



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:** 15 April 2021

**Language:** English

**Classification:** Public

---

**Public redacted version of**

**Prosecution consolidated response for review of detention**

---

**Specialist Prosecutor's Office**

Jack Smith

**Counsel for Mr Gucati**

Jonathan Elystan Rees

**Counsel for Mr Haradinaj**

Toby Cadman

1. The continued detention of Hysni GUCATI and Nasim HARADINAJ (collectively, the 'Accused') remains necessary.<sup>1</sup> There has been no relevant change in circumstances detracting from the established reasons for detention.<sup>2</sup> Rather, the Article 41(6)(b) risks have increased since the latest review decisions.<sup>3</sup>

2. The Pre-Trial Judge ('PTJ') previously found: (i) grounded suspicion that the Accused committed offences against the administration of justice within the jurisdiction of the Specialist Chambers ('KSC');<sup>4</sup> (ii) articulable grounds to believe that the Accused constitute a flight risk,<sup>5</sup> will obstruct the progress of criminal proceedings, and will repeat or attempt to repeat the criminal offences;<sup>6</sup> and (iii) that the release conditions proposed by the Accused insufficiently mitigated the Article 41(6)(b) risks.<sup>7</sup>

---

<sup>1</sup> *Contra* Submissions on the Third Review of Detention, KSC-BC-2020-07/F0170, 1 April 2021 ('GUCATI Submissions'); Defence Submissions on Third Review of Detention of Nasim Haradinaj, KSC-BC-2020-07/F00173, 1 April 2021 (notified 6 April 2021) ('HARADINAJ Submissions').

<sup>2</sup> See Article 41(10) of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Rule 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'); Decision on Nasim Haradinaj's Appeal on Decision Reviewing Detention, KSC-BC-2020-07/IA002/F00005, 9 February 2021, para.55 ('[t]he competent panel has an obligation to review the reasons or circumstances underpinning detention and determine whether these reasons continue to exist under Article 41(6) of the Law. The competent panel is not required to make findings on the factors already decided upon in the initial ruling on detention but must examine these reasons or circumstances and determine whether they still exist. What is crucial is that the competent panel is satisfied that, at the time of the review decision, grounds for continued detention still exist.'). All references to 'Article' or 'Articles' herein refer to articles of the Law, and all references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

<sup>3</sup> Decision on Review of Detention of Hysni Gucati, KSC-BC-2020-07/F00143, 24 February 2021 ('February 2021 Gucati Review Decision'); Decision on Review of Detention of Nasim Haradinaj, KSC-BC-2020-07/F00144, 24 February 2021 ('February 2021 HARADINAJ Review Decision'). See also Decision on Review of Detention of Hysni Gucati, KSC-BC-2020-07/F00093, 24 December 2020; Decision on Review of Detention of Nasim Haradinaj, KSC-BC-2020-07/F00094, 24 December 2020; Decision on Request for Immediate Release of Nasim Haradinaj, KSC-BC-2020-07/F00058, 27 October 2020; Decision on Request for Arrest Warrant and Transfer Orders, KSC-BC-2020-07/F00012, 24 September 2020.

<sup>4</sup> February 2021 Gucati Review Decision, KSC-BC-2020-07/F00143, para.18; February 2021 HARADINAJ Review Decision, KSC-BC-2020-07/F00144, para.17.

<sup>5</sup> February 2021 Gucati Review Decision, KSC-BC-2020-07/F00143, paras 20-22; February 2021 HARADINAJ Review Decision, KSC-BC-2020-07/F00144, paras 19-29.

<sup>6</sup> February 2021 Gucati Review Decision, KSC-BC-2020-07/F00143, paras 23-32; February 2021 HARADINAJ Review Decision, KSC-BC-2020-07/F00144, paras 30-38.

<sup>7</sup> February 2021 Gucati Review Decision, KSC-BC-2020-07/F00143, paras 34-39 (risk of flight was adequately addressed by the conditions proposed by the GUCATI Defence, but risks of obstructing proceedings or committing further offences could only be effectively managed from detention); February 2021 HARADINAJ Review Decision, KSC-BC-2020-07/F00144, paras 40-44.

These findings continue to be true in all respects. They are not the Specialist Prosecutor's Office's ('SPO') 'generalised objections to release',<sup>8</sup> they are the reasoned findings of the PTJ upheld on appeal.

3. Many of the Defence submissions in this review simply repeat past submissions already rejected by the PTJ.<sup>9</sup> Repetitive submissions do not constitute changed circumstances. Further, neither Accused propose any new conditions which could mitigate the Article 41(6) risks.<sup>10</sup>

4. Below, the SPO addresses new arguments within the context of the litigation concerning the Accused's detention. None of these issues constitutes a relevant change in circumstances, impacts the PTJ's previous findings, or detracts from the need for the continued detention of the Accused.

*The stage of proceedings increases the relevant risks*

5. The SPO has now filed its pre-trial brief, list of witnesses, list of exhibits, and Rule 102(3) list. The Accused have a full account of the SPO's case against them, and know that their trial imminently approaches. This only increases their incentive to attempt to unlawfully evade or obstruct the proceedings, including through a repetition of the prior conduct giving rise to the charges in this case.

6. The intended relevance of the GUCATI Defence submissions regarding the presence, or absence, of specific items on the SPO's exhibit list is unclear.<sup>11</sup> First,

---

<sup>8</sup> HARADINAJ Submissions, KSC-BC-2020-07/F00173, para.42 (in relation to Article 41(6) risk findings).

<sup>9</sup> Egs HARADINAJ Submissions, KSC-BC-2020-07/F00173, paras 3, 59.

<sup>10</sup> See GUCATI Submissions, KSC-BC-2020-07/F0170, paras 8-9; HARADINAJ Submissions, KSC-BC-2020-07/F00173, para.78. As compared to its last submission (Defence Submissions on Second Review of the Detention of Nasim Haradinaj, KSC-BC-2020-07/F00111, 1 February 2021, para.38), the HARADINAJ Defence has made slight adjustments to conditions: (a) (a comma is deleted, a 'that' is added, and 'Kosovo' becomes 'designated area'); (b) ('reside' becomes 'resides'); (c) (communications device to be registered with the 'SPO', instead of the 'Court'); and (e) ('refrain' becomes 'refrains'). But the conditions themselves are repeated in all material aspects.

<sup>11</sup> See GUCATI Submissions, KSC-BC-2020-07/F0170, paras 5-7, 9.

neither the grounded suspicion underlying the Accused's detention, nor the well-grounded suspicion found in respect of the confirmed charges, relied on such items. Second, those items, which are subject to court granted protective measures, were required to be withheld specifically because of the high risk of the commission of further crimes by the Accused,<sup>12</sup> including the further unlawful dissemination of confidential information. As such, the GUCATI Defence submissions only emphasise the Article 41(6) risks which the Accused pose. As the PTJ has previously found,<sup>13</sup> this risk arises from the direct conduct and statements of the Accused, both of whom vowed to continue to unlawfully disseminate and publish confidential information.

*The HARADINAJ Defence raises no new circumstances in respect of the risk of flight*

7. The HARADINAJ Defence continues to challenge the narrative of his client evading arrest, making limited new submissions amongst repetitive arguments.<sup>14</sup> None of these challenges raise a relevant change in circumstances.

8. No corroboration of the arresting officer's account<sup>15</sup> is required for an articulable grounds to believe standard, noting that such corroboration would not be required even when proving facts beyond reasonable doubt.<sup>16</sup> Moreover, as the PTJ previously noted, the SPO's account is in fact corroborated in important aspects by Mr HARADINAJ's own version of events.<sup>17</sup> The SPO already disclosed all statements and

---

<sup>12</sup> See Prosecution submissions on the disclosure of certain documents seized from the KLA War Veterans Association, KSC-BC-2020-07/F00110, 1 February 2021, Confidential (with two annexes), para.40. See also Confidential Redacted Version of the Decision on the Non-Disclosure of Information Requested by the Defence, KSC-BC-2020-07/F00171/CONF/RED, 1 April 2021; Decision on Disclosure of Certain Documents Seized from the KLA War Veterans Association, KSC-BC-2020-07/F00141, 23 February 2021, Confidential.

<sup>13</sup> February 2021 Gucati Review Decision, KSC-BC-2020-07/F00143, paras 30, 32; February 2021 HARADINAJ Review Decision, KSC-BC-2020-07/F00144, para.38, citing KSC-BC-2020-07/F00094, para.41.

<sup>14</sup> HARADINAJ Submissions, KSC-BC-2020-07/F00173, paras 6-8, 45-57.

<sup>15</sup> *Contra.* HARADINAJ Submissions, KSC-BC-2020-07/F00173, para.48.

<sup>16</sup> Rule 139(3).

<sup>17</sup> February 2021 HARADINAJ Review Decision, KSC-BC-2020-07/F00144, para.24.

video footage it is aware of that is relevant to this incident,<sup>18</sup> and is not in a position to know what various other bystanders may have recorded (or when they started recording).<sup>19</sup>

9. The HARADINAJ Defence's account of the Accused's arrest has been fully considered and found wanting by the PTJ.<sup>20</sup> The HARADINAJ Defence's latest submissions simply ignore that the PTJ did not consider a further account from the parties 'to be necessary for determining Mr HARADINAJ's continued detention at this stage'.<sup>21</sup>

10. The arresting officer's statement,<sup>22</sup> the available video footage<sup>23</sup> and aspects of the Accused's own narrative match the SPO's account of the Accused's arrest.

11. Further, as found previously, Mr HARADINAJ's risk of flight is predicated upon several factors beyond him having evaded arrest, namely: (i) HARADINAJ's non-recognition of the KSC; (ii) his EU citizenship which enables him to travel with ease to a number of jurisdictions, including those that do not have extradition agreements with Kosovo; (iii) his ability, as deputy head of the KLA WVA, to call upon the network and resources of the organisation's estimated 40,000 members to assist in any attempt to flee; and (iv) the additional disclosure provided to the Accused.<sup>24</sup> This last point is even more pronounced now that the Accused has been provided the pre-trial brief, list of witnesses, list of exhibits, and consolidated Rule 102(3) list. No circumstances justifying a change in HARADINAJ's flight risk assessment exist.

**[REDACTED]**

---

<sup>18</sup> As ordered by February 2021 HARADINAJ Review Decision, KSC-BC-2020-07/F00144, para.22.

<sup>19</sup> *Contra* HARADINAJ Submissions, KSC-BC-2020-07/F00173, para.50.

<sup>20</sup> February 2021 HARADINAJ Review Decision, KSC-BC-2020-07/F00144, para.24.

<sup>21</sup> February 2021 HARADINAJ Review Decision, KSC-BC-2020-07/F00144, para.22.

<sup>22</sup> 083798-083799.

<sup>23</sup> 081981-01; 081931-03.

<sup>24</sup> See February 2021 HARADINAJ Review Decision, KSC-BC-2020-07/F000144, paras 25-28.

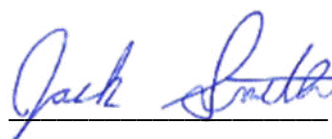
12. [REDACTED]. [REDACTED]. [REDACTED].

13. [REDACTED].<sup>25</sup> [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].  
[REDACTED].

*Detention remains proportionate*

14. The length of pre-trial detention must be balanced against the Article 41(6) risks and the circumstances of the case as a whole, including the potential penalties for the crimes charged.<sup>26</sup> The Accused have been detained for six and half months on charges which include sentences of up to 10 years.<sup>27</sup> The case is proceeding expeditiously, and is about to be sent to a Trial Panel. Nothing indicates that the Accused's detention thus far is or is approaching being disproportionate. Given the many factors underlying the Article 41(6) risks for both Accused, the additional time which has past since the last review does not justify changing the PTJ's prior findings.

**Word count: 1,631**



**Jack Smith**

**Specialist Prosecutor**

Thursday, 15 April 2021

At The Hague, the Netherlands

---

<sup>25</sup> [REDACTED]. [REDACTED].

<sup>26</sup> See ICC, *Prosecutor v. Bemba et al.*, Judgment on the appeals against Pre-Trial Chamber II's decision regarding interim release in relation to Aimé Kilolo Musamba, Jean-Jacques Mangenda, Fidèle Babala Wandu, and Narcisse Arido and order for reclassification, 29 May 2015, ICC-01/05-01/13-969, para.45.

<sup>27</sup> Article 387 of Code No.06/L-074, Criminal Code of the Republic of Kosovo, 14 January 2019 (charged in Count 3). For perspective, this maximum sentence length is double that which the ICC can impose for offences against the administration of justice. Article 70(3) of the ICC Statute.