



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: **KSC-BC-2020-07**

The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: **Trial Panel II**

Judge Charles L. Smith, III, Presiding Judge

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 23 August 2021

Language: English

Classification: **Public**

Decision on Review of Detention of Hysni Gucati

Specialist Prosecutor

Jack Smith

Counsel for Hysni Gucati

Jonathan Elystan Rees

Huw Bowden

Counsel for Nasim Haradinaj

Toby Cadman

Carl Buckley

TRIAL PANEL II,¹ pursuant to Articles 1(2), 2, 3(2)(e), 19(2), 21(3), and 40-41 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 25 September 2020, Mr Hysni Gucati ("Mr Gucati") and Mr Nasim Haradinaj were arrested in relation to alleged dissemination of confidential and non-public information relating to the work of the Special Investigative Task Force ("SITF") and/or the Specialist Prosecutor's Office ("SPO").²
2. On 27 October 2020, the Single Judge rejected Mr Gucati's application for bail,³ which was upheld by the Court of Appeals Panel.⁴ The Pre-Trial Judge then reviewed and extended Mr Gucati's detention at regular intervals, namely on 24 December 2020, 24 February, 23 April and 23 June 2021.⁵
3. In his Fifth and latest Detention Decision, the Pre-Trial Judge ordered Mr Gucati to file submissions on the next review of his detention by 4 August 2021, the SPO

¹ F00263, President, *Decision Assigning Trial Panel II*, 15 July 2021.

² F00012/A01/RED, Single Judge, *Public Redacted Version of Arrest Warrant for Hysni Gucati*, 24 September 2020; F00015, Registrar, *Notification of Arrest Pursuant to Rule 55(4)*, 25 September 2020; F00012/A02/RED, Single Judge, *Public Redacted Version of Order for Transfer to Detention Facilities of the Specialist Chambers*, 24 September 2020; F00018, Registrar, *Notification of the Reception of Hysni Gucati in the Detention Facilities of the Specialist Chambers*, 25 September 2020, with Annex 1, confidential.

³ F00059, Single Judge, *Decision on Application for Bail ("First Detention Decision")*, 27 October 2020.

⁴ 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, para. 78.

⁵ F00093, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati ("Second Detention Decision")*, 24 December 2020; F00143, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati ("Third Detention Decision")*, 24 February 2021; F00188, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati ("Fourth Detention Decision")*, 23 April 2021; F00245, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati ("Fifth Detention Decision")*, 23 June 2021.

to file the same by 11 August 2021, with the possibility for Mr Gucati to comment on the SPO's submissions by 16 August 2021.⁶

4. On 15 July 2021, the President of the Specialist Chambers ("President" and "SC", respectively) assigned the present case to Trial Panel II ("Panel").⁷ On 16 July 2021, the Pre-Trial Judge transmitted the case to the Panel.⁸

5. On 21 July 2021, the Panel scheduled the Trial Preparation Conference for 1 and 2 September 2021 and provisionally set the Specialist Prosecutor's Preparation Conference for 8-9 September 2021.⁹ The Parties indicated their availability for both conferences.¹⁰

6. On 4 August 2021, Mr Gucati filed submissions on the present review of his detention before the Panel.¹¹ On 5 August 2021, Mr Gucati filed a corrected version of the same application.¹² The SPO responded on 10 August 2021.¹³ Mr Gucati filed no reply to the SPO submissions.

II. SUBMISSIONS

7. Mr Gucati submits that he should be released immediately, with or without conditions, as his continued detention is neither necessary nor proportionate.¹⁴

⁶ Fifth Detention Decision, para. 32(b)(c).

⁷ F00263, President, *Decision Assigning Trial Panel II*, 15 July 2021.

⁸ F00265, Pre-Trial Judge, *Decision Transmitting Case File to Trial Panel II*, 16 July 2021.

⁹ F00267, Trial Panel II, *Order for Submissions and Scheduling the Trial Preparation Conference*, 21 July 2021.

¹⁰ CRSPD51, *Email from CMU to Chambers re date of TPC*, 19 July 2021, confidential.

¹¹ F00270, Defence for Mr Gucati, *Submissions on the Fifth Review of Detention*, 4 August 2021.

¹² F00270/COR, Defence for Mr Gucati, *Corrected Version of Submissions on the Fifth Review of Detention* ("Defence Submission"), 5 August 2021.

¹³ F00228, Specialist Prosecutor, *Prosecution Consolidated Submissions for Review of Detention with public Annex 1* ("SPO Submission"), 10 August 2021.

¹⁴ Defence Submission, paras 6, 13, 18-20 (with references to F00038, Defence for Mr Gucati, *Application for Bail* ("F00038"), 29 September 2020, para. 5; F00087/RED, Defence for Mr Gucati, *Submissions on the Review of Detention by 27th December 2020* ("F00087/RED"), 17 December 2020, para. 27; F00112, Defence for Mr Gucati, *Submissions on the Second Review of Detention of Hysni Gucati* ("F00112"), 2 February 2021, para. 9).

Mr Gucati repeats his submissions made before the Pre-Trial Judge that the alleged dissemination of non-public material and the risks related to its dissemination have been at the heart of the Pre-Trial Judge's past decisions.¹⁵ Mr Gucati accordingly submits that notwithstanding the finalisation of disclosure by the SPO, the latter cannot: (i) produce in evidence a single non-public document for the dissemination of which he was allegedly responsible; (ii) call at trial a single witness to testify that they were threatened or intimidated, or faced other serious consequences as a result of Mr Gucati's actions; or (iii) prove the offences at trial.¹⁶ Further, Mr Gucati recalls his good character, compliant conduct during the arrest, transfer and detention, and strong ties to his hometown.¹⁷ Mr Gucati also submits that material changes of circumstances (namely, the absence of a date for the trial, the application for the recusal of the President and the Presiding Judge of the Panel and the resulting delays) render his detention no longer proportionate.¹⁸ Lastly, Mr Gucati reiterates arguments raised in submissions regarding the lack of any disclosed material of such sensitivity that its protection could justify his continued detention in order to avoid the obstruction of proceedings.¹⁹

8. The SPO responds that the continued detention of Mr Gucati remains necessary as there has been no relevant change in the circumstances, and, in fact, the Article 41(6)(b) risks have increased.²⁰ In this regard, the SPO points to a new statement by the acting chairman of the Kosovo Liberation Army War Veterans Association ("KLA WVA") in which he reiterates the intention to distribute any

¹⁵ Defence Submission, para. 6 (with references to F00170, Defence for Mr Gucati, *Submissions on the Third Review of Detention* ("F00170"), 1 April 2021, paras 4-8; F00214, Defence for Mr Gucati, *Submissions on the Fourth Review of Detention* ("F00214"), 1 June 2021, para. 6).

¹⁶ Defence Submission, paras 7-8, 15. See also F00170, paras 4-8; F00214, paras 6-8.

¹⁷ Defence Submission, para. 14.

¹⁸ Defence Submission, paras 4, 9-13.

¹⁹ Defence Submission, paras 16-18. See also F00214, paras 14-16.

²⁰ SPO Submission, para. 1.

confidential information that may be received in the future.²¹ Furthermore, the SPO submits that Mr Gucati repeats his earlier arguments, which have already been rejected by the Pre-Trial Judge in the last review of Mr Gucati's detention.²² The SPO maintains that the Pre-Trial Judge's findings in the last review of Mr Gucati's detention continue to be true in all respects.²³ The SPO further avers that the existence of a grounded suspicion to justify continued detention is manifest and that Mr Gucati's submission regarding the threshold under Article 41(6) of the Law betray an unduly narrow understanding as to how the charges in this case can be proven.²⁴ The SPO also indicates that confidential information disclosed in this case includes information on, *inter alia*, SPO staff members and investigative methods as well as summaries of highly sensitive information.²⁵ The SPO further submits that the Defence application for recusal of the President and the Presiding Judge of the Panel cannot constitute changed circumstances, as it was found to be lacking in substance.²⁶ The SPO also rejects the argument of Mr Gucati that the absence of a set date for trial would cause delays and indicates its readiness to commence trial whenever the Panel sees fit.²⁷ The SPO accordingly argues that Mr Gucati's arguments on the (lack of) proportionality of his detention should be rejected as unfounded.²⁸

III. APPLICABLE LAW

9. Pursuant to Article 41(6)(a) and (b) of the Law, the SC shall only detain a person when there is a grounded suspicion that the person has committed a crime within the its jurisdiction; and there are articulable grounds to believe that the person (i) is a flight risk; (ii) will obstruct the progress of the proceedings; or (iii) will repeat the

²¹ SPO Submission, paras 4-5; Annex 1.

²² SPO Submission, para. 5.

²³ SPO Submission, para. 2.

²⁴ SPO Submission, para. 7.

²⁵ SPO Submission, para. 10.

²⁶ SPO Submission, para. 11, fn. 35.

²⁷ SPO Submission, para. 13.

²⁸ SPO Submission, paras 13-15.

criminal offence, complete an attempted crime or commit a crime which the person threatened to commit.

10. Article 41(12) of the Law provides for alternative measures to prevent or mitigate these risks, including, among others, bail, house detention, promise not to leave residence and prohibition on approaching specific places or persons.

11. Pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, until a judgment is final or until release, upon the expiry of two months from the last ruling on detention on remand, the Panel shall examine whether the reasons for detention on remand still exist, and extend or terminate it.

IV. DISCUSSION

12. At the outset, the Panel recalls that any analysis of continued detention must take the presumption of innocence as its starting point.²⁹ Detention cannot be maintained lightly and the burden to demonstrate that such detention is necessary is on the SPO.³⁰ The Panel also recalls that it is not incumbent upon Mr Gucati to demonstrate the existence of reasons warranting his release.³¹ The Trial Panel observes in this regard that the Pre-Trial Judge's practice in relation to detention review was to receive submissions from the Defence first, and submissions from the SPO thereafter, with the possibility for the Defence to reply.³² The Panel notes that such a procedural arrangement does not displace the onus that rests exclusively upon the SPO to establish, in every instance, that the conditions for detention continue to be met.

²⁹ See, albeit in relation to pre-trial detention, KSC-BC-2020-06, IA004-F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Interim Release* ("Thaçi Appeal Decision"), 30 April 2021, para. 17. See also KSC-BC-2020-05, F00158, Trial Panel I, *Fifth Decision on Review of Detention*, 23 July 2021, para. 14.

³⁰ Thaçi Appeal Decision, para. 17.

³¹ See 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* ("SCCC 26 April 2017 Judgment"), 26 April 2017, para. 115.

³² See IA002-F00005, Court of Appeals Panel, *Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention*, 9 February 2021, para. 43, fn. 82.

Nonetheless, the Panel decides that, going forward, it will receive first the submissions of the SPO and thereafter submissions from the Defence, for ease of review.

A. GROUNDED SUSPICION

13. As regards the threshold for continued detention, Article 41(6)(a) of the Law requires a grounded suspicion that Mr Gucati committed an offence within the jurisdiction of the SC. In this regard, the Panel notes that the Pre-Trial Judge confirmed the indictment against Mr Gucati having found that a well-grounded suspicion within the meaning of Article 39(2) of the Law existed that he committed offences under SC jurisdiction.³³ The Panel further recalls that the threshold required for continued detention (grounded suspicion) is necessarily lower than that required for the confirmation of an indictment (well-grounded suspicion).³⁴

14. In relation to Mr Gucati's submissions as to the lack of evidence and the SPO's inability to prove the offences at trial, the Panel considers that such claims reflect the position of the Defence as regards the weight of SPO evidence to be presented at trial and do not support a conclusion that either of the above thresholds is no longer fulfilled. The Panel further notes that the evaluation of the evidence in support of the charges will occur at trial, when the Panel will assess what weight to give to that evidence and whether the SPO has discharged its burden of proof as to relevant allegations contained in the indictment and in relation to the alleged guilt of Mr Gucati.³⁵

15. In light of the foregoing, the Panel is satisfied that there remains a grounded suspicion against Mr Gucati as required by Article 41(6)(a) of the Law.

³³ F00074/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on the Confirmation of the Indictment* ("Confirmation Decision"), 11 December 2020.

³⁴ Confirmation Decision, para. 28.

³⁵ SCCC 26 April 2017 Judgment, para. 201.

B. NECESSITY OF DETENTION

16. With respect to the grounds for continued detention, Article 41(6)(b) of the Law sets out three alternative bases (risks) on which detention may be found to be necessary.³⁶ These grounds must be “articulable” in the sense that they must be specified in detail by reference to the relevant information or evidence.³⁷ The SPO must accordingly demonstrate the existence of either of these risks against the threshold of articulable grounds to believe.³⁸ Furthermore, a Panel must provide specific reasoning and rely on concrete grounds when authorising continued detention.³⁹ That being said, in determining whether any of the grounds under Article 41(6)(b) of the Law allowing for a person’s detention exist, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.⁴⁰

1. Risk of Flight

17. The Panel notes that while the SPO maintains that Article 41(6)(b) risks have increased since the last review decisions, it does not indicate the reasons why a risk of flight may exist in relation to Mr Gucati. In this regard, the Panel concurs with the previous findings of the Pre-Trial Judge that any risk of Mr Gucati fleeing could be sufficiently mitigated by a set of alternative measures.⁴¹

³⁶ Cf. ECtHR, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, 5 July 2016, para. 88; ECtHR, *Zohlandt v. the Netherlands*, no. 69491/16, 9 February 2021, para. 50; ECtHR, *Grubnyk v. Ukraine*, no. 58444/15, 17 September 2020, para. 115; ECtHR, *Korban v. Ukraine*, no. 26744/16, 4 July 2019, para. 155.

³⁷ 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”. See also *Thaçi Appeal Decision*, para. 23.

³⁸ KSC-BC-2020-05, F00127, Trial Panel I, *Fourth Decision on Review of Detention*, 25 May 2021, para. 15.

³⁹ *Thaçi Appeal Decision*, para. 22.

⁴⁰ *Thaçi Appeal Decision*, para. 22.

⁴¹ Third Detention Decision, para. 40; Fourth Detention Decision, paras 15-16; Fifth Detention Decision, para 12-13.

18. In light of the foregoing, the Panel finds that Mr Gucati's continued detention may not be justified on the ground of the risk of flight.

2. Risk of Obstructing the Proceedings

19. The Panel recalls the Pre-Trial Judge's findings that there is a well-grounded suspicion that Mr Gucati intentionally participated in the unauthorised dissemination of protected information and threatened (potential) information providers.⁴² While, as said above, any analysis of continued detention must take as a starting point the presumption of innocence, the Pre-Trial Judge's above findings may be considered when determining whether there are articulable grounds to believe that Mr Gucati poses a risk of obstructing the present proceedings. In particular, the Panel recalls that it has been determined that there is a well-grounded suspicion that Mr Gucati published on repeated occasions SPO/SITF-related documents received by the KLA WVA, which contained, *inter alia*, names of (potential) information providers.⁴³ Furthermore, the Pre-Trial Judge found that there was well-grounded suspicion that Mr Gucati made various accusations regarding such persons for having allegedly interacted with the SITF/SPO,⁴⁴ and vowed to continue to publish such information in the future,⁴⁵ despite being ordered by the Single Judge to refrain from doing so.⁴⁶

20. The Panel further notes that, as a result of the finalisation of the disclosure process and the filing of the SPO Pre-Trial Brief, Mr Gucati is aware of the full

⁴² Confirmation Decision, paras 100, 102-103, 105, 108-109, 111-113, 115-117.

⁴³ Confirmation Decision, paras 101, 106.

⁴⁴ Confirmation Decision, paras 111, 115.

⁴⁵ Confirmation Decision, para. 102.

⁴⁶ Confirmation Decision, paras 101, 106. *See also* F00005, Single Judge, *Urgent Decision Authorising a Seizure*, 7 September 2020, paras 11-13, 21-22; F00007, Single Judge, *Decision Authorising a Seizure*, 17 September 2020, paras 11-13, 21-22; F0009/A01/RED, Specialist Prosecutor, *Annex 1 to Request for Arrest Warrants and Related Orders*, 1 October 2020, p. 14; First Detention Decision, para. 17; Fifth Detention Decision, paras 18, 24.

extent of the SPO case and has access to evidence classified as confidential.⁴⁷ The Panel observes that Mr Gucati challenges the sensitive nature of documents protected by this classification. These submissions overlook and fail to address the fact that the disclosed material contains, *inter alia*: (i) declarations and charts describing the alleged confidential nature of the leaked documents; (ii) identifying information of SPO staff members; and (iii) summaries of sensitive information, including SPO investigative methods and contacts with individuals whose identity is protected.⁴⁸ If it were to occur, the dissemination of such information would create a risk to the conduct of the proceedings.

21. Furthermore, the Panel agrees with the Pre-Trial Judge that Mr Gucati, as head of the KLA WVA, would have the means to disseminate information received through the disclosure process or any other protected material he may obtain once released by communicating with the media or with the assistance of others within the KLA WVA.⁴⁹ The Panel is furthermore not persuaded that Mr Gucati's character or his compliant conduct during the arrest and detention have any bearing on his willingness or capability to disseminate such information.

22. In light of the foregoing, the Panel finds that there are articulable grounds to believe that, if released, Mr Gucati will obstruct the present proceedings by disseminating or facilitating the dissemination of confidential or otherwise protected information and thereby threaten or influence witnesses, victims or accomplices.

⁴⁷ F00181/A01, Specialist Prosecutor, Pre-Trial Brief, 9 April 2021, confidential; Fifth Detention Decision, para. 17.

⁴⁸ F00141, Pre-Trial Judge, *Decision on Disclosure of Certain Documents Seized from the KLA War Veterans Association*, 23 February 2021, confidential; F00136, Pre-Trial Judge, *Decision on Non-Disclosure of Certain Witness Contacts*, 22 February 2021, confidential; F00210, Pre-Trial Judge, *Decision on Prosecution Requests and Challenges Pursuant to F00172*, 26 May 2021, confidential.

⁴⁹ First Detention Decision, para. 17; Fifth Detention Decision, para. 17. *See also* in this regard SPO Submission, Annex 1.

3. Risk of Committing Offences

23. Given the above findings regarding the risk of obstructing the present proceedings and, in particular, in light of Mr Gucati's past conduct, including his vow to continue to publish SITF/SPO-related information, the Panel considers that there are articulable grounds to believe that, if released, Mr Gucati will commit offences either in repetition of those charged or which he has previously threatened to commit. This finding, based on the threshold of articulable grounds to believe, is without prejudice to the determination that the Panel will be asked to make in relation to the charges once it has heard and assessed all relevant evidence and arguments put forth by the Parties at trial.

4. Conclusion

24. The Panel concludes that there remains a risk that Mr Gucati will obstruct the present proceedings and that he will commit offences either in repetition of those charged or which he has previously threatened to commit. The Panel will assess below whether these risks can be adequately addressed by the application of alternative measures.

C. MEASURES ALTERNATIVE TO DETENTION

25. As regards measures alternative to detention, Article 41(12) of the Law sets out a number of options to be considered in order to ensure the accused's presence at trial, to prevent reoffending or to ensure successful conduct of proceedings. In this respect, the Panel recalls that detention should only be continued if there are no alternative, more lenient measures reasonably available that could sufficiently mitigate the risks set out in Article 41(6)(b) of the Law.⁵⁰ The Panel must therefore consider *proprio motu*

⁵⁰ SCCC 26 April 2017 Judgment, para. 114; KSC-CC-PR-2020-09, F00006, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of Amendments to the Rules of Procedure and Evidence Adopted by the Plenary on 29 and 30 April 2020* ("SCCC 22 May 2020 Judgment") 22 May 2020, para. 70. See also

all reasonable alternative measures that could be imposed and not only those raised by the Defence or the SPO.⁵¹

26. For the purpose of the present review, the Panel notes that neither the SPO nor Mr Gucati make any new submissions on proposed alternative measures. Nonetheless, the Panel shall consider whether any such measures could mitigate the aforementioned risks.

27. The Panel concurs with the Pre-Trial Judge's finding that, if released from detention, Mr Gucati could obtain access to various means of communication in order to disseminate electronically, or through the mail, confidential information received through the disclosure process, or additional information which may come into his possession by other means.⁵² The Panel further concurs with the Pre-Trial Judge's finding that no alternative measures, such as house detention coupled with restrictions on communication with other persons, would effectively prevent Mr Gucati from employing other electronic devices belonging to, for example, his family or acquaintances, or from passing on confidential information to other persons. The array of communication mediums available is so varied that it is only through the communication monitoring framework applicable at the SC's detention facilities that Mr Gucati's communications can be effectively controlled and subject to any necessary limitation.⁵³ Furthermore, the Panel considers that Mr Gucati would also be in a position to share confidential information with other members of the KLA WVA with a view to such members disseminating the information. As a result, the Panel considers that there is no basis to conclude that

ECtHR, *Buzadji v. the Republic of Moldova* [GC], para. 87 *in fine*; ECtHR, *Idalov v. Russia* [GC], no. 5826/03, 22 May 2012, para. 140 *in fine*.

⁵¹ KSC-BC-2020-06, IA003/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Interim Release* ("Selimi Appeal Decision"), 30 April 2021, para. 86; KSC-BC-2020-05, F00127, Trial Panel I, *Fourth Decision on Review of Detention*, 25 May 2021, para. 24.

⁵² Fifth Detention Decision, paras 23, 25.

⁵³ Fifth Detention Decision, para. 25.

any of the measures foreseen in Article 41(12) of the Law, or any other reasonably available measures could mitigate the aforementioned risks in the present case.

28. In light of the foregoing, the Panel finds that the risks of obstructing the proceedings and committing offences either in repetition of those charged or which Mr Gucati has previously threatened to commit can only be effectively managed at the SC's detention facilities. In these circumstances, the Panel finds that Mr Gucati's continued detention is necessary in order to avert the risks in Article 41(6)(b)(ii) and (iii) of the Law.

D. REASONABLENESS OF DETENTION

29. As regards the length of detention, the Panel recalls that the duration of time spent in detention is a factor that needs to be considered along with the risks in Article 41(6)(b) of the Law, in order to determine whether, all factors being considered, the continued detention is unreasonable and the person needs to be released.⁵⁴ The Panel is accordingly under an obligation to ensure that the time spent in detention is reasonable, including during trial.⁵⁵

30. The Panel notes in this regard that Mr Gucati has now been in detention for approximately eleven months since his arrest. During this time, significant steps were taken for the preparation of the case for trial.⁵⁶ Following the transmission of the case file, the Panel promptly scheduled preparatory conferences for early September and ordered submissions from the Parties to be filed prior to those hearings, with a view to starting the trial as soon as practicable.⁵⁷ Against this background, the Panel is not persuaded by the argument of Mr Gucati that the absence of a start date for the trial and the dates as currently set for the preparatory

⁵⁴ Selimi Appeal Decision, para. 79.

⁵⁵ SCCC 22 May 2020 Judgment, para. 63.

⁵⁶ Second Detention Decision, para. 46; Third Detention Decision, para. 41; Fourth Detention Decision, para. 28; Fifth Detention Decision, paras 29-30.

⁵⁷ F00267, Trial Panel II, *Order for Submissions and Scheduling the Trial Preparation Conference*, 21 July 2021.

conferences cause any delays in the present proceedings, still less delays that would render his detention unreasonable.

31. The Panel is also not persuaded by Mr Gucati's submission that the application for the recusal of the President and the Presiding Judge of the Panel would cause delays rendering detention unreasonable. In fact, the Panel observes that the President has already dismissed the aforementioned application as well as a request for reconsideration in this regard.⁵⁸

32. In light of these developments, as well as the fact that there are continuing risks of obstructing the proceedings and committing offences either in repetition of those charged or which Mr Gucati has previously threatened to commit, neither of which can be sufficiently mitigated by the application of reasonable alternative measures, the Panel finds that Mr Gucati's detention for a further two months is necessary and reasonable in the specific circumstances of the case.

⁵⁸ F00272, President, *Decision on the Application for Recusal or Disqualification*, 6 August 2021; F00278, President, *Decision on the Request for Reconsideration of the Decision on Recusal or Disqualification*, 20 August 2021.

V. DISPOSITION

33. For the above-mentioned reasons, the Panel hereby:

- a. **ORDERS** Mr Gucati's continued detention;
- b. **ORDERS** the SPO to file submissions on the next review of Mr Gucati's detention by **Friday, 8 October 2021**; and
- c. **ORDERS** Mr Gucati to respond to the SPO submissions, if he so wishes, by **Friday, 15 October 2021**.



Judge Charles L. Smith, III

Presiding Judge

Dated this Monday, 23 August 2021
At The Hague, the Netherlands