staff member is mentioned in a public transcript, pursuant to Article 33 of the Practice Direction on Files and Filings, parties shall make reference to Specialist Chambers and SPO staff members only by their functional titles unless strictly necessary for the proceedings and preferably in submissions with a classification of confidential or strictly confidential, and references to other personal information shall only be made upon approval by a Panel or the President', KSC-BC-2020-07, Transcript, 30 March 2021, pp.213-214. The Pre-Trial Judge also specifically ordered the Haradinaj Defence to file a public redacted version of a filing, redacting the name of the SPO staff member mentioned therein, KSC-BC-2020-07, Transcript, 30 March 2021, p.214.

classification of documents disclosed to the Defence on a confidential basis should be maintained until such material is presented as evidence at trial and the classification of each item is ruled upon by the Trial Panel on an individual basis.<sup>9</sup>

3. Accordingly, the Guwati Defence should be ordered to provide a public redacted version of F00199, redacting the information referred to above. At Annex 1, the SPO proposes the minimum redactions to be applied.

**Word count: 502**



---

**Jack Smith**  
**Specialist Prosecutor**

Tuesday, 29 June 2021

At The Hague, the Netherlands.

---

<sup>9</sup> See also Practice Direction, Article 23(3).