

In: KSC-BC-2020-07

Before: Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Hysni Gucati

Date: 29th September 2020

Language: English

File Name: *The Specialist Prosecutor v Nasim Haradinaj and Hysni Gucati*

CLASSIFICATION: Public

PARTICIPANTS TO WHICH THE SUBMISSION IS TO BE DISTRIBUTED: Single Judge, SPO, the President of the Specialist Chambers, Specialist Counsel for Mr Haradinaj

Application for Bail

Specialist Prosecutor's Office
Valeria Bolici

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Valon Hasani

Application for Bail

1. Without prejudice to (1) the application challenging the lawfulness of the arrest in accordance with Article 41(2) of the Law No.05/L-53 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), on grounds that the arrest warrant was issued without lawful authority, and (2) the request for disclosure relating to the material upon which the arrest and detention was based, the Applicant, Mr Gucati, applies for bail.

2. Article 41(6) of the Law provides that detention is only to be ordered when there are articulable grounds to believe that:
 - i. There is a risk of flight;

 - ii. He or she will destroy, hide, change or forge evidence of a crime or specific circumstances indicate that he or she will obstruct the progress of the criminal proceedings by influencing witnesses, victims or accomplices; or

 - iii. The seriousness of the crime, or the manner or circumstances in which it was committed and his or her personal characteristics, past conduct, the environment and conditions in which he or she lives or other personal circumstances indicate a risk that he or she will repeat the criminal offence, complete an attempted crime or commit a crime in which he or she has threatened to commit.

3. Article 41(12) of the Law provides that the Specialist Chambers may order a range of measures including bail, conditions of residence including house detention, prohibitions on approaching specific places or persons, and

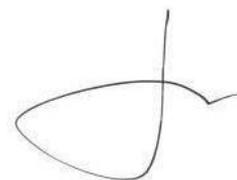
requirements to report to police stations as alternatives to detention on remand to ensure presence, preventing reoffending or ensuring the successful conduct of criminal proceedings.

4. It follows that where alternative measures meet the concerns in Article 41(6) of the Law detention is no longer justified.
5. In the present case, and without prejudice to (1) the application challenging the lawfulness of the arrest in accordance with Article 41(2) of the Law No.05/L-53 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), on grounds that the arrest warrant was issued without lawful authority, and (2) the request for disclosure relating to the material upon which the arrest and detention was based, the Applicant proposes bail on the following conditions:
 - a. A surety in the sum of 5000 Euros
 - b. Surrender of his passport
 - c. A requirement that he lives and sleeps each night at his home address
 - d. Daily reporting to Eulex Police HQ
 - e. A condition not to contact directly or indirectly any person the court thinks it appropriate to restrict contact with
 - f. A condition not to go within 100 metres of the offices of the Kosovo Liberation Army War Veterans Association
6. The above conditions meet any risk of flight, a concern that he will obstruct the progress of criminal proceedings or commit further offences. Moreover,

continued detention on remand is disproportionate in the circumstances. It is proper to reflect that:

- a. The Applicant was co-operative on arrest;
- b. The Applicant has not been charged with any offence, and he may never be;
- c. The offences under investigation do not appear to involve allegations of force being used;
- d. The offences under investigation do not appear to involve allegations of actual threats being used (as opposed to exposure to potential threats);
- e. The offences under investigation do not appear to involve allegations of actual harm being caused (as opposed to exposure to potential harm);
- f. The maximum custodial sentence for an offence of violating the secrecy of proceedings in the circumstances as alleged in the warrant is 1 years imprisonment;
- g. The maximum custodial sentence for an offence of retaliation in the circumstances as alleged in the warrant is 3 years imprisonment; and
- h. Although the maximum custodial sentence for an offence of intimidation during criminal proceedings is 10 years (with a range starting as low as 2 years), the higher end of that range should be reserved for only those cases involving force and actual threat.

Word count: 632 words

A handwritten signature in black ink, appearing to be 'J. E. Rees', written in a cursive style.

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