

**In:** KSC-BC-2020-07

**The Prosecutor v. Hysni Gucati and Nasim Haradinaj**

**Before:** Single Judge

Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Counsel for Hysni Gucati

**Date:** 20<sup>th</sup> October 2020

**Language:** English

**Classification:** Confidential

**To be submitted to:** The President of the Specialist Chambers, Judge  
Ekaterina Trendafilova re the issue of assignment of a  
new Judge

---

**Request for an Oral Hearing**

---

**Specialist Prosecutor**

Jack Smith

**Counsel for Hysni Gucati**

Jonathan Elystan Rees QC

**Counsel for Nasim Haradinaj**

Bastiaan Martens

## REQUEST FOR AN ORAL HEARING

1. On 29<sup>th</sup> September 2020, the Applicant filed a motion challenging the lawfulness of the Applicant's arrest, transfer and detention in accordance with Article 41(2) of the Law No. 05/L-53 on Specialist Chambers and Specialist Prosecutor's Office ("Law")<sup>1</sup>.
2. Two ancillary motions were filed by the Applicant at the same time, requesting (i) a new judge to be assigned to deal with the challenge to the lawfulness of the Applicant's arrest, transfer and detention<sup>2</sup>; and (ii) without prejudice to the motion challenging the lawfulness of the Applicant's arrest, transfer and detention, bail<sup>3</sup>.
3. At the hearing on 1<sup>st</sup> October 2020, the Single Judge directed the SPO to serve a consolidated reply to those motions by Friday 9<sup>th</sup> October 2020<sup>4</sup>.
4. On 9<sup>th</sup> October 2020 the SPO served their reply<sup>5</sup>.

---

<sup>1</sup> "Challenge to the Lawfulness of the Arrest in accordance with Article 41(2): the Arrest Warrant was Issued without Lawful Authority" KSC-BC-2020-7/F00034

<sup>2</sup> "Challenge to the Lawfulness of the Arrest in accordance with Article 41(2): Request for Assignment of a New Judge to Determine Challenge" KSC-BC-2020-7/F00032

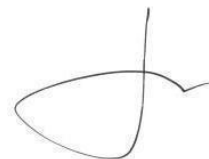
<sup>3</sup> "Application for Bail" KSC-BC-2020-7/F00038

<sup>4</sup> Transcript of First Appearance of Mr Hysni Gucati 1<sup>st</sup> October 2020 at p.7 lines 15-17

<sup>5</sup> "Consolidated Prosecution response to Defence motions challenging lawfulness of arrest and requesting release" KSC-BC-2020-7/F00045

5. The matter should now be set down for oral hearing to determine the Applicant's motions challenging the lawfulness of his arrest, transfer and detention, and bail. Under Article 41(2) of the Law, the Applicant is entitled "to have such a challenge decided speedily by the Specialist Chambers and his or her release ordered if detention is not lawful" (emphasis added).
6. As the Applicant's motion challenges this Single Judge's authority to have ordered his arrest, and asserts that in doing so this Single judge acted without lawful authority and beyond his powers, the oral hearing to determine the Applicant's motion challenging the lawfulness of his arrest, transfer and detention should be listed before a newly assigned Judge in accordance with the principle of natural justice, *nemo iudex in causa sua*.
7. As article 41(10) of the Law provides for an unqualified right of appeal to a Court of Appeals Panel against a decision on detention, it is requested that provision is also made, at this stage, for a speedy hearing before a Court of Appeals Panel to follow an oral hearing at first instance to determine the Applicant's motions on the lawfulness of his arrest, transfer and detention and bail, in the event that the Applicant is unsuccessful at first instance and exercises his right of appeal.
8. Specialist Counsel for the Applicant can be available with notice during the period 26<sup>th</sup> October 2020 to 13<sup>th</sup> November 2020. It is requested that an oral hearing at first instance is listed during the week commencing 26<sup>th</sup> October 2020, with a provisional hearing before a Court of Appeals Panel to be listed to follow, if required, during the period beginning the day after the first instance hearing and ending on 13<sup>th</sup> November 2020.

Word count: 508 words

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

JONATHAN ELYSTAN REES QC

Specialist Counsel for Mr Gucati

20<sup>th</sup> October 2020

Cardiff, UK