



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:** 8 April 2022

**Language:** English

**Classification:** Public

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**Submissions pursuant to the Trial Panel's Order F00584**

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**Specialist Prosecutor's Office**

Jack Smith

**Counsel for Mr Gucati**

Jonathan Elystan Rees

**Counsel for Mr Haradinaj**

Toby Cadman

1. Pursuant to the Order,<sup>1</sup> the Specialist Prosecutor's Office ('SPO') provides its submissions on reclassification of transcripts. Each of the confidential transcripts listed by the Trial Panel<sup>2</sup> is addressed, in turn, below.
2. The SPO does not object to the reclassification as public of the transcript of 2 September 2021, pages 561-564 and 598.
3. The relevant portions of the transcript of 7 October 2021<sup>3</sup> should remain confidential, as they reproduce the content of filings bearing the same classification, including the Accused's personal data and confidential witness information.<sup>4</sup>
4. Certain parts of the transcript of 18 October 2021, namely page 865, lines 8-11 and lines 22-24, pages 883-885, pages 917 to 918, line 14, should remain confidential, as they reproduce the contents of exhibits bearing the same classification and include confidential witness names.<sup>5</sup> The SPO does not object to the reclassification to public of the remaining portions of the 18 October 2021 transcript.<sup>6</sup>
5. The transcript of 19 October 2021, pages 1006-1008, should remain confidential because (a) it reproduces the contents of exhibits bearing the same classification;<sup>7</sup> and (b) it includes information that, if revealed to the public and compared with the contents of confidential documents disseminated by the Accused, will facilitate the identification of protected witnesses in previous Kosovo trials<sup>8</sup> or in proceedings before the Kosovo Specialist Chambers.<sup>9</sup>

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<sup>1</sup> Order for Submissions on Reclassification of Transcripts and Filings, KSC-BC-2020-07/F00584, 28 March 2022 ('Order'), para.9(a).

<sup>2</sup> Order, KSC-BC-2020-07/F00584, para.7.

<sup>3</sup> 7 October 2021, T.753-754, 763-764.

<sup>4</sup> See, Lesser Redacted Indictment, KSC-BC-2020-07/F00251/A01/Red, 4 October 2021, paras 1-2, 18.

<sup>5</sup> See, Decision on the Classification and Public Redacted Versions of Exhibits Admitted Through the Bar Table, KSC-BC-2020-07/F00350, 5 October 2021 ('Decision on Classification'), para 18.

<sup>6</sup> 18 October 2021, T.863-865 (with the exception of T. 865, lines 8-11 and lines 22-24) and T.918, line 15 to T.919.

<sup>7</sup> 19 October 2021, T.968-971.

<sup>8</sup> 19 October 2021, T.1006-1008.

<sup>9</sup> 19 October 2021, T.953-961.

6. The confidential portions of the transcripts of 20 October 2021 contain information on confidential witness identities and reproduce the contents of exhibits bearing a confidential classification. The current classification should therefore be maintained. The SPO does not object to the re-classification as public of discrete passages within these confidential transcripts, including both witness testimonies and Parties' submissions, to the extent that they do not reveal confidential information, such as page 1114, line 13, to page 1115, line 7; pages 1092 to 1094, line 2; and page 1138, line 20 to page 1140, line 2.

7. The transcripts of 21 October 2021 should maintain a confidential classification as they include the names and personal information of SPO staff members,<sup>10</sup> as well as information on the internal practices and the digital environment the SPO operates with, the publication of which would increase the institutional security risk and prejudice ongoing or future SPO investigations.<sup>11</sup> The SPO does not object to the reclassification as public of pages 1244, line 5 to 1252, line 15 of the 21 October 2021 transcript.

8. The SPO does not object to the reclassification as public of: (a) pages 1305-1308 of the transcript of 25 October 2021, to the extent the name of the SPO staff member included in page 1307, line 16, is redacted;<sup>12</sup> (b) pages 1344, line 22 to 1354; and (c) page 1390, line 15 to page 1393, line 13. The remaining confidential portions of the 25 October 2021 transcript contain information revealing confidential witness identities,<sup>13</sup> reproduce the contents of exhibits bearing a confidential classification,<sup>14</sup> contain names of SPO staff members,<sup>15</sup> and include information that, if revealed to the public,

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<sup>10</sup> 21 October 2021, T.1169. See Decision on Classification, KSC-BC-2020-07/F00350, paras 22, 24; Practice Direction on Files and Filings, KSC-BD-15, 17 May 2019, para.33.

<sup>11</sup> 21 October 2021, T.1216-1246.

<sup>12</sup> The video-recording of the corresponding part of the hearing should also remain confidential, to the extent DHG0229 is displayed on video.

<sup>13</sup> 25 October 2021, T. 1316-1321, 1365-1366

<sup>14</sup> 25 October 2021, T. 1333-1339, 1344-1346, 1393, line 14 to 1407.

<sup>15</sup> 25 October 2021, T.1386, and 1393, line 14 to 1407.

would facilitate the identification of protected witnesses in previous Kosovo trials or in proceedings before the Kosovo Specialist Chambers.<sup>16</sup> The current classification should therefore be maintained.

9. The SPO does not object to the reclassification as public of pages 1428-1430 of the transcript of 26 October 2021, to the extent the names of the SPO staff member included in page 1428 lines 22 and 25, and page 1429, line 23, are redacted. The remaining confidential portions of the transcripts of 26 October 2021 contain information revealing confidential witness identities,<sup>17</sup> reproduce the contents of exhibits bearing a confidential classification,<sup>18</sup> and contain names and personal information of SPO staff members.<sup>19</sup> The current classification should therefore be maintained.

10. The transcript of 4 November 2021 should remain confidential as it includes information revealing confidential witness identities,<sup>20</sup> as well as names of SPO staff members and information on the internal SPO practices,<sup>21</sup> the publication of which would increase the institutional security risk and prejudice ongoing or future SPO investigations.

11. Pages 1920-1925 of the transcript of 5 November 2021 should remain confidential as they refer to filings bearing the same classification, and considering that a summary of the Trial Panel's oral order on that matter was read out in open session.<sup>22</sup> The confidential portion of page 1943 of the transcript of 5 November 2021 should remain confidential, as it contains the name of a SPO staff member.

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<sup>16</sup> 25 October 2021, T.1321-1333; 1343-1344.

<sup>17</sup> 26 October 2021, T.1467-1469, 1518-1519.

<sup>18</sup> 26 October 2021, T.1518-1519.

<sup>19</sup> 26 October 2021, T.1435, 1439.

<sup>20</sup> 4 November 2021, T.1780-1793.

<sup>21</sup> 4 November 2021, T.1773-1777, 1790-1793, 1891-1900.

<sup>22</sup> 5 November 2021, T.1926.

12. The transcript of 8 December 2021, pages 2385-2387, contains information revealing confidential witness identities and reproduces the contents of exhibits bearing a confidential classification. The confidential classification should therefore be maintained.

13. Finally, the transcript of 15 December 2021, pages 2622-2626 and 2627-2636, should remain confidential as they reproduce the contents of confidential exhibits and contain information that, if made public, would endanger the security of witnesses and increase the risk for the digital security of the SPO and prejudice ongoing or future SPO investigations.

**Word count: 1013**



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

Friday, 8 April 2022

At The Hague, the Netherlands