



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2020-07
Specialist Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

Date: 18 December 2020

Language: English

Classification: Public

Prosecution consolidated submissions on review of detention

Specialist Prosecutor's Office

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1. Pursuant to the Order,¹ the Specialist Prosecutor's Office ('SPO') hereby files submissions on the review of the detention of Accused Hysni GUCATI and Nasim HARADINAJ. The Accused's continued detention remains necessary, as there is no change in circumstances detracting from the established reasons for detention.² On the contrary, the Article 41(6)(b) risks have increased since the Last Detention Rulings.³
2. The Pre-Trial Judge⁴ previously found: (i) grounded suspicion that each Accused committed certain offences against the administration of justice within the Specialist Chambers' jurisdiction;⁵ (ii) articulable grounds to believe that each Accused is a flight risk, will obstruct the progress of criminal proceedings, and will repeat or attempt to repeat the criminal offences;⁶ and (iii) that the release conditions proposed by each Accused – particularly insofar as such conditions relied on the personal assurances of the Accused themselves – did not eliminate the Article 41(6)(b) risks.⁷
3. Since the Last Detention Rulings, the Pre-Trial Judge has confirmed a six-count Indictment,⁸ charging both Accused with serious⁹ offences against the administration

¹ Order for Submissions on the Review of Detention, KSC-BC-2020-07/F00073, 9 December 2020 ('Order').

² Article 41(10) of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'); Rule 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). Unless otherwise indicated, all references to 'Article(s)' are to the Law. *See also* ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 28 July 2010 entitled [...], 19 November 2010, para.51 (the risks need not be re-established; rather, the relevant inquiry is whether there has been a change in circumstances).

³ Decision on Request for Immediate Release of Nasim Haradinaj, KSC-BC-2020-07/F00058, 27 October 2020 ('HARADINAJ Decision'); Decision on Application for Bail, KSC-BC-2020-07/F00059, 27 October 2020 ('GUCATI Decision'; collectively with the HARADINAJ Decision, 'Last Detention Rulings'). *See also* Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, KSC-BC-2020-07/IA001/F00005, 9 December 2020 ('Appeal Decision') (affirming the GUCATI Decision).

⁴ At the time, acting in his former capacity as Single Judge.

⁵ Decision on Request for Arrest Warrant and Transfer Orders, KSC-BC-2020-07/F00012, 24 September 2020 ('Arrest Decision'), Section IV(B)(1).

⁶ Arrest Decision, KSC-BC-2020-07/F00012, Section IV(B)(2); GUCATI Decision, KSC-BC-2020-07/F00059, paras 14-21; HARADINAJ Decision, KSC-BC-2020-07/F00058, paras 21, 24, 26-27.

⁷ GUCATI Decision, KSC-BC-2020-07/F00059, paras 17-21; HARADINAJ Decision, KSC-BC-2020-07/F00058, paras 31-32. *See also* Appeal Decision, KSC-BC-2020-07/IA001/F00005, paras 57-67.

⁸ ANNEX 1 to Submission of confirmed Indictment, KSC-BC-2020-07/F00075/A01, 14 December 2020, Strictly Confidential ('Indictment').

⁹ Appeal Decision, KSC/BC-2020-07/IA001/F00005, para.71.

of justice and public order. In addition to those offences previously considered in the the Arrest Decision or Last Detention Rulings, there is now also grounded suspicion that each Accused committed the offence of obstructing official persons in performing official duties under KCC¹⁰ Article 401.¹¹

4. The Indictment also alleges conduct beyond that previously addressed in the Arrest Decision and Last Detention Rulings, including each Accused's further revelation of confidential and non-public information and other obstructive, intimidating, and retaliatory statements and conduct.¹² The existing risks of flight, obstruction, and commission of further crimes have therefore increased since the Last Detention Rulings and will continue to increase as the proceedings progress and further information and evidence is disclosed, thereby 'elucidat[ing] the seriousness of the charges and mak[ing] more concrete the possibility of conviction'.¹³

5. Such ever-increasing risks – in particular, considering that both Accused have vowed to continue disseminating confidential and non-public information of the SPO for the declared purpose of obstructing the SPO and Specialist Chambers ('SC') – can only be effectively managed from the SC's detention facilities.¹⁴

Word count: 637



Jack Smith
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Friday, 18 December 2020

At The Hague, the Netherlands.

¹⁰ Criminal Code of the Republic of Kosovo, Code No.06/L-074 (2019) ('KCC').

¹¹ Indictment, KSC-BC-2020-07/F00075/A01, paras 25-28, Counts 1-2.

¹² Indictment, KSC-BC-2020-07/F00075/A01, *inter alia*, paras 11, 16, 20.

¹³ Decision on Review of Detention, KSC-BC-2020-05/F00052, 23 November 2020, para.22. *See also* paras 27, 31.

¹⁴ HARADINAJ Decision, KSC-BC-2020-07/F00058, para.31.