



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 Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon  
**Filing Participant:** Specialist Prosecutor  
**Date:** 25 October 2021  
**Language:** English  
**Classification:** Public

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**Prosecution submission on associated exhibits for W04841**

**with one confidential annex**

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## I. SUBMISSIONS

1. As directed by the Trial Panel,<sup>1</sup> in Annex 1 the Specialist Prosecutor's Office ('SPO') provides a table listing the associated exhibits sought for admission with W04841's declarations pursuant to Rule 154.<sup>2</sup> MFI numbers are provided where available. The classification of each exhibit is also specified, along with whether a public redacted version is available.<sup>3</sup>

2. From Rule 154's language, it is clear that it derives from the provisions of international tribunals governing introducing statements of witnesses who are present for further examination. In particular, this procedure is reflected in the rules of the ICTY and ICC.<sup>4</sup> These tribunals admit associated exhibits with the tendered statements under these rules.<sup>5</sup> For the drafters of the KSC Rules to have adopted such a procedure without qualification suggests an intention to consider associated exhibits in the same way as these other institutions.

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<sup>1</sup> Transcript of Hearing, 20 October 2021, pp.1034-36.

<sup>2</sup> Rule 154 of the Rules 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>3</sup> The public redacted versions available are in English. Should the exhibits be admitted, equivalent Albanian redacted versions will be submitted before the closing of the SPO's case.

<sup>4</sup> Rule 92 *ter* of the ICTY Rules, Rule 68(3) of the ICC Rules.

<sup>5</sup> ICC, *Prosecutor v. Yekatom and Ngaïssona*, Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1962, P-0925, P-2193, P-2926, P-2927, P-1577 and P-0287, and the Ngaïssona Defence Motion to Limit the Scope of P-2926's Evidence, ICC-01/14-01/18-907-Red, 1 April 2021 ('*Yekatom and Ngaïssona* Decision'), para.13; ICC, *Prosecutor v. Gbagbo and Blé Goudé*, Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3), ICC-02/11-01/15-573-Red, 9 June 2016, para.9; ICTY, *Prosecutor v. Hadžić*, Decision on Prosecution Motions For Admission of Evidence of GH-111, GH-011, And GH-147 Pursuant To Rule 92 *ter*, IT-04-75-T, 16 January 2013 (*Hadžić* Decision), para.7; ICTY, *Prosecutor v. Stanišić and Župljanin*, Decision on Prosecution's Motions for Admission of Evidence Pursuant to Rule 92 *ter*, IT-08-91-T, 2 October 2009, para.16; ICTY, *Prosecutor v. Đorđević*, Decision on Prosecution's Motion for Admission of Evidence Pursuant to Rule 92 *ter*, IT-05-87/1-T, 10 February 2009, para.5; *Prosecutor v. Lukić and Lukić*, Decision on Confidential Prosecution Motion for the Admission of Prior Testimony with Associated Exhibits and Written Statements of Witnesses Pursuant to Rule 92 *ter*, IT-98-32/1-T, 9 July 2008, para.15.

3. Associated exhibits in Rule 154 statements should be understood as those exhibits used or explained in the course of the statement itself.<sup>6</sup> Their admission is necessary to understand the contents of the statement, and they therefore form an integral part of it. The main objective of Rule 154 is to expedite proceedings by shortening the direct examination of witnesses.<sup>7</sup> This purpose would be largely defeated if every associated exhibit had to be presented to a witness in the course of direct examination. This is particularly the case for a witness like W04841, whose declarations cover so many associated exhibits that tendering them all outside the Rule 154 procedure would substantially elongate the examination.

4. The logic for introducing associated exhibits at other tribunals with similar rules holds equally true at the KSC. These exhibits also meet the standard admissibility criteria set out in Rule 138(1), and could be independently admitted under that provision. As W04841 explains in her declarations, all submitted exhibits are relevant, authentic, and probative. No undue prejudice is caused, noting in particular that the Defence has had a full opportunity to question W04841 as to all exhibits submitted.

## II. CLASSIFICATION

5. Annex 1 of this filing is confidential in order to protect information with the same classification.

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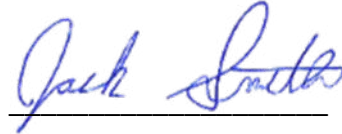
<sup>6</sup> *Yekatom and Ngaïssona* Decision, ICC-01/14-01/18-907-Red, para.13 (“[t]he notion of “prior recorded testimony” also includes any annex to a witness statement, or document otherwise associated with it, as long as it is used or explained by the witness in their statement and thereby forms an integral part of the testimony itself”); ICC, *Prosecutor v. Ruto and Sang*, Decision on Prosecution Request for Admission of Prior Recorded Testimony, ICC-01/09-01/11-1938-Red-Corr2, 28 August 2015, para.33 (reversed on other grounds).

<sup>7</sup> *Hadžić* Decision, IT-04-75-T, para.7.

### III. RELIEF SOUGHT

6. For the reasons above, the SPO requests the admission of the exhibits in Annex 1 as exhibits associated with W04841's declarations.

**Word count: 727**



**Jack Smith**

**Specialist Prosecutor**

Monday, 25 October 2021

At The Hague, the Netherlands