



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

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

Before: **Pre-Trial Judge**
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 24 December 2020

Language: English

Classification: **Public**

Decision on Review of Detention of Nasim Haradinaj

Specialist Prosecutor
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THE PRE-TRIAL JUDGE,¹ pursuant to Article 41(10) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 22 September 2020, the Specialist Prosecutor's Office ("SPO") requested the arrest of Hysni Gucati ("Mr Gucati") and Nasim Haradinaj ("Mr Haradinaj") for alleged dissemination of confidential information relating to the work of the Special Investigative Task Force ("SITF") and/or the SPO at three press conferences held on 7, 16, and 22 September 2020 (referred to, respectively, as "First Press Conference", "Second Press Conference", and "Third Press Conference") and sought their transfer to the detention facilities of the Specialist Chambers ("SC").²

2. On 24 September 2020, the Single Judge issued arrest warrants for Mr Gucati and Mr Haradinaj for attempted intimidation of witnesses, retaliation and violation of secrecy of proceedings, and ordered their transfer to the SC detention facilities ("Decision on Arrest on Transfer").³

¹ KSC-BC-2020-07, F00061, President, *Decision Assigning a Pre-Trial Judge*, 29 October 2020, public. Prior to this decision, the President had assigned the same Judge as Single Judge; see KSC-BC-2020-07, F00003, President, *Decision Assigning a Single Judge Pursuant to Article 33(2) of the Law*, 29 May 2018, public.

² KSC-BC-2020-07, F00009/RED, Specialist Prosecutor, *Urgent Request for Arrest Warrants and Related Orders, filing KSC-BC-2020-07/F0009 dated 22 September 2020*, 22 September 2020, public, paras 1, 35(a); with Annexes 1-2, public.

³ KSC-BC-2020-07, F00012, Single Judge, *Decision on Request for Arrests and Transfers* ("Decision on Arrest and Transfer"), 24 September 2020, public, para. 36, with Annexes 1-4, public.

3. Mr Haradinaj was arrested on 25 September 2020⁴ and transferred to the SC detention facilities the following day.⁵
4. On 26 September 2020, the Single Judge was notified of the assignment of Bastiaan Martens (“Mr Martens”) as duty counsel to Mr Haradinaj.⁶
5. On 29 September 2020, Mr Haradinaj filed a request for his immediate release from detention.⁷ On 27 October 2020, the Single Judge rendered a decision rejecting this request (“First Detention Decision”).⁸
6. On 30 October 2020, the SPO submitted for confirmation a strictly confidential and *ex parte* indictment (“Indictment”) against Mr Gucati and Mr Haradinaj, together with evidentiary material supporting the facts underpinning the charges and a detailed outline demonstrating the relevance of each item of evidentiary material to each allegation.⁹
7. On 2 December 2020, the Registrar notified the Pre-Trial Judge of the appointment of Mr Martens as counsel to Mr Haradinaj.¹⁰

⁴ KSC-BC-2020-07, F00012/A03/COR/RED, Single Judge, *Public Redacted Version of Corrected Version of Arrest Warrant for Nasim Haradinaj (“Arrest Warrant”)*, 24 September 2020, public; F00016, Registrar, *Notification of Arrest Pursuant to Rule 55(4)*, 25 September 2020, public.

⁵ KSC-BC-2020-07, KSC-BC-2020-07, F00012/A04/RED, Single Judge, *Public Redacted Version of Order for Transfer to Detention Facilities of the Specialist Chambers*, 24 September 2020, public; F00020, Registrar, *Notification of the Reception of Nasim Haradinaj in the Detention Facilities of the Specialist Chambers*, 26 September 2020, public, with Annex 1, confidential; F00026/COR, Registrar, *Corrected Report on the Arrest and Transfer of Nasim Haradinaj to the Detention Facilities*, 28 September 2020, confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*. A public redacted version of F00026 was filed 14 October 2020, see F00026/COR/RED.

⁶ KSC-BC-2020-07, F00020, Registrar, *Notification of the Reception of Nasim Haradinaj in the Detention Facilities of the Specialist Chambers*, 26 September 2020, public, para. 3, with Annex 1, confidential.

⁷ KSC-BC-2020-07, F00030, Defence, *Initial appearance, preliminary motion to dismiss the charges and motion for immediate release*, 29 September 2020, public.

⁸ KSC-BC-2020-07, F00058, Single Judge, *Decision on Request for Immediate Release of Nasim Haradinaj*, 27 October 2020, public.

⁹ KSC-BC-2020-07, F00063, Specialist Prosecutor, *Submission of Indictment for Confirmation and Related Requests*, 30 October 2020, strictly confidential and *ex parte*, with Annexes 1 and 2, strictly confidential and *ex parte*.

¹⁰ KSC-BC-2020-07, F00071, Registrar, *Notification of the Appointment of Counsel to Nasim Haradinaj*, 2 December 2020, public, with Annex 1, confidential.

8. On 9 December 2020, the Pre-Trial Judge requested the Parties to file written submission on Mr Haradinaj's continued detention by 18 December 2020.¹¹
9. On 11 December 2020, the Pre-Trial Judge confirmed, in part, the Indictment and ordered the SPO to submit a revised indictment, as confirmed ("Confirmed Indictment").¹²
10. On 14 December 2020, the SPO submitted the Confirmed Indictment,¹³ with redactions as authorised by the Pre-Trial Judge.¹⁴ The Confirmed Indictment charges Mr Gucati and Mr Haradinaj with offences under Articles 387, 388, 392 and 401 of the 2019 Kosovo Criminal Code ("KCC"), by virtue of Article 15(2) of the Law.¹⁵
11. On 17 December 2020, Mr Hendrik Sytema ("Mr Sytema") was approved as co-counsel for Mr Haradinaj.¹⁶
12. On 18 December 2020, the Pre-Trial Judge approved the withdrawal of Mr Martens as counsel for Mr Haradinaj.¹⁷ Immediately thereafter, Toby Cadman ("Mr Cadman") was appointed as counsel for Mr Haradinaj.¹⁸ An initial appearance for Mr Haradinaj was held on the same day.¹⁹

¹¹ KSC-BC-2020-07, F00073, Pre-Trial Judge, *Order for Submissions on the Review of Detention*, 9 December 2020, public.

¹² KSC-BC-2020-07, F00074/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on the Confirmation of the Indictment* ("Confirmation Decision"), 11 December 2020, public.

¹³ KSC-BC-2020-07, F00075, Specialist Prosecutor, *Submission of Confirmed Indictment*, 14 December 2020, public, with Annex 1 ("Confirmed Indictment"), strictly confidential, and Annex 2, ("Public Redacted Confirmed Indictment"), public.

¹⁴ Confirmation Decision, para. 155(c).

¹⁵ Public Redacted Confirmed Indictment, para. 48.

¹⁶ KSC-BC-2020-07, F00082, Registrar, *Notification of Approval of Co-Counsel for Nasim Haradinaj* ("Notification of Co-Counsel"), 17 December 2020, public, para. 5, with Annex 1, confidential.

¹⁷ KSC-BC-2020-07, F00084, Pre-Trial Judge, *Decision Approving the Withdrawal of Counsel*, 18 December 2020, confidential.

¹⁸ KSC-BC-2020-07, F00086, Registrar, *Notification of the Appointment of Counsel to Nasim Haradinaj*, 18 December 2020, public, with Annex 1, confidential.

¹⁹ KSC-BC-2020-07, F00081, Pre-Trial Judge, *Second Decision Rescheduling the Initial Appearances of Mr Gucati and Mr Haradinaj*, 17 December 2020, public.

13. On 18 December 2020, Mr Haradinaj filed “Submissions on the Review of Detention by 27 December 2020”.²⁰ The “Prosecution consolidated submissions on review of detention” was also filed that day.²¹

14. On 21 December 2020, Mr Carl Buckley (“Mr Buckley”) was approved as co-counsel for Mr Haradinaj.²²

II. SUBMISSIONS

15. Mr Haradinaj submits that there is no proper justification for continued detention and he should therefore be released immediately, with or without conditions.²³ He also requests that the time-period for filing submissions on detention be extended²⁴ and that the review of detention should in any event be dealt with by way of an oral hearing.²⁵

16. The SPO submits that continued detention remains necessary as there is no change in circumstance distracting from the established reasons for detention.²⁶ The SPO further submits that the Article 41(6)(b) risks have increased since the last ruling on detention.²⁷ The SPO points to the fact that there is now the additional finding of grounded suspicion that Mr Gucati committed the offence of obstructing official persons in performing their official duties under Article 401 of the KCC.²⁸ The SPO also submits that the Confirmed Indictment alleges conduct beyond that addressed in

²⁰ KSC-BC-2020-07, F00090, Defence, *Submission on the Review of Detention by 27 December 2020*, 18 December 2020, public. A corrected version, F00090/COR, was filed on 21 December 2020 (“Defence Submission”).

²¹ KSC-BC-2020-07, F00088, Specialist Prosecutor, *Prosecution Consolidated Submissions on Review of Detention* (“SPO Submission”), 18 December 2020, public.

²² KSC-BC-2020-07, F00092, Registrar, *Notification of Approval of Co-Counsel for Nasim Haradinaj*, 23 December 2020, public, para. 10, with Annex 1, confidential.

²³ Defence Submission, paras 1, 18(b).

²⁴ Defence Submission, paras 18(a), 19-28.

²⁵ Defence Submission, paras 18(c), 37-54.

²⁶ SPO Submission, para. 1.

²⁷ SPO Submission, para. 1.

²⁸ SPO Submission, para. 3.

the Arrest Warrant and the First Detention Decision thereby elucidating the seriousness of the charges and making more concrete the possibility of conviction.²⁹ The SPO contends that such ever increasing risks can only be effectively managed from the SC's detention facilities.³⁰

III. APPLICABLE LAW

17. Article 41(6) of the Law provides that the SC shall only order the arrest and detention of a person when there is a grounded suspicion that the person has committed a crime within the jurisdiction of the SC; and there are articulable grounds to believe that the person (i) is a flight risk; (ii) will destroy, hide, change or forge evidence or specific circumstances indicate that the person will obstruct the progress of criminal proceedings; or (iii) will repeat the criminal offence, complete an attempted crime or commit a crime which he or she has threatened to commit the criminal offences.

18. Article 41(10) of the Law provides that, until judgement is final or until release, upon the expiry of two (2) months from the last ruling on detention on remand, the Pre-Trial Judge or Panel seized with the case shall examine whether reasons for detention on remand still exist and render a ruling by which detention on remand is extended or terminated.

19. Article 41(12) of the Law provides that, in addition to detention on remand, the following measures may be ordered to ensure the presence of the accused, to prevent reoffending or ensure successful conduct of criminal proceedings: summons, arrest, bail, house detention, promise not to leave residence, prohibition on approaching specific places or persons, attendance at police station or other venue, and diversion.

²⁹ SPO Submission, para. 4.

³⁰ SPO Submission, paras 4-5.

20. Pursuant to Rule 57(2) of the Rules, the Pre-Trial Judge shall review a decision on detention on remand upon expiry of two (2) months from the last ruling on detention.

IV. DISCUSSION

21. Article 41(10) of the Law obliges the Pre-Trial Judge to examine whether reasons for detention on remand still exist, including the grounds set out in Article 41(6) of the Law, namely whether (i) there is grounded suspicion that the person committed the crime(s); and (ii) there are articulable grounds to believe that any of the requirements set out in Article 41(6)(b) of the Law has been fulfilled. The following decision addresses the requirements of Article 41(6) of the Law within the framework of the submissions made by the Parties.

A. REQUEST FOR AN EXTENSION OF TIME

22. Mr Haradinaj submits that the appointment of Mr Cadman, to replace his former counsel, took place just prior to his initial appearance on 18 December 2020 and just hours before the deadline for filing submissions on the review of detention, and in these circumstances, failure to grant an extension for the filing of submissions on detention until 21 December 2020 was contrary to principles of fairness.³¹ Mr Haradinaj submits that, while it was the responsibility of previous counsel to file any relevant submissions by the appropriate deadline, he should not be prejudiced by this failure to do so.³² Mr Haradinaj further submits that an extension until 21 December 2020 for the filing of submissions does not delay the 27 December 2020 deadline for the two-month review of detention.³³

³¹ Defence Submission, paras 19-25.

³² Defence Submission, para. 26.

³³ Defence Submission, para. 27.

23. The Pre-Trial Judge notes that he denied Mr Haradinaj's application for an extension of time to file submissions on the review of detention at the initial appearance.³⁴ Mr Haradinaj essentially seeks reconsideration of that decision.

24. The Pre-Trial Judge recalls that reconsideration is an exceptional measure and contingent on specific requirements set forth in Rule 79 of the Rules.³⁵ In this regard, Mr Haradinaj demonstrates neither a clear error of reasoning nor that reconsideration is necessary to avoid an injustice. The arguments raised by Mr Haradinaj are essentially the same as during his initial appearance which have been addressed by the Pre-Trial Judge. No new facts or arguments arising since the hearing are advanced. In addition to the reasons already given,³⁶ the Pre-Trial Judge notes that (i) the initial appearance was postponed at the request of Mr Haradinaj;³⁷ (ii) Mr Haradinaj chose to change his counsel on the eve of his initial appearance; (iii) Mr Haradinaj was assisted since 17 December 2020 by co-counsel, Hendrik Sytma,³⁸ and, importantly, (iv) new counsel for Mr Haradinaj, Mr Cadman, actually provided extensive submissions on continued detention within the original deadline, after his oral request for a variation of time was denied.

25. Accordingly, the Pre-Trial Judge finds no prejudice to the Accused and consequently finds that reconsideration is unwarranted in the circumstances. That being said, the Pre-Trial Judge recalls that the present review does not prevent Mr Haradinaj from challenging the basis for his detention or submitting a request for interim release at any point in time in accordance with Article 41 of the Law and Rules 56 and 57 of the Rules.

³⁴ Transcript of Hearing, 18 December 2020, p. 61, line 9, to p. 64, line 8.

³⁵ *Similarly*, KSC-BC-2020-05, F00046, Pre-Trial Judge, *Decision on Specialist Prosecutor's Request for Reconsideration or Certification for Appeal*, 5 November 2020, public, para. 14.

³⁶ Transcript of Hearing, 18 December 2020, p. 61, line 22 to p. 62, line 14; p. 63, line 23 to p. 64, line 8.

³⁷ KSC-BC-2020-07, F00077, Defence, *Urgent Request to Postpone the Initial Appearance to December 18, 2020*, 14 December 2020 (filed 15 December 2020), public, para. 4.

³⁸ Notification of Co-Counsel, para. 5.

B. GROUNDED SUSPICION

26. Under the Kosovo Criminal Procedure Code 2012, Law No. 04/L-123, the evidentiary threshold of “grounded suspicion” is defined as “knowledge of information which would satisfy an objective observer that a criminal offence has occurred, is occurring or there is a substantial likelihood that one will occur and the person concerned is more likely than not to have committed the offence”.³⁹

27. Mr Haradinaj does not challenge the existence of a grounded suspicion that offences were committed. The Pre-Trial Judge recalls that, when confirming the Indictment, he found that there is a well-grounded suspicion that Mr Haradinaj committed offences within the jurisdiction of the SC, namely: (i) obstructing official persons in performing official duties by serious threat; (ii) obstructing official persons in performing official duties by common action of a group; (iii) intimidation during criminal proceedings; (iv) retaliation; (v) violating the secrecy of proceedings through unauthorised revelation of protected information; and (vi) violating the secrecy of proceedings through unauthorised revelation of the identity and/or personal data of protected persons in violation of Articles 387, 388, 392 and 401 of the KCC, by virtue of Article 15(2) of the Law.⁴⁰

28. The Pre-Trial Judge accordingly finds that Article 41(6)(a) of the Law continues to be met.

³⁹ Decision on Arrest and Transfer, para. 18. See also Article 5(1)(c) of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms European, as interpreted by the European Court of Human Rights, *Fox, Campbell and Hartley v. United Kingdom*, no. 12244/86; 12245/86; 12383/86, Judgment, 30 August 1990, vol. 182, Series A, p. 16, para. 32; *K.-F. v. Germany*, no. 144/1996/765/962, Judgment, 27 November 1997, Reports 1997-VII, para. 57; *Labita v. Italy*, no. 26772/95, Judgment, 6 April 2000, para. 155; *Berktaş v. Turkey*, no. 22493/93, Judgment, 1 March 2001, para. 199; *O’Hara v. United Kingdom*, no. 37555/97, Judgment, 16 October 2001, para. 34.

⁴⁰ Confirmation Decision, paras 103, 109, 113, 117, 121, 125.

C. NECESSITY OF DETENTION

29. Once the threshold in Article 41(6)(a) of the Law is met, the grounds that allow the Pre-Trial Judge to deprive a person of his or her liberty must be articulable.⁴¹ In this regard, it is recalled that determining the existence of either risks under Article 41(6)(b)(i)-(iii) of the Law, so as to make the detention of the person necessary, is a matter of assessing the possibility, as opposed to the unavailability that such risks materialise.⁴²

1. Risk of Flight

30. With regard to flight risk under Article 41(6)(b)(i) of the Law, Mr Haradinaj submits that: (i) the finding that he is a flight risk is wholly unsubstantiated and without foundation and (ii) he resides in Kosovo with his family and has never sought to disguise or conceal his whereabouts and therefore is not a flight risk.⁴³ The SPO argues that the existing risk of flight has increased since the First Detention Decision on account of the filing of the Confirmed Indictment and will continue to increase as the proceedings progress.⁴⁴

31. Mr Haradinaj's generally claims that earlier findings on Mr Haradinaj's flight risk are unsubstantiated without providing any arguments in support of his claim. the Pre-Trial Judge recalls his findings that: (i) Mr Haradinaj's attempt to evade SPO officers by vehicle and on foot during his arrest support the finding that he is a flight risk; (ii) his non-recognition of the SC portends a lack of willingness to

⁴¹ Article 19.1.9 of the Kosovo Criminal Procedure Code.

⁴² KSC-BC-2020-07/IA001, F00005, Court of Appeals Panel, *Decision on Hysni Gucati's Appeal on Matters Related to the Arrest and Detention* ("Decision on Gucati's Appeal of First Detention Decision"), 9 December 2020, public, para. 67; *Decision on Arrest and Transfer*, para. 19. Similarly, ICC, *Prosecutor v. Bemba Gombo et al.*, ICC-01/05-01/13-558, Appeals Chamber, [Judgment on the appeal of Mr Aimé Kilolo Musamba against the decision of Pre-Trial Chamber II of 14 March 2014 entitled "Decision on the 'Demande de mise en liberté provisoire de Maître Aimé Kilolo Musamba'"](#), 11 July 2014, para. 107.

⁴³ Defence Submission, para. 34(a).

⁴⁴ SPO Submission, para. 4.

voluntarily bring himself before a judicial institution for which he has no regard; (iii) his EU citizenship also supports the finding that he is a flight risk, as such citizenship enables him to travel with ease to a number of jurisdictions, including those that do not have extradition agreements with Kosovo; and (iv) regardless of the monthly stipend received by Mr Haradinaj from the Kosovo Liberation Army War Veterans Association (“KLA WVA”) or the amount of money at the disposal of the organisation, Mr Haradinaj, as deputy head of the organisation, has the ability to call upon the network and resources of the KLA WVA’s estimated 40,000 members to assist in any attempt to flee.⁴⁵

32. The Pre-Trial Judge also notes that, since the First Detention Decision, the SPO has filed a Confirmed Indictment. This factor provides further support for the finding that Mr Haradinaj is a flight risk as it highlights the seriousness of the charges⁴⁶ and makes more concrete the possibility of conviction, thus providing incentives for Mr Haradinaj to flee.

33. The Pre-Trial Judge accordingly finds that Mr Haradinaj remains a flight risk.

2. Obstruction of the Progress of Criminal Proceedings

34. With regard to the risk that proceedings will be obstructed under Article 41(6)(b)(ii) of the Law, Mr Haradinaj submits that there is no basis on which it can be suggested that he sought to obstruct investigations since he did not use threats to obtain or seek to obtain or facilitate the disclosure of documents relating to the SPO’s investigations. Mr Haradinaj further submits that the relevant documents were ultimately seized and therefore the orders of the Single Judge were respected.⁴⁷ The SPO argues that the existing risk of obstruction has

⁴⁵ KSC-BC-2020-07, F00058, Single Judge, *Decision on Request for Immediate Release of Nasim Haradinaj*, 27 October 2020, public, para. 21.

⁴⁶ Decision on Gucati’s Appeal of First Detention Decision, paras 71-72.

⁴⁷ Defence Submission, para. 33(b).

increased since the First Detention Decision and will continue to increase as the proceedings progress.⁴⁸

35. At the outset, the Pre-Trial Judge recalls his prior finding that Mr Haradinaj has publicly stated that he would continue to disseminate confidential and non-public information,⁴⁹ despite orders to the KLA WVA from the Single Judge forbidding such dissemination.⁵⁰

36. The SPO's seizure of the relevant confidential and non-public information, does not negate Mr Haradinaj's intent to disseminate such information should the opportunity arise. In fact, on two occasions, Mr Haradinaj's involvement in press conferences regarding confidential and non-public documents were preceded by authorised seizures.⁵¹

37. Contrary to Mr Haradinaj's submissions, the fact that Mr Haradinaj did not seek to obtain the confidential and non-public documents, by threat or otherwise in the first instance, did not prevent him from disseminating such information once he gained access to it.

38. The Pre-Trial Judge recalls in this regard that the Single Judge's orders not only related to the seizure of particular documents, but also acknowledged the sensitive nature of information from SITF/SPO investigations and warned that such documents, *and/or their contents*, should not be disseminated.⁵² Despite such

⁴⁸ SPO Submission, para. 4.

⁴⁹ First Detention Decision, para. 24, *citing* KSC-BC-2020-07, F0009/RED/A01, Specialist Prosecutor, *Annex 1 to Request for Arrest Warrants and Related Orders* ("Annex 1 to SPO Request for Arrest Warrants"), 1 October 2020, public, pp. 5-6; KSC-BC-2020-07, F0009/RED/A02, Specialist Prosecutor, *Annex 2 to Request for Arrest Warrants and Related Orders* ("Annex 2 to SPO Request for Arrest Warrants"), 1 October 2020, public, p. 8.

⁵⁰ First Detention Decision, para. 24, *citing* KSC-BC-2020-07, F00005, Single Judge, *Urgent Decision Authorising a Seizure* ("First Order"), 7 September 2020, public, para. 22; KSC-BC-2020-07, F00007, Single Judge, *Decision Authorising a Seizure* ("Second Order"), 17 September 2020, public, para. 22.

⁵¹ First Detention Decision, para. 24, *citing* Annex 1 to SPO Request for Arrest Warrant; Annex 2 to SPO Request for Arrest Warrant; First Order; Second Order.

⁵² First Order, paras 21, 22, 25; Second Order, paras 21, 22, 25.

warnings, Mr Haradinaj, at the Second Status Conference, revealed the names of individuals and information relating to confidential investigations,⁵³ told those present at the press conference that the documents were available for the taking,⁵⁴ promised to continue disseminating documents provided to the KLA WVA,⁵⁵ and declared that he sought to discredit the work of the SC.⁵⁶ Similarly, at the Third Status Conference, Mr Haradinaj revealed the name of individuals and other information in relation to confidential investigations,⁵⁷ invited those in attendance to look at, record, or public the contents of documents,⁵⁸ and stated his intent to further disseminate confidential and non-public information.⁵⁹

39. The Pre-Trial Judge accordingly finds that the risk that Mr Haradinaj may obstruct the progress of proceedings remains.

3. Commission of Further Offences

40. With regard to the risk of committing further offences, under Article 41(6)(b)(iii) of the Law, Mr Haradinaj submits that his good character and strong family and communities ties indicate that there are no past conduct issues or personal circumstances that would raise concern that he would commit further offences.⁶⁰

41. The Pre-Trial Judge considers that Mr Haradinaj's character or family or community ties fail to prevent him from disseminating confidential and non-public information in light of his publicly stated commitment to continue to

⁵³ Annex 1 to SPO Request for Arrest Warrants, pp. 8-9, 11.

⁵⁴ Annex 1 to SPO Request for Arrest Warrants, p. 10.

⁵⁵ Annex 1 to SPO Request for Arrest Warrants, p. 11.

⁵⁶ Annex 1 to SPO Request for Arrest Warrants, pp. 10-11.

⁵⁷ Annex 1 to SPO Request for Arrest Warrants, pp. 14-15.

⁵⁸ Annex 1 to SPO Request for Arrest Warrants, pp. 15, 16-17, 20, 24.

⁵⁹ Annex 1 to SPO Request for Arrest Warrants, pp. 15-17.

⁶⁰ Defence Submission, para. 34(c).

disseminate such information.⁶¹ Thus, for the reasons discussed above with regard to the obstruction of proceedings, the Pre-Trial Judge finds that the risk that Mr Haradinaj may commit further crimes by threatening, intimidating, or putting at risk (potential) witnesses through the disclosure of confidential and non-public information remains.

4. Conclusion

42. The Pre-Trial Judge finds that Mr Haradinaj's submissions do not undermine the determination that there are articulable grounds to believe that all three risks envisaged under Article 41(6)(b)(i)-(iii) of the Law exist.⁶²

D. CONDITIONAL RELEASE

43. Mr Haradinaj alternatively requests conditional release and proposes the following conditions to mitigate any perceived risks: (i) surrender of his passport; (ii) an order to remain in Kosovo at a given address; (iii) registration, with the SPO, of electronic devices used for communications; (iv) regular reporting to a local police station; (v) a prohibition on contacting his co-defendant; and (vi) a prohibition on communicating with the media or publishing information concerning matters before the SC.⁶³ Mr Haradinaj asserts that these conditions secure his whereabouts, prevent communication with relevant individuals, and prevent him from disseminating any information or material that might prejudice any ongoing or future matters.⁶⁴

⁶¹ First Detention Decision, para. 24, *citing* Annex 1 to SPO Request for Arrest Warrants, pp. 5-6; Annex 2 to SPO Request for Arrest Warrants, p. 8.

⁶² Decision on Arrest and Transfer, paras 27-31.

⁶³ Defence Submission, para. 35.

⁶⁴ Defence Submission, para. 36.

44. With respect to flight risk, the Pre-Trial Judge considers that the surrendering of a passport, remaining in Kosovo at a given address, and regular reporting to a local police station are conditions that would generally mitigate that risk. However, the Pre-Trial Judge considers these conditions to be insufficient in light of Mr Haradinaj's attempts to evade SPO officers during arrest, lack of recognition of the SC, and EU citizenship that would enable him to travel with ease to jurisdictions that do not have extradition agreements with Kosovo.⁶⁵ While the Pre-Trial Judge notes favourably Mr Haradinaj's strong family and community ties to his hometown,⁶⁶ such ties when counterbalanced against his prior attempt to evade arrest do not sufficiently mitigate the risk that he may flee.

45. With respect to the risk of obstructing the proceedings or the commission of further offences, the Pre-Trial Judge notes that conditions, such as registration of electronic devices, a prohibition on contacting a co-defendant or the media or publishing information concerning matters before the SC, are indeed aimed at mitigating these risks. However, in the face of Mr Haradinaj's failure to comply with orders of the Single Judge on two prior occasions,⁶⁷ stated desire to continue disseminating confidential and non-public documents and information,⁶⁸ and his non-recognition of the SC,⁶⁹ any personal assurances to refrain from contacting a co-defendant or the media or publishing information concerning matters before the SC cannot be relied upon. If released, Mr Haradinaj would be in a position to receive, without oversight, confidential and non-public information. Registration of communications devices would not prevent Mr Haradinaj from obtaining or disseminating confidential or non-public information. In these circumstances, the

⁶⁵ First Detention Decision, para. 21.

⁶⁶ Defence Submission, para. 34(c).

⁶⁷ First Order, para. 22; Second Order, para. 22.

⁶⁸ Annex 1 to SPO Request for Arrest Warrant, pp. 5-6; Annex 2 to SPO Request for Arrest Warrant, p. 8.

⁶⁹ KSC-BC-2020-07, Transcript, 29 September 2020, public, p. 17, line 13 to p.18, line 5.

Pre-Trial finds that conditional release would be insufficient to overcome the Article 41(6)(b) risks identified above.

46. The Pre-Trial Judge accordingly finds that since none of the conditions proposed by Mr Haradinaj are sufficient to mitigate the Article 41(6)(b) risks enumerated above, conditional release must be denied.

E. REQUEST FOR AN ORAL HEARING

47. Mr Haradinaj joins Mr Gucati's request for an oral hearing to supplement his written submissions on the review of detention and respond to the SPO's submissions.⁷⁰

48. The Pre-Trial Judge recalls his decision, rendered on 18 December 2020, denying Mr Gucati's request for an oral hearing in relation to the current two-month detention review process.⁷¹ For these same reasons, Mr Haradinaj's request for an oral hearing is denied. In these circumstances, the Pre-Trial finds that he has sufficient information to issue the present decision and no further submissions, whether written or oral, are warranted at this stage.⁷²

49. The Pre-Trial Judge emphasises that, while the request for an oral hearing and the request to provide submissions in reply is denied, Mr Haradinaj is not precluded from submitting separate challenges on detention or applications for interim or conditional release under Article 41(2) and (12) of the Law and Rules 56(3) and 57(2) of the Rules at any point in the intervening period between the requisite two-month reviews of detention.

⁷⁰ Defence Submission, paras 37-54.

⁷¹ KSC-BC-2020-07, F00089, Pre-Trial Judge, *Order Setting the Date for the Plea Hearing and the First Status Conference and on Related Matters*, 18 December 2020, public, paras 3, 16-17.

⁷² *See*, in this regard, Decision on Gucati's Appeal of First Detention Decision, para. 77.

50. Finally, in order to facilitate the next two-month review of detention, the Pre-Trial Judge orders Mr Haradinaj to file submissions on whether reasons for his continued detention still exist by Monday, 1 February 2021. Responses and replies to this submission shall follow the timeline set out in Rule 76 of the Rules.

V. DISPOSITION

51. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a. **ORDERS** Mr Haradinaj's continued detention;
- b. **DENIES** Mr Haradinaj's request for an oral hearing; and
- c. **ORDERS** Mr Haradinaj to file submissions on the next review of detention by Monday, 1 February 2021.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Thursday, 24 December 2020

At The Hague, the Netherlands