



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

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

**Before:** Trial Panel II  
Judge Charles L. Smith, III, Presiding Judge  
Judge Christoph Barthe  
Judge Guénaël Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor

**Date:** 23 August 2021

**Language:** English

**Classification:** Public

---

**Public redacted version of**

**Prosecution request for protective measures**

---

**Specialist Prosecutor's Office**

Jack Smith

**Counsel for Mr Gucati**

Jonathan Elystan Rees

**Counsel for Mr Haradinaj**

Toby Cadman

## I. Introduction

1. Pursuant to the orders of the Trial Panel,<sup>1</sup> Articles 23, 40(2) and (6)(f) of the Law,<sup>2</sup> and Rules 80, 116(4)(b), and 120 of the Rules,<sup>3</sup> the Specialist Prosecutor's Office ('SPO') requests the Trial Panel to authorise the following protective measures for W04841 and W04842:

- a. identification of these witnesses only by their assigned pseudonyms throughout all public proceedings; and
- b. redaction of these witnesses' names and identifying information from the court's public records.

2. These requested protective measures are consistent with the rights of the Accused. The Accused and Defence already know the identities of these witnesses and will have access to their complete testimony.

## II. Submissions

3. W04841 is an SPO Investigator/Investigation Operations Leader and W04842 is the Head of the SPO Witness Security Team. Both witnesses [REDACTED]. [REDACTED]. [REDACTED]. This compromises the effectiveness of SPO investigations and, noting the climate of witness intimidation in Kosovo,<sup>4</sup> puts those whom they interact with at risk.

---

<sup>1</sup> Order for Submissions and Scheduling the Trial Preparation Conference, KSC-BC-2020-07/F00267, 21 July 2021 (with annex), para.8.

<sup>2</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

<sup>3</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

<sup>4</sup> See generally Public Redacted Version of 'Request for arrest warrants and related orders', filing KSC-BC-2020-06/F00005 dated 28 May 2020, KSC-BC-2020-06/F00005/RED, 17 November 2020 (with three annexes), paras 18-26. See also *Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA002/F00005/RED, 30 April 2021, para.62.

4. Ensuring that W04841 and W04842 are only referred to by pseudonym is necessary for them to carry out their work while safeguarding their safety, the safety of witnesses and other persons they interact with, and the integrity of ongoing and future investigations. The necessity of protecting the identity of SPO staff members is explicitly acknowledged in the KSC's statutory scheme. In particular, Article 33 of the Practice Direction<sup>5</sup> requires that SPO staff members only be referenced by their functional titles unless strictly necessary. Furthermore, the KSC's jurisprudence recognises that identifying and contact information of SPO staff members is subject to standard redactions under Rule 108(1)(a) when the disclosure of this information could put them at risk and hinder their work in the field, thereby putting ongoing or future investigations at risk, or posing security risks to witnesses or other persons whom they interview or contact.<sup>6</sup> It is also noted that, for reasons similar to those applicable to W04841 and W04842, ICC prosecution staff members have been granted comparable protective measures when testifying.<sup>7</sup>

5. Balancing the rights of the Accused and the principle of public proceedings, the requested measures are proportional and limited. It is a clear mischaracterisation to

---

<sup>5</sup> Article 33 of the Registry Practice Direction on Files and Filings before the Kosovo Specialist Chambers, KSC-BD-15, 17 May 2019 ('Practice Direction') ('[p]articipants shall make reference to staff members of the Specialist Chambers and the Specialist Prosecutor's Office, or to Defence or Victims' Counsel support staff, only by their functional titles, unless strictly necessary for the proceedings and preferably in Submissions with a classification of confidential or strictly confidential').

<sup>6</sup> See Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-07/F00104, 22 January 2021, para.82(a); *Prosecutor v. Shala*, Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-04/F00033, 30 April 2021, para.89(a); *Prosecutor v. Thaçi et al.*, Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-06/F00099, 23 November 2020, para.95(a); *Prosecutor v. Mustafa*, Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-05/F00034, 9 October 2020, para.86(a).

<sup>7</sup> ICC, *Prosecutor v. Ongwen*, Decision on the 'Prosecution's application for in-court protective and special Measures', ICC-02/04-01/15-612-Red, 30 November 2016, paras 36-37; ICC, *Prosecutor v. Bemba et al.*, Decision on Prosecution Request for In-Court Protective Measures, ICC-01/05-01/13-1306, 28 September 2015, para.5, *granting ICC, Prosecutor v. Bemba et al.*, Public redacted version of "Prosecution's Request for In-Court Protective Measures", 15 September 2015, ICC-01/05-01/13-1248-Conf, ICC-01/05-01/13-1248-Red, 22 June 2016, paras 11-12; ICC, *Prosecutor v. Katanga and Ngudjolo*, Order on protective measures for certain witnesses called by the Prosecutor and the Chamber (Rules 87 and 88 of the Rules of Procedure and Evidence), ICC-01/04-01/07-1667-Red-tENG, 9 December 2009 (redacted version notified 29 November 2012), para.19.

refer to W04841 or W04842 as anonymous witnesses in the present proceedings.<sup>8</sup> Though identified by pseudonym, the witnesses will still be seen from and heard by the public when testifying. The Accused will be able to follow the testimony of both witnesses no differently, as the measures sought only extend to protecting identification by the broader public.

### III. Classification

6. In accordance with Rule 82(3), this request is filed confidentially to protect the witnesses concerned, those they interact with, and the integrity of SPO investigations. A public redacted version will be filed.

### IV. Relief sought

7. For the foregoing reasons, the Trial Panel is requested to authorise the protective measures requested at paragraph 1 above.

**Word count: 863**



**Jack Smith**

**Specialist Prosecutor**

Monday, 23 August 2021

At The Hague, the Netherlands

---

<sup>8</sup> *Contra* Submission of Interim Pre-Trial Brief on Behalf of the Defence of Nasim Haradinaj, 12 July 2021, KSC-BC-2020-07/F00260, Confidential, para.250. In contrast to the measures actually requested, *see also* Rules 80(4)(e)(ii) and 147.