



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: **Trial Panel II**
Judge Charles L. Smith, III, Presiding Judge
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon
Filing Participant: Specialist Prosecutor
Date: 8 October 2021
Language: English
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Prosecution consolidated submissions 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. The established reasons for detention all continue to exist.¹ With the trial now commenced, the Article 41(6)(b) risks justifying detention² are at their highest point and no conditions can sufficiently mitigate them.
2. The Trial Panel previously found: (i) a grounded suspicion that the Accused committed offences against the administration of justice within the jurisdiction of the Specialist Chambers ('KSC');³ (ii) articulable grounds to believe that Mr Haradinaj constitutes a flight risk⁴ and that both Accused will obstruct the progress of criminal proceedings and will repeat or attempt to repeat the criminal offences;⁵ (iii) that the release conditions proposed by the Accused insufficiently mitigated the Article 41(6)(b) risks;⁶ and (iv) that continued detention remained proportionate.⁷ In the

¹ 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; 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'). See also *Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA008/F00004/RED, 1 October 2021, paras 13-16. All references to 'Article' or 'Articles' herein refer to articles of the Law, unless otherwise specified.

² Decision on Review of Detention of Hysni Gucati, KSC-BC-2020-07/F00279, 23 August 2021 ('August 2021 Gucati Decision'); Decision on Review of Detention of Nasim Haradinaj, KSC-BC-2020-07/F00280, 23 August 2021 ('August 2021 Haradinaj Decision'). See also Decision on Review of Detention of Hysni Gucati, KSC-BC-2020-07/F00245, 23 June 2021; Decision on Review of Detention of Nasim Haradinaj, 23 June 2021, KSC-BC-2020-07/F00246.

³ August 2021 Gucati Review Decision, KSC-BC-2020-07/F00279, paras 13-15; August 2021 Haradinaj Review Decision, KSC-BC-2020-07/F00280, paras 16-18.

⁴ August 2021 Haradinaj Review Decision, KSC-BC-2020-07/F00280, paras 21-24. See also August 2021 Gucati Review Decision, KSC-BC-2020-07/F00279, paras 17-18.

⁵ August 2021 Gucati Review Decision, KSC-BC-2020-07/F00279, paras 19-23; August 2021 Haradinaj Review Decision, KSC-BC-2020-07/F00280, paras 25-29.

⁶ August 2021 Gucati Review Decision, KSC-BC-2020-07/F00279, paras 25-28; August 2021 Haradinaj Review Decision, KSC-BC-2020-07/F00280, paras 31-36.

⁷ August 2021 Gucati Review Decision, KSC-BC-2020-07/F00279, paras 29-32; August 2021 Haradinaj Review Decision, KSC-BC-2020-07/F00280, paras 37-39.

specific circumstances of this case, detention remains warranted for the same reasons previously justifying these findings.

3. The network of KLA war veterans remains ready and willing to obstruct the proceedings. Faton Klinaku, a named associate in the Indictment and acting chairman of the KLA War Veterans' Association, continues to claim that the KSC is illegitimate⁸ after promising to distribute the KSC's confidential information if given the opportunity.⁹ For Klinaku to persist in such remarks is revealing of the lengths the supporters of the Accused will go to destabilise the KSC. Contextual considerations of this kind remain relevant in a detention assessment.¹⁰

4. 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.¹¹ The Accused are facing charges which include sentences of up to 10 years.¹²

5. That this trial is moving expeditiously is clear. A significant percentage of the SPO's exhibits have been admitted before trial.¹³ An additional witness has been

⁸ Annex 1.3 to Prosecution challenges to disclosure of items in updated Rule 102(3) Notice, KSC-BC-2020-07/F00316/A01, 17 September 2021.

⁹ Annex 1 to Prosecution consolidated submissions for review of detention, KSC-BC-2020-07/F00273/A01, 10 August 2021 (on 12 June 2021: '[t]o the Specialist Prosecutor's Office in The Hague: I am surprised by your amateurism. We have not published and we cannot publish anything. We have offered them to the media for publication and will offer it to them again. We will not keep your scandals secret because we're under no obligation to do so'); Annex 1 to Prosecution consolidated submissions for review of detention, KSC-BC-2020-07/F00228/A01, 11 June 2021 (on 4 June 2021: '[a]s we have been against this Court, we will make public any material we receive that is in everybody's interest').

¹⁰ See *Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA002/F00005/RED, 30 April 2021, para.62.

¹¹ 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, ICC-01/05-01/13-969, 29 May 2015, para.45.

¹² Article 387 of Code No.06/L-074, Criminal Code of the Republic of Kosovo, 14 January 2019 (charged in Count 3).

¹³ Decision on the Prosecution Request for Admission of Items Through the Bar Table, KSC-BC-2020-07/F00334, 29 September 2021.

added.¹⁴ Most importantly, the trial has commenced and evidence presentation is underway. With the opening statements and onward progress of the trial, the Accused know with greater precision than ever before what evidence will be used against them. This unfolding evidence increases the Article 41(6)(b) risks.¹⁵

6. Nothing indicates that detention thus far is or is approaching being unreasonable. This trial is expected to be a short one, such that significant further detention will not be necessary in order to resolve the charges against the Accused. There have not been any unjustified delays, and the rights of the Accused have been fully respected. Detention therefore remains proportionate.

7. For the reasons above, and noting the previous findings of the Trial Panel, the detention of the Accused must be extended.

Word count: 1014



Jack Smith

Specialist Prosecutor

Friday, 8 October 2021

At The Hague, the Netherlands

¹⁴ Transcript, 8 September 2021, p.707.

¹⁵ See generally ICTY, *Prosecutor v. Milutinović et al.*, IT-05-87-AR65.2, Decision on Interlocutory Appeal of Denial of Provisional Release During the Winter Recess, 14 December 2006, para.15.