

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

Before: Court of Appeals Panel

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hysni Gucati

Date: 2nd February 2021

Language: English

Classification: Public

Submissions on the Second Review of Detention of Hysni GUCATI

Specialist Prosecutor

Jack Smith

Counsel for Hysni Gucati

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Huw Bowden

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Toby Cadman

Carl Buckley

1. On 24 December 2020, the Pre-Trial Judge rendered his Decision on Review of Detention of Hysni Gucati (the 'Decision')¹. At paragraph 50 of the Decision, Mr Gucati was directed to file submissions on whether reasons for his continued detention still exist by 1 February 2021.
2. An extension of time of 1 day is requested to permit the filing of these submissions on 2 February 2021. The review is not due until the end of the February, and no party will be prejudiced by the short extension requested.
3. As of 24th February 2021, Mr Gucati will already have been in detention for a total of 152 days (over 5 months). The longer a person remains in pre-trial detention, the higher the burden on the Specialist Chambers to justify continued detention². The clear presumption is in favour of the accused being at liberty.
4. Paragraphs 10 to 30 of the 'Submissions on the Review of Detention by 27th December 2020' are maintained and repeated³.
5. It is noted that in the Decision, the Pre-Trial Judge maintained that any risk of flight continues to be adequately addressed by the Proposed Conditions⁴.
6. In relation to the issue of risk of obstructing the progress of proceedings or the commission of further offences, it is noted that the Pre-Trial Judge at paragraph

¹ "Decision on Review of Detention of Hysni Gucati", KSC-BC-2020-07/F00093

² "Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention", KSC-BC-2020-07/IA0001/F00005 at paragraph 73

³ "Submissions on the Review of Detention by 27th December 2020", KSC-BC-2020-07/F00087

⁴ "Decision on Review of Detention of Hysni Gucati", KSC-BC-2020-07/F00093 at paragraph 41

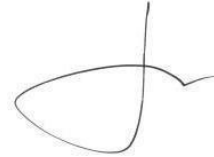
34 of the Decision did not identify any occasion when Mr Gucati is alleged to make a threat to the safety of potential witnesses himself.

7. The following additional mitigating factors, noted favourably by the Pre-Trial Judge in the Decision at paragraph 40, should be taken into account in his favour when considering whether (a) there is any ongoing risk of obstructing the proceedings/the commission of further offences and (b) Mr Gucati will abide by conditions to address the risk of obstructing the progress of proceedings or the commission of further offences: 'Mr Gucati's cooperation throughout his arrest, transfer and detention and (ii) his responsibilities towards his elderly and unwell mother'⁵.
8. Paragraphs 82 to 98 of the Defence Submissions on Second Review of the Detention of Nasim Haradinaj⁶ are specifically herein adopted by Mr Gucati as the same points apply equally to Mr Gucati.
9. In relation to the conditions hitherto proposed (and any other condition that the Pre-Trial Judge deems fit to impose), the Mayor of the Municipality of Skendraj, Mr Bekim Jashari, is willing to stand as a guarantor for the compliance by Mr Gucati with any such conditions and will undertake to contact the competent authorities if he has any reason to believe that any such conditions are not being complied with.
10. The Pre-Trial Judge is requested accordingly to terminate Mr Gucati's detention and release him with or without conditions.

⁵ "Decision on Review of Detention of Hysni Gucati", KSC-BC-2020-07/F00093 at paragraph 40

⁶ "Defence Submissions on Second Review of the Detention of Nasim Haradinaj", KSC-BC-2020-07/F00111

Word count: 523 words

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

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2nd February 2021

Cardiff, UK