

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 Counsel for Hysni Gucati

Date: 1st April 2021

Language: English

Classification: Public

Submissions on the Third Review of Detention

Specialist Prosecutor

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I. INTRODUCTION

1. On 24th February 2021 the Pre-Trial Judge issued his Decision on Review of Detention of Hysni Gucati of the same date and ordered Mr Gucati to file submissions on the next review of detention by Thursday 1 April 2021¹.
2. In accordance with the Pre-Trial Judge's order, the defence make the following submissions on behalf of Mr Gucati.

II. SUBMISSIONS

3. The defence repeat that 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. Detention can only be extended (i) where the strict conditions in Article 41(6) of the Law continue to be met *and* (ii) detention remains strictly necessary and proportionate having considered whether other, less stringent measures than detention could be sufficient³.
4. In the present case, the allegation of the dissemination of non-public material and the alleged ongoing risks of the dissemination of the same have been at the heart of the Pre-Trial Judge's previous decisions on release⁴.

¹ *Decision on Review of Detention of Hysni Gucati*, KSC-BC-2020-07/F00143 at paragraph 42.b

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

³ *Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention*, KSC-BC-2020-07/IA0001/F00005 at paragraphs 51 and 72

⁴ *Decision on Application for Bail*, KSC-BC-2020-07/F00059 at paragraphs 16, 17 and 19; *Decision on Review of Detention of Hysni Gucati*, KSC-BC-2020-07/F00093 at paragraphs 28 to 37; *Decision on Review of Detention of Hysni Gucati*, KSC-BC-2020-07/F00143 at paragraphs 1, 25, 26, 29, 30, 32 and 37

5. However, the SPO has now made clear that, at trial, it will not, and cannot, produce in evidence a single document which they allege Mr Gucati was responsible for disseminating which was not already in the public domain.
6. Further, the SPO has also now made clear that, at trial, it will not, and cannot, call a single witness to say in evidence that they were threatened or intimidated, or that they faced other serious consequences, as a result of the actions of Mr Gucati.
7. In light of the SPO's now clarified position as set out above, it is submitted that the continued detention of Mr Gucati can no longer be considered to be both necessary and proportionate, and that release should be ordered immediately, with or without any of the conditions proposed previously⁵.
8. The court is reminded that Mr Gucati is a man of hitherto good character and has been complaint throughout his arrest and transport, and subsequently during his detention. He has, as the Pre-Trial Judge has acknowledged, strong family and community ties in his hometown.
9. The submissions made at paragraphs 27, 28 and 29 of the Submissions on the Review of Detention by 27th December 2020⁶ are maintained and repeated in relation to any residual risk of the dissemination of confidential and non-public material, in the new context that the SPO will not, and cannot, produce in evidence at trial a single document which they allege Mr Gucati was responsible for disseminating which was not already in the public domain.

⁵ *Application for Bail*, KSC-BC-2020-07/F00038 at paragraph 5; *Submissions on the Review of Detention by 27th December 2020*, KSC-BC-2020-07/F00087 at paragraph 27; *Submissions on the Second Review of Detention of Hysni Gucati*, KSC-BC-2020-07/F00112 at paragraph 9

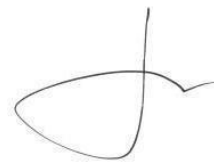
⁶ *Submissions on the Review of Detention by 27th December 2020*, KSC-BC-2020-07/F00087

10. The Pre-Trial Judge has already found that any residual risk of flight can be adequately met by conditions.

III. CONCLUSION

11. It is submitted that Mr Gucati should be released immediately, with or without conditions.

Word count: 612 words



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1st April 2021

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