



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA 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 February 2021

Language: English

Classification: **Public**

Decision on Review of Detention of Hysni Gucati

Specialist Prosecutor
Jack Smith

Counsel for Hysni Gucati
Jonathan Elystan Rees

Counsel for Nasim Haradinaj
Toby Cadman

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") (collectively the "Defence") for alleged dissemination of confidential and non-public information relating to the work of the Special Investigative Task Force and/or the SPO at three press conferences held on 7, 16, and 22 September 2020 and sought their transfer to the detention facilities of the Specialist Chambers ("SC").²
2. On 25 September 2020, Mr Gucati was arrested³ and transferred to the detention facilities of the SC in The Hague, the Netherlands.⁴
3. On 29 September 2020, Mr Gucati filed an "Application for Bail".⁵ On 27 October 2020, the Single Judge rejected this application ("First Detention Decision").⁶

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/A01/RED, Single Judge, *Public Redacted Version of Arrest Warrant for Hysni Gucati*, 24 September 2020, public; F00015, Registrar, *Notification of Arrest Pursuant to Rule 55(4)*, 25 September 2020, public.

⁴ KSC-BC-2020-07, F00012/A02/RED, Single Judge, *Public Redacted Version of Order for Transfer to Detention Facilities of the Specialist Chambers*, 24 September 2020, public; F00018, Registrar, *Notification of the Reception of Hysni Gucati in the Detention Facilities of the Specialist Chambers*, 25 September 2020, public, with Annex 1, confidential.

⁵ KSC-BC-2020-07, F00038, Defence, *Application for Bail*, 29 September 2020, public.

⁶ KSC-BC-2020-07, F00059, Single Judge, *Decision on Application for Bail ("First Detention Decision")*, 27 October 2020, public.

4. On 30 October 2020, the SPO submitted for confirmation a strictly confidential and *ex parte* indictment (“Indictment”) against Mr Gucati and Mr Haradinaj.⁷
5. On 9 December 2020, the Court of Appeals Panel rendered a decision denying, *inter alia*, Mr Gucati’s appeal of the First Detention Decision.⁸
6. 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”).⁹
7. On 24 December 2020, after hearing the Parties,¹⁰ the Pre-Trial Judge rendered a second decision continuing Mr Gucati’s detention (“Second Detention Decision”).¹¹
8. On 2 February 2021, Mr Gucati filed submissions on continued detention.¹² The SPO responded on 12 February 2021.¹³ On 19 February 2021, Mr Gucati replied.¹⁴

⁷ 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*.

⁸ 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 Appeal of First Detention Decision”), 9 December 2020, public, para. 78.

⁹ 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. KSC-BC-2020-07, F00075, Specialist Prosecutor, *Submission of Confirmed Indictment*, 14 December 2020, public, with Annex 1, strictly confidential, and Annex 2, public.

¹⁰ KSC-BC-2020-07, F00087/RED, Defence, *Submissions on the Review of Detention by 27th December* (“Prior Defence Submission”), 17 December 2020, public; KSC-BC-2020-07, F00088, Specialist Prosecutor, *Prosecution Consolidated Submissions on Review of Detention*, 18 December 2020, public.

¹¹ KSC-BC-2020-07, F00093, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati*, 24 December 2020, public.

¹² KSC-BC-2020-07, F00112, Defence for Mr Gucati, *Submissions on the Second Review of Detention of Hysni Gucati* (“Defence Submission”), 2 February 2021, public.

¹³ KSC-BC-2020-07, F00124, Specialist Prosecutor, *Prosecution Consolidated Response for Review of Detention* (“SPO Submission”), 12 February 2021, public.

¹⁴ KSC-BC-2020-07, F00134, Defence, *Defence Reply to Prosecution Consolidated Response for Review of Detention* (“Reply”), 19 February 2021, confidential, with Annex 1, confidential; F00135, Defence, *Translation of Annex 1 to the Reply to the Prosecution Consolidated Response to Submissions on the Review of Detention*, 20 February 2021, confidential, with Annex 1 (“Translation of Annex 1 to Defence Reply”), confidential.

II. SUBMISSIONS

9. Mr Gucati submits that his detention should be terminated and that he should be released with or without conditions.¹⁵ Mr Gucati requests an extension of one day to file his submissions.¹⁶ Mr Gucati incorporates by reference his prior submissions on detention.¹⁷ In addition, Mr Gucati also incorporates by reference Mr Haradinaj's arguments regarding the risk of obstructing proceedings.¹⁸ In relation to the conditions hitherto proposed ("Proposed Conditions"),¹⁹ Mr Gucati submits that a public official can stand as guarantor for his compliance with respect to any conditions imposed on his release ("Additional Condition").²⁰

10. The SPO responds that the continued detention of Mr Gucati remains necessary.²¹ The SPO argues that there have been no relevant changes in circumstances which undermine the reasons for detention.²² The SPO asserts that Article 41(6)(b) risks have increased since the Second Detention Decision²³ and conditions on release would fail to mitigate such risks.²⁴

11. Mr Gucati replies that his suggested guarantor, together with the Proposed Conditions, can adequately address any residual risk of obstructing the progress of proceedings or the commission of further offences.²⁵

¹⁵ Defence Submission, para. 10.

¹⁶ Defence Submission, paras 1-2.

¹⁷ Defence Submission, para. 4; Prior Defence Submission, paras 10-30.

¹⁸ Defence Submission, para. 8; referring to KSC-BC-2020-07, F00111, Defence, *Defence Submission on Second Review of the Detention of Nasim Haradinaj* ("Haradinaj Submission"), 1 February 2021, public, paras 82-98.

¹⁹ Previously proposed conditions included bail of EUR 5,000, surrender of passport, living and sleeping at his home address, daily reporting to the European Union Rule of Law Mission in Kosovo police headquarters, restriction of contacts, a prohibition on going to the offices of the Kosovo Liberation Army War Veterans Association, a prohibition on entering Pristina, use of a single electronic device for communications only, the details of which are to be provided to the SPO, and/or residing outside Kosovo. See First Detention Decision, para. 6; Second Detention Decision, para. 11.

²⁰ Defence Submission, para. 9.

²¹ SPO Submission, para. 1.

²² SPO Submission, para. 1.

²³ SPO Submission, paras 1, 3.

²⁴ SPO Submission, para. 2.

²⁵ Reply, paras 5-7; Translation of Annex 1 to Defence Reply.

III. APPLICABLE LAW

12. 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.

13. Article 41(10) of the Law provides that, until a 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.

14. 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.

15. 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

16. As a preliminary matter, the Pre-Trial Judge notes that Mr Gucati filed his submissions on the review detention a day after the 1 February 2021 deadline.²⁶ Mr Gucati has requested an extension of time.²⁷ This request is granted on an exceptional basis so as not to deny Mr Gucati the opportunity to present submissions on a matter so fundamental as whether detention should be continued. However, the Pre-Trial Judge emphasises that, pursuant to Rule 76 of the Rules, future applications for an extension of time should be filed sufficiently in advance to enable a ruling on the application before the expiry of the relevant time-limit.

17. With regard to the review of detention, 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 SPO bears the burden of establishing that the detention of the Accused is necessary.²⁸ The following decision addresses the requirements of Article 41(6) of the Law within the framework of the submissions made by the Parties.

²⁶ Second Detention Decision, para. 51.

²⁷ Defence Submission, para. 2.

²⁸ KSC-CC-PR-2017-01, F00004, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office*, 26 April 2017, para. 115. Similarly, for example, ICC, *Prosecutor v. Gbagbo and Blé Goudé*, ICC-02/11-01/15-208, Appeals Chamber, [Judgment on the Appeal of Mr Laurent Gbagbo Against the Decision of Trial Chamber I of 8 July 2015 Entitled "Ninth Decision on the Review of Mr Laurent Gbagbo's Detention Pursuant to Article 60\(3\) of the Statute"](#) ("Gbagbo 8 September 2015 Appeal Judgment"), 8 September 2015, para. 36; *Prosecutor v. Bemba*, ICC-01/05-01/08-1019, Appeals Chamber, [Judgment on the Appeal of Mr Jean-Pierre Bemba Gombo Against the Decision of Trial Chamber III of 28 July 2010 Entitled "Decision on the Review of the Detention of Mr Jean-Pierre Bemba Gombo Pursuant to Rule 118\(2\) of the Rules of Procedure and Evidence"](#), 19 November 2010, para. 51; *Prosecutor v. Katanga and Ngudjolo Chui*, ICC-01/04-01/07-330, Pre-Trial Chamber I, [Decision on the Powers of the Pre-Trial Chamber to Review Proprio Motu the Pre-Trial Detention of Germain Katanga](#), 18 March 2008, p. 7.

A. GROUNDED SUSPICION

18. Mr Gucati does not challenge the existence of 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 Gucati committed offences in violation of Articles 387, 388, 392 and 401 of the Kosovo Criminal Code, by virtue of Article 15(2) of the Law.²⁹ The Pre-Trial Judge accordingly finds that Article 41(6)(a) of the Law continues to be met.

B. NECESSITY OF DETENTION

19. 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 in the sense that they must be specified in detail.³⁰ 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 unavoidability that such risks materialise.³¹

1. Risk of Flight

20. Mr Gucati repeats his prior submissions on the risk of flight.³² The SPO argues that the existing risk of flight has increased since the Second Detention Decision given the disclosure of the supporting material to the Confirmed Indictment.³³

²⁹ Confirmation Decision, paras 103, 109, 113, 117, 121, 125.

³⁰ Article 19.1.9 of the Kosovo Criminal Procedure Code. Article 19.1.30 of the Kosovo Criminal Procedure Code 2012, Law No. 04/L-123 defines “articulable” as: “the party offering the information or evidence must specify in detail the information or evidence being relied upon”.

³¹ Decision on Appeal of First Detention Decision, para. 67; KSC-BC-2020-07, F00012, Single Judge, *Decision on Request for Arrest Warrants and Transfer Orders* (“Decision on Arrest and Transfer”), 24 September 2020, public, para. 19, with Annexes 1-4, public. *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.

³² Defence Submission, paras 4-5; *see* Prior Defence Submission, paras 25-26.

³³ SPO Submission, paras 3-4.

21. While the Pre-Trial Judge previously found that the Proposed Conditions could address the risk of flight,³⁴ the Pre-Trial Judge considers it necessary to reassess this risk according to circumstances in which Mr Gucati currently finds himself. In this regard, the Pre-Trial Judge notes that, since the Second Detention Decision, the SPO has completed disclosure of indictment supporting material, pursuant to Rule 102(1)(a) of the Rules, and has further disclosed evidence under Rule 102(1)(b) of the Rules.³⁵ This factor supports the Pre-Trial Judge's prior assessment that there is a risk that Mr Gucati may flee. This risk will accordingly be assessed against the Proposed Conditions in section C, below.

22. The Pre-Trial Judge accordingly finds that there remains a risk that Mr Gucati will flee.

2. Obstruction of the Progress of Criminal Proceedings

23. Mr Gucati repeats his prior submissions on the risk of obstructing the progress of criminal proceedings.³⁶ Mr Gucati also adopts the arguments put forward by Mr Haradinaj, namely that: (i) there is no possibility that the progress of proceedings could be obstructed given that the three batches of documents were seized from the headquarters of the Kosovo Liberation Army War Veterans Association ("KLA WVA") in line with the relevant court orders;³⁷ and (ii) Mr Gucati did not solicit any documents, facilitate their leak, or take any steps to come into possession of them.³⁸ It is further argued that the confidential nature of the leaked batches is still subject to scrutiny,³⁹ and Mr Gucati did not himself

³⁴ First Detention Decision, para. 15; Second Detention Decision, para. 26.

³⁵ KSC-BC-2020-07, F00104, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 22 January 2021, public, paras 39, 44.

³⁶ Defence Submission, para. 4; *see also* Prior Defence Submission, paras 17-24.

³⁷ Haradinaj Submission, paras 82-86.

³⁸ Haradinaj Submission, paras 87-92.

³⁹ Haradinaj Submission, para. 89.

make a threat to the safety of potential witnesses.⁴⁰ In addition, Mr Gucati asserts that his cooperation during his arrest and transfer and his responsibilities toward his unwell mother should be taken into account as mitigating factors with respect to the risk of obstructing the progress of proceedings.⁴¹

24. At the outset, Pre-Trial Judge notes that Mr Gucati largely repeats arguments made during the last review of detention,⁴² which have been ruled upon by the Pre-Trial Judge in the Second Detention Decision.⁴³ Therefore, the Pre-Trial Judge recalls these findings and only reproduces them below to the extent necessary.

25. With regard to the Defence argument relating to the seizure of documents and the Single Judge's orders, the Pre-Trial Judge notes that the dissemination of confidential and non-public information persisted even after Mr Gucati was ordered on two occasions to refrain from doing so and the leaked batches were seized.⁴⁴ In fact, after the issuance of these orders, Mr Gucati publicly stated that he and the KLA WVA would continue to publish all documents they receive⁴⁵ and encouraged members of the media to do the same.⁴⁶ The SPO's seizure of the relevant confidential and non-public information does not negate Mr Gucati's intent to disseminate such information should the opportunity arise.

26. While Mr Gucati may not have solicited any documents, facilitated their leak, or took any steps to come into possession of the seized documents, the Pre-Trial

⁴⁰ Defence Submission, para. 6.

⁴¹ Defence Submission, para. 7.

⁴² Second Detention Decision, para. 28; Prior Defence Submission, paras 17-24.

⁴³ Second Detention Decision, paras 29-36.

⁴⁴ 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.

⁴⁵ Second Detention Decision, para. 33; 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, p. 14.

⁴⁶ Second Detention Decision, para. 33; Annex 1 to Request for Arrest Warrants, p. 24.

Judge recalls his finding that Mr Gucati participated in the unauthorised dissemination of confidential and non-public information.⁴⁷

27. As to the lack of clarity regarding the confidential nature of information in the leaked batches and access to the batches, the Pre-Trial Judge notes that this matter has been addressed in another decision.⁴⁸ However, with respect to establishing the risks under Article 41(6)(b) of the Law, what is pertinent is that Mr Gucati thought he had in his possession confidential and non-public information and nevertheless sought to disseminate it. In this regard, the Pre-Trial Judge recalls his finding that Mr Gucati acknowledged the confidential and non-public nature of the information he and Mr Haradinaj were disclosing and the lack of authorisation for such disclosure.⁴⁹ Furthermore, the Single Judge's orders, which were addressed and/or served upon⁵⁰ Mr Gucati and the KLA WVA, explicitly recognised the confidential and non-public nature of the information in question.⁵¹ Mr Gucati nevertheless persisted with the dissemination of the leaked material.

28. With respect to the alleged lack of use of actual force, threats, or harm by Mr Gucati, the Pre-Trial Judge recalls his finding that Mr Haradinaj queried, in Mr Gucati's presence, "how the safety of the witnesses may be guaranteed when their names may be read by anyone" and further stated that he did not "care about the witnesses of the Hague court" and "would publish the data of all the witnesses of this court".⁵² The Pre-Trial Judge considers that such queries, made during a press conference, amount to veiled threats to the safety of potential witnesses.

⁴⁷ Decision on Arrest and Transfer, para. 29.

⁴⁸ KSC-BC-2020-07, F00141, *Decision on Disclosure of Certain Documents Seized from the KLA War Veterans Association*, 23 February 2021, confidential.

⁴⁹ Second Detention Decision, para. 31; Annex 1 to Request for Arrest Warrants, pp. 13-14. *See also*, Annex 1 to Request for Arrest Warrants, pp. 5, 10.

⁵⁰ KSC-BC-2020-07, F00008, Specialist Prosecutor, *Prosecution Report Pursuant to Decision KSC-BC-2018-01/F00121*, 21 September 2020, confidential, with Annex 1, confidential; KSC-BC-2020-07, F00028, Specialist Prosecutor, *Prosecution Report Pursuant to Decision KSC-BC-2018-01-F00123*, 29 September 2020, confidential, paras 2, 5, with Annex 1, confidential.

⁵¹ First Order, paras 11-13, 21-22; Second Order, paras 11-13, 21-22.

⁵² Second Detention Decision, para. 34; Annex 1 to Request for Arrest Warrants, pp. 6.

Mr Gucati's presence while such threats were being made by his deputy signified support and approval for these threats.⁵³

29. The Pre-Trial Judge recalls his finding that, if released, Mr Gucati would be in a position to receive, without oversight, confidential and non-public information.⁵⁴ As head of the KLA WVA, Mr Gucati would also have the means to disseminate such information by communicating freely with the media or his network of KLA veterans or publishing the material himself.⁵⁵ Any personal assurances to refrain from such conduct cannot be relied upon in light of his public statements vowing to continue to disclose confidential and non-public information⁵⁶ and his failure to abide by the orders of the Single Judge.⁵⁷

30. With respect to Mr Gucati's cooperativeness throughout his arrest, transfer, and detention, as well as his responsibilities towards his elderly and unwell mother, Mr Gucati fails to show how such factors address the risk that he will obstruct the progress of proceedings. This is especially so as the risk of obstructing the progress of proceedings is predicated on, *inter alia*, his vow to continue to disclose confidential and non-public information⁵⁸ and his failure to abide by the orders of the Single Judge.⁵⁹

31. The Pre-Trial Judge accordingly finds that there remains a risk that Mr Gucati may obstruct the progress of proceedings.

3. Risk of Committing Further Offences

32. As regards the risk that Mr Gucati may commit further offences, for the reasons discussed above with regard to the obstruction of proceedings, the Pre-

⁵³ Confirmation Decision, paras 115, 134.

⁵⁴ First Detention Decision, para. 17; Second Detention Decision, para. 35.

⁵⁵ First Detention Decision, para. 17.

⁵⁶ First Detention Decision, para. 17; Annex 1 to Request for Arrest Warrants, p. 13.

⁵⁷ First Detention Decision, para. 17; First Order, paras 11-13, 21-22; Second Order, paras 11-13, 21-22.

⁵⁸ First Detention Decision, para. 17; Annex 1 to Request for Arrest Warrants, p. 13.

⁵⁹ First Detention Decision, para. 17; First Order, paras 11-13, 21-22; Second Order, paras 11-13, 21-22.

Trial Judge finds that the risk that Mr Gucati may commit further offences by threatening, intimidating, or putting at risk (potential) witnesses through the disclosure or dissemination of confidential and non-public information remains.

4. Conclusion

33. The Pre-Trial Judge concludes that there remains a risk that Mr Gucati will flee, obstruct the progress of proceedings, or commit further offences. The Pre-Trial Judge will assess below whether these risks can be adequately addressed by the Proposed Conditions and/or the Additional Condition.

C. CONDITIONAL RELEASE

34. Mr Gucati submits that any risk that he may obstruct the progress of proceedings and/or commit further crimes can be adequately met by the Proposed Conditions and use of a guarantor.⁶⁰ Mr Gucati provides a declaration from his proposed guarantor indicating that the guarantor can supervise him 24 hours a day, seven days a week, pursuant to his legal powers through the Kosovo police, and will notify competent authorities immediately if any condition placed on release is not met.⁶¹

35. The SPO responds that the use of a guarantor cannot prevent Mr Gucati from disclosing confidential and non-public information.⁶²

36. The Pre-Trial Judge recalls that, with respect to flight risk, it was found there were mitigating factors and that the Proposed Conditions sufficiently addressed this risk.⁶³ The Pre-Trial Judge sees no reason to alter that finding.

⁶⁰ Defence Submission, para. 9.

⁶¹ Translation of Annex 1 to Defence Reply, p. 2.

⁶² SPO Submission, para. 9.

⁶³ Second Detention Decision, paras 40-41.

37. As to the risk that Mr Gucati may obstruct the progress of proceeding or commit further offences, the Pre-Trial Judge notes that Mr Gucati proposes the use of a guarantor. As the Pre-Trial Judge found in relation to the Proposed Conditions, Mr Gucati could receive electronically, or through the mail, confidential or non-public information and could disseminate such information through the same means.⁶⁴ The guarantor would have no ability to monitor such communications at the level in which they could be monitored at the detention unit and therefore would not be in a position to prevent the disclosure of confidential and non-public information. The Pre-Trial Judge accordingly finds that use of guarantor insufficiently addresses the risk that Mr Gucati may obstruct the progress of proceedings.

38. Additionally, the Pre-Trial Judge considers that the risks of obstructing proceedings or committing further offences can only be effectively managed at the SC detention facilities. This is particularly so in light of Mr Gucati's public statements vowing to continue to disclose confidential and non-public information⁶⁵ and his failure to abide by the orders of the Single Judge.⁶⁶ In these circumstances, the Pre-Trial Judge finds that conditional release would be insufficient to overcome the Article 41(6)(b) risks identified above.

39. The Pre-Trial Judge accordingly finds the Proposed Conditions and the Additional Condition insufficiently mitigate the risks of obstructing the progress of proceeding or committing further offences.

⁶⁴ Second Detention Decision, para. 42.

⁶⁵ First Detention Decision, para. 17; Annex 1 to Request for Arrest Warrants, p. 13.

⁶⁶ First Detention Decision, para. 17; First Order, paras 11-13, 21-22; Second Order, paras 11-13, 21-22.

D. PROPORTIONALITY OF DETENTION

40. Mr Gucati submits that the longer a person remains in pre-trial detention the higher the burden on the SC to justify continued detention.⁶⁷

41. As to length of pre-trial detention, the Pre-Trial Judge notes in this regard that the Court of Appeals Panel found that Mr Gucati's pre-trial detention of more than two months, even in the absence of a confirmed indictment against him, remained proportional at this early stage of the proceedings.⁶⁸ While Mr Gucati has been in detention for approximately five months, there is now a confirmed indictment against him, the material supporting this indictment and evidence under Rule 102(1)(b) of the Rules has been disclosed,⁶⁹ and a deadline of 9 April 2021 has been set for the SPO to complete disclosure under Rules 102 and 103 of the Rules and file a pre-trial brief and related material.⁷⁰ Against this backdrop, and the fact that the risks of obstruction and the commission of further offences remain and cannot be mitigated by the Proposed Conditions and/or the Additional Condition, the Pre-Trial Judge finds that Mr Gucati's detention is necessary and proportional in the current circumstances.

V. DISPOSITION

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

- a. **ORDERS** Mr Gucati's continued detention; and
- b. **ORDERS** Mr Gucati to file submissions on the next review of detention by Thursday, 1 April 2021, with responses and replies following the timeline set out in Rule 76 of the Rules.

⁶⁷ Defence Submission, para. 3; Prior Defence Submission, paras 7-10.

⁶⁸ Decision on Appeal of First Detention Decision, para. 73.

⁶⁹ KSC-BC-2020-07, F00104, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 22 January 2021, public, paras 39, 44.

⁷⁰ Transcript of Hearing, 24 February 2021, p. 52, lines 14-19.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Wednesday, 24 February 2021
At The Hague, the Netherlands