

In: KSC-BC-2020-07

The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: Pre-Trial Judge

Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hysni Gucati

Date: 25 November 2020

Language: English

Classification: Confidential

**Request for Directions:
Re Conduct of Proceedings
Concerning the Review of Detention**

Specialist Prosecutor

Jack Smith

Counsel for Hysni Gucati

Jonathan Elystan Rees QC

Huw Bowden

Counsel for Nasim Haradinaj

Bastiaan Martens

I. BACKGROUND

1. By order dated 11 November 2020, the Pre-Trial Judge informed Mr Gucati and his co-suspect, Mr Haradinaj ('the Suspects') that the SPO had filed a strictly confidential and *ex parte* indictment ('the Indictment') against them¹.
2. This followed the SPO publicly stating their intention to file against the Suspects by the end of October 2020 during the hearing on 1 October 2020².
3. At paragraph 10 of the same order, the Pre-Trial Judge noted that³:
 - (a) Mr Gucati has already been arrested and is continuing to be held in detention;
 - (b) Mr Gucati does not, however, know of the specific charges levied against him in the indictment; and that
 - (c) Mr Gucati has a right to be provided with all essential information in order to be able to obtain an effective review of his detention.
4. In the circumstances, the Pre-Trial Judge stated that⁴:

¹ KSC-BC-2020-07, F00065, Pre-Trial Judge, *Order for Submissions on the Conduct of Proceedings Concerning the Review of the Indictment*, 11 November 2020, confidential, para.5.

² KSC-BC-2020-07, Transcript, 1 October 2020, public, p.15

³ KSC-BC-2020-07, F00065, Pre-Trial Judge, *Order for Submissions on the Conduct of Proceedings Concerning the Review of the Indictment*, 11 November 2020, confidential, para.10.

⁴ KSC-BC-2020-07, F00065, Pre-Trial Judge, *Order for Submissions on the Conduct of Proceedings Concerning the Review of the Indictment*, 11 November 2020, confidential, para.11.

"...[he is] minded, in the specific circumstances of the present case, to make available to the Suspects the Indictment, if necessary with redactions. Then, if they so wish, for reasons of fairness, they may also make submissions on the Indictment while it is being reviewed by the Pre-Trial Judge. This is without prejudice to the Suspects' exercise of rights under the Laws and the Rules".

5. The Pre-Trial Judge invited submissions from the parties on the issue by 17 November 2020.
6. Submissions on behalf of Mr Gucati⁵, Mr Haradinaj⁶ and the Specialist Prosecutor⁷ were filed on 17 November 2020 as directed.

II. . REQUEST FOR FURTHER DIRECTIONS AS TO THE CONDUCT OF THE PROCEEDINGS CONCERNING THE REVIEW OF DETENTION

7. Mr Gucati has now been in detention for exactly 2 calendar months commencing with his arrest on 25th September 2020.
8. In accordance with Rule 57 of the Rules, the detention of Mr Gucati is to be reviewed at least every two months, as Mr Gucati was directly informed by the Single Judge at the hearing on 1 October 2020⁸.
9. It is requested in the circumstances that the Pre-Trial Judge provides further directions as to the conduct of the review of Mr Gucati's detention, including

⁵ KSC-BC-2020-07, F00066

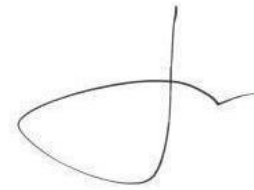
⁶ KSC-BC-2020-07, F00067

⁷ KSC-BC-2020-07, F00068

⁸ KSC-BC-2020-07, Transcript 1 October 2020, at page 26 lines 18 to 21

as to the disclosure of the indictment⁹ and thereafter the exchange of submissions on the review of detention, as a matter of urgency.

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⁹ Noting, as the Pre-Trial Judge has, that Mr Gucati has the right to be provided with all essential information in order to be able to obtain an effective review of his detention (including the exercise of the right to request a review before the expiry of the two month period where there has been a *change in circumstances*) – see KSC-BC-2020-07, F00065, *Order for Submissions on the Conduct of Proceedings Concerning the Review of the Indictment* at paragraph 10