

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: 21st 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: Further Note re Prosecution Response to Defence
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: FURTHER NOTE RE PROSECUTION
RESPONSE TO DEFENCE REQUEST FOR AN ORAL HEARING

1. Whether or not the Specialist Prosecutor's Office 'generally welcomes' oral argument is irrelevant¹. The Applicant is entitled to an oral hearing.
2. The SPO is simply incorrect when it asserts that oral submissions have already been heard from both parties on all of the issues raised in the Request during the hearing on 1st October 2020².
3. No oral submissions were heard from either party during that hearing on either (i) the motion a new judge be assigned to deal with the challenge to the lawfulness of the Applicant's arrest, transfer and detention, or (ii) the motion challenging the lawfulness of the Applicant's arrest, transfer and detention in accordance with Article 41(2) of the Law³.
4. Oral submissions were heard by the Single Judge on 1st October 2020 in relation to bail, but no decision was given, and the Applicant has not had any opportunity to make oral submissions in response to the written submission provided by the SPO on the lawfulness of the Applicant's release and his application for bail which was not served until 9th October 2020⁴.

¹ "Prosecution response to Defence Request for an Oral Hearing" KSC-BC-2020-7/F00053 at paragraph 1

² "Prosecution response to Defence Request for an Oral Hearing" KSC-BC-2020-7/F00053 at paragraph 1

³ Transcript of First Appearance, 1st October 2020 at page 7, lines 15 to 17 and at page 16, lines 12 to 19

⁴ "Consolidated Prosecution Response to Defence Motions Challenging Lawfulness of Arrest and Requesting Release" KSC-BC-2020-7/F00045

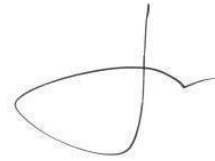
5. The Applicant repeats: under Article 41(2) of the Law, he is entitled “to have such a challenge decided speedily by the Specialist Chambers and his or her release ordered if detention is not lawful” (emphasis added).

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 26th October 2020 to 13th November 2020. It is requested that an oral hearing at first instance is listed during the week commencing 26th 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 13th November 2020.

Word count: 531 words

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

JONATHAN ELYSTAN REES QC

Specialist Counsel for Mr Gucati

21st October 2020

Cardiff, UK