



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

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 Prosecutor

Date: 12 February 2021

Language: English

Classification: Public

Prosecution consolidated response for review of detention

Specialist Prosecutor's Office

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1. The continued detention of Hysni GUCATI and Nasim HARADINAJ (collectively, the 'Accused') remains necessary.¹ There has been no relevant change in circumstances detracting from the established reasons for detention.² Rather, the Article 41(6)(b) risks have increased since the Review Decisions.³
2. The Pre-Trial Judge⁴ previously found: (i) grounded suspicion that the Accused committed offences against the administration of justice within the jurisdiction of the Specialist Chambers ('SC');⁵ (ii) articulable grounds to believe that the Accused constitute 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

¹ *Contra* Defence Submissions on Second Review of the Detention of Nasim Haradinaj, KSC-BC-2020-07/F0111, Public, 1 February 2021 (notified on 2 February 2021, 'HARADINAJ Submissions'); Submissions on the Second Review of Detention of Hysni Gucati, KSC-BC-2020-07/F0112, Public, 2 February 2021 ('GUCATI Submissions'). The Specialist Prosecutor's Office ('SPO') responds to the GUCATI Submissions despite the fact that, contrary to Rule 76 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'), the Defence failed to request an extension of the applicable time limit in advance and failed to provide any reasons justifying extension.

² See Article 41(10) of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' herein refer to articles of the Law, unless otherwise specified; Rule 57(2) of the Rules; ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-1019, 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.

³ Decision on Review of Detention of Hysni Gucati, KSC-BC-2020-07/F00093, Public, 24 December 2020, ('GUCATI Review Decision'); Decision on Review of Detention of Nasim Haradinaj, KSC-BC-2020-07/F00094, Public, 24 December 2020 ('HARADINAJ Review Decision', collectively the 'Review Decisions').

⁴ Including in his former capacity as Single Judge.

⁵ Decision on Request for Arrest Warrant and Transfer Orders, KSC-BC-2020-07/F00012, Public, 24 September 2020, Section IV(B)(1) ('Arrest Decision'); HARADINAJ Review Decision, KSC-BC-2020-07/F00094, paras 27-28; GUCATI Review Decision, KSC-BC-2020-07/F00093, paras 21-23. In confirming the indictment against the Accused, the Pre-Trial Judge found that there was a 'well-grounded suspicion' that the Accused committed the crimes confirmed in the indictment, which is a more onerous threshold than the 'grounded suspicion' required by Article 41(6)(a), see Public Redacted Version of the Decision on the Confirmation of the Indictment, KSC-BC-2020-07/F00074/RED, Public, 11 December 2020, para.28.

⁶ Arrest Decision, KSC-BC-2020-07/F00012, Section IV(B)(2); Decision on Request for Immediate Release of Nasim Haradinaj, KSC-BC-2020-07/F00058, Public, 27 October 2020, paras 21, 24, 26-27 ('HARADINAJ Release Decision'); Decision on Application for Bail, KSC-BC-2020-07/F00059, Public, 27 October 2020, paras 14-21 ('GUCATI Bail Decision'); GUCATI Review Decision, KSC-BC-2020-07/F00093, paras 26-27, 29-38; HARADINAJ Review Decision, KSC-BC-2020-07/F00094, paras 31-33, 35-39, 41-42.

proposed by the Accused insufficiently mitigated the Article 41(6)(b) risks.⁷ These findings continue to be true.⁸

3. The existing incentives to flee, obstruct the progress of proceedings, and commit further crimes have only increased since the Review Decisions, given that the disclosure of indictment supporting material on 4 January 2021 further ‘elucidates the seriousness of the charges and makes more concrete the possibility of conviction.’⁹

4. Below, the SPO addresses issues now raised by the Defence for the first time within the context of the litigation concerning the Accused’s detention. Neither issue constitutes a relevant change in circumstances, impacts the Pre-Trial Judge’s previous findings, or detracts from the need for the continued detention of the Accused.

Nasim HARADINAJ remains a flight risk

5. The Defence submits a distorted and selective account of the arrest of Mr HARADINAJ.¹⁰ As set out in previous submissions,¹¹ Mr HARADINAJ’s actions in the moments leading up to his arrest clearly demonstrate that he attempted to evade the

⁷ GUCATI Bail Decision, KSC-BC-2020-07/F00059, paras 17-21 and GUCATI Review Decision, KSC-BC-2020-07/F00093, paras 40-44 (while the Pre-Trial Judge found that the risk of flight was adequately addressed by the conditions proposed by the GUCATI Defence, he found that the risks of obstructing proceedings or committing further offences can only be effectively managed from detention); HARADINAJ Release Decision, KSC-BC-2020-07/F00058, paras 31-32; HARADINAJ Review Decision, KSC-BC-2020-07/F00094, paras 44-46 (where the Pre-Trial Judge found that conditional release would be insufficient to overcome the risks of flight, obstruction of proceedings, and commission of further offences).

⁸ With regard to the Haradinaj Defence’s submission that ‘relevant and sufficient’ reasons are required to justify detention, it is noted that – as recently affirmed by the Court of Appeals – risk of flight, of interference with witnesses or evidence and a risk of reoffending have all be found to meet the required standard (Decision on Nasim Haradinaj’s Appeal Against Decision Reviewing Detention, KSC-BC-2020-07/IA002/F00005, 9 February 2021, paras 58-59). Further, to the extent the Defence merely repeats prior submissions or seeks to reargue points, this does not constitute a relevant change of circumstances.

⁹ Decision on Review of Detention, KSC-BC-2020-05/F00052, Public, 23 November 2020, para.22, *see also* paras 27, 31.

¹⁰ HARADINAJ Submissions, KSC-BC-2020-07/F0111, paras 32-61, 65, 67-72.

¹¹ Prosecution response to Filing KSC-BC-2020-07/F00030, KSC-BC-2020-07/F00039, Public, 2 October 2020, para.9; Public Redacted Version of ‘‘Corrected Report on the Arrest and Transfer of Nasim Haradinaj to the Detention Facilities’’, filing KSC-BC-2020-07/F00026/COR dated 28 September 2020’, KSC-BC-2020-07/F00026/COR/RED, Public, 14 October 2020, paras 3-11 (‘Report on Arrest and Transfer’).

arresting officers. In particular, the vehicle Mr HARADINAJ travelled in engaged in evasive manoeuvres and, after the vehicle came to a stop, Mr HARADINAJ attempted to run from the arresting officers, before being quickly caught up with and promptly detained.¹²

6. Moreover, Mr HARADINAJ's attempt to actively evade the arresting officers is but one of five considerations upon which the finding of a risk of flight is based,¹³ and therefore - even if his account were to be credited - it is insufficient to negate that risk.¹⁴

7. For example, Mr HARADINAJ's acknowledgement that, during his arrest, he told SPO officers that he does not recognise the SC or recognise their authority to arrest¹⁵ provides added support to the Pre-Trial Judge's findings in this regard.¹⁶ While Mr HARADINAJ is entitled to express his opinion that he 'does not recognise the KSC/SPO nor does he recognise its powers of arrest or detention',¹⁷ the Pre-Trial Judge is equally entitled to, and should, rely on such expressions as an indication that Mr HARADINAJ constitutes a flight risk.

8. The Defence's proposed measures for conditional release¹⁸ are identical to those previously put forward¹⁹ and rejected by the Pre-Trial Judge,²⁰ save for a proposal that the Pre-Trial Judge impose any other condition deemed fit.²¹ No other condition would suffice to mitigate the identified Article 41(6)(b) risks. Accordingly, the request for Mr HARADINAJ's release, conditional or otherwise, should be rejected.

¹² Report on Arrest and Transfer, KSC-BC-2020-07/F00026/COR/RED, para.3; *Contra* HARADINAJ Submissions, KSC-BC-2020-07/F0111, paras 55, 69, 71.

¹³ *See* HARADINAJ Review Decision, KSC-BC-2020-07/F00094, paras 31-33; *See also* Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention, KSC-BC-2020-07/IA002/F00005, Public, 9 February 2021, paras 60-61.

¹⁴ *Contra* HARADINAJ Submissions, KSC-BC-2020-07/F0111, paras 3, 4, 31.

¹⁵ HARADINAJ Submissions, KSC-BC-2020-07/F0111, para.58.

¹⁶ *See* HARADINAJ Review Decision, KSC-BC-2020-07/F00094, para.31(ii).

¹⁷ HARADINAJ Submissions, KSC-BC-2020-07/F0111, paras 66, 71.

¹⁸ HARADINAJ Submissions, KSC-BC-2020-07/F0111, para 99(a)-(g).

¹⁹ *See* Corrected Submissions on the Review of Detention by 27 December 2020, KSC-BC-2020-07/F00090/COR, Public, 21 December 2020, para.35(a)-(f) ('HARADINAJ 21 December 2020 Submissions').

²⁰ HARADINAJ Review Decision, KSC-BC-2020-07/F00094, paras 44-46.

²¹ *See* HARADINAJ 21 December 2020 Submissions, KSC-BC-2020-07/F00090/COR, Public, para.35(g).

A guarantor would not suffice to mitigate Mr GUCATI's Article 41(6)(b) risks

9. The willingness of the individual identified by the Defence to stand as guarantor for compliance by Mr GUCATI with any conditions of release imposed on him,²² would not adequately address the risks that Mr GUCATI would obstruct the progress of criminal proceedings or commit further crimes. Nothing in the proposed measure suggests that such a person would, for example, be able to prevent Mr GUCATI from continuing to disclose confidential and non-public information, something the Pre-Trial Judge has found that Mr GUCATI has publicly vowed to do.²³ Accordingly, the request for Mr GUCATI's release, conditional or otherwise, should be rejected.

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Friday, 12 February 2021

At The Hague, the Netherlands

²² GUCATI Submissions, KSC-BC-2020-07/F0112, para.9.

²³ GUCATI Review Decision, KSC-BC-2020-07/F00093, para.43.