



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:** 22 October 2021

**Language:** English

**Classification:** **Public**

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**Decision on Review of Detention of Hysni Gucati**

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**TRIAL PANEL II**, 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" or "the Accused") 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").<sup>1</sup>
2. On 27 October 2020, the Single Judge rejected Mr Gucati's application for bail,<sup>2</sup> which was upheld by the Court of Appeals Panel.<sup>3</sup> The Pre-Trial Judge reviewed and extended Mr Gucati's detention at regular intervals, namely on 24 December 2020, 24 February, 23 April and 23 June 2021.<sup>4</sup>
3. On 16 July 2021, the Pre-Trial Judge transmitted the case to Trial Panel II ("Panel").<sup>5</sup>

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<sup>1</sup> 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.

<sup>2</sup> F00059, Single Judge, *Decision on Application for Bail ("First Detention Decision")*, 27 October 2020.

<sup>3</sup> IA001/F00005, Court of Appeals Panel, *Decision on Hysni Gucati's Appeal on Matters Related to the Arrest and Detention*, 9 December 2020, para. 78.

<sup>4</sup> 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.

<sup>5</sup> F00265, Pre-Trial Judge, *Decision Transmitting Case File to Trial Panel II*, 16 July 2021.

4. On 23 August 2021, the Panel reviewed and extended Mr Gucati's detention ("Sixth Detention Decision").<sup>6</sup>

5. On 8 October 2021, the SPO filed its consolidated submissions for review of detention ("SPO Submission").<sup>7</sup>

6. On 15 October 2021, the Defence for Mr Gucati ("Defence") responded to the SPO Submission ("Gucati Submission").<sup>8</sup>

## II. SUBMISSIONS

7. The SPO submits that the continued detention of Mr Gucati remains necessary as the reasons for detention all continue to exist, the Article 41(6)(b) risks are at their highest point with the commencement of the trial, and no conditions can sufficiently mitigate them.<sup>9</sup> The SPO asserts that the network of the Kosovo Liberation Army War Veterans' Association ("KLA WVA") remains ready and willing to obstruct the proceedings, that its acting chairman continues to claim the illegitimacy of the Specialist Chambers ("SC"), and that he has promised to distribute confidential information from the SC if given the opportunity.<sup>10</sup> The SPO avers that the Panel's previous finding that there was grounded suspicion that Mr Gucati committed offences against the administration of justice within the SC's jurisdiction continues to be true, and justifies continued detention.<sup>11</sup> The SPO concludes that the detention of the Accused must be extended.<sup>12</sup>

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<sup>6</sup> F00279, Panel, *Decision on Review of Detention of Hysni Gucati* ("Sixth Detention Decision"), 23 August 2021.

<sup>7</sup> F00356, Specialist Prosecutor, *Prosecution Consolidated Submissions for Review of Detention* ("SPO Submission"), 8 October 2021.

<sup>8</sup> F00375, Gucati Defence, *Submissions on the Sixth Review of Detention* ("Gucati Submission"), 15 October 2021.

<sup>9</sup> SPO Submission, paras 1-2.

<sup>10</sup> SPO Submission, para. 3.

<sup>11</sup> SPO Submission, para. 2.

<sup>12</sup> SPO Submission, para. 7.

8. The Defence responds that Mr Gucati should be released immediately, with or without conditions.<sup>13</sup> It submits that the circumstances warranting detention no longer exist.<sup>14</sup> The Defence contends that the SPO cannot prove the offences alleged at trial due to, *inter alia*, its reliance on unreliable hearsay evidence and the fact that such evidence cannot be tested in cross-examination against undisclosed batches of documents, since the SPO withheld the documents.<sup>15</sup> The Defence argues that, the decision of the Trial Panel to order the SPO to file updated Rule 102(3) notices constitutes a new circumstance, because, had SPO disclosure taken place earlier, the proceedings may have progressed sooner.<sup>16</sup> The Defence submits that, as a result, Mr Gucati's continued detention can no longer be considered to be necessary and proportionate.<sup>17</sup> The Defence reiterates that Mr Gucati has strong family and community ties to his hometown, and recalls previous findings that risk of flight can be mitigated.<sup>18</sup> The Defence reminds the Panel of Mr Gucati's good character, emphasising that he has been compliant throughout his arrest and detention.<sup>19</sup> In addition to conditions of release that it has previously proposed, the Defence requests the Panel to: (i) consider releasing Mr Gucati under the same conditions as those proposed in another SC case ("Proposed Conditions");<sup>20</sup> and (ii) make enquiries to the Kosovo Police into the enforceability of the Proposed Conditions.<sup>21</sup>

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<sup>13</sup> Gucati Submission, para. 19.

<sup>14</sup> Gucati Submission, paras 6, 9-10.

<sup>15</sup> Gucati Submission, para. 10.

<sup>16</sup> Gucati Submission, para. 11.

<sup>17</sup> Gucati Submission, para. 12.

<sup>18</sup> Gucati Submission, paras 14, 17.

<sup>19</sup> Gucati Submission, para. 17.

<sup>20</sup> Gucati Submission, para. 13 referring to KSC-BC-2020-06, F00341/RED, *Public Redacted Version of Veseli Defence Submissions on Detention Review with Confidential Annexes A to C (F00341 dated 4 June 2021)* ("KSC-BC-2020-06 Veseli Submission"), 25 June 2021, para. 36.

<sup>21</sup> Gucati Submission, para. 13 referring to KSC-BC-2020-06 Veseli Submission, 25 June 2021, para. 36.

### 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 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.<sup>22</sup>

12. While not required to make findings on the factors already decided upon in the initial ruling on detention, the Panel must examine these reasons or circumstances and determine whether they still exist to satisfy itself that, at the time of the review decision, grounds for continued detention still exist.<sup>23</sup> To do so, the Panel shall, *proprio motu*, assess whether it is still satisfied that, at the time of the review and under the specific circumstances of the case when the review takes place, the detention of the Accused remains warranted.<sup>24</sup>

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<sup>22</sup> See also IA002-F00005, Court of Appeals Panel, *Decision on Nasim Haradinaj's Appeal on Decision Reviewing Detention* ("Haradinaj Appeal Detention Review Decision"), 9 February 2021, para. 55.

<sup>23</sup> Haradinaj Appeal Detention Review Decision, para. 55.

<sup>24</sup> KSC-BC-2020-06, IA008-F00004, Court of Appeals Panel, *Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Review of Detention* ("Veseli Appeals Detention Review Decision"), 1 October 2021, para. 14.

#### IV. DISCUSSION

13. At the outset, the Panel recalls that any analysis of continued detention must accept the presumption of innocence as its starting point.<sup>25</sup> Detention cannot be maintained lightly and the burden to demonstrate that detention is necessary is on the SPO.<sup>26</sup> It is not incumbent upon Mr Gucati to demonstrate the existence of reasons warranting his release.<sup>27</sup>

##### A. GROUNDED SUSPICION

14. 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 recalls 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. It is further recalled that the “well-grounded suspicion” threshold for the confirmation of the indictment is necessarily higher than the “grounded suspicion” required for continued detention.<sup>28</sup>

15. The Panel notes in this regard that the Defence’s submissions on the SPO’s inability to prove the alleged offences at trial merely reflect the Defence’s position on the weight of SPO evidence. As such, they do not support a conclusion that

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<sup>25</sup> Sixth Detention Decision, para. 12. *See also*, 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.

<sup>26</sup> Sixth Detention Decision, para. 12; Thaçi Appeal Decision, para. 17.

<sup>27</sup> Sixth Detention Decision, para. 12; 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.

<sup>28</sup> Sixth Detention Decision, para. 13. *See also* Veseli Appeal Detention Review Decision, para. 21; F00074/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on the Confirmation of the Indictment (“Confirmation Decision”)*, 11 December 2020, para. 28..

either of the above thresholds is no longer fulfilled. The full evaluation of the evidence admitted at trial takes place at the conclusion of trial, when the Panel assesses what weight to give to that evidence and whether the SPO has discharged its burden of proof as to the allegations contained in the indictment.<sup>29</sup> As regard the Defence's allegation that SPO evidence cannot be tested in cross-examination against documents which the SPO has withheld, the Panel observes that this concerns the Accused's right to confrontation, which is being addressed by the Panel on an ongoing basis.<sup>30</sup> In any event, this does not negate the grounded suspicion that Mr Gucati committed an offence within the jurisdiction of the SC.

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

## B. NECESSITY OF DETENTION

17. 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.<sup>31</sup> These grounds must be "articulable" in the sense that they must be specified in detail by reference to the relevant information or evidence.<sup>32</sup> The SPO must accordingly demonstrate the existence of either of these risks against the threshold of articulable grounds to believe.<sup>33</sup> A Panel must provide specific

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<sup>29</sup> Sixth Detention Decision, para. 14. *See also* SCCC 26 April 2017 Judgment, para. 201.

<sup>30</sup> *See e.g.*, F00334, Panel, *Decision on the Prosecution Request for Admission of Items Through the Bar Table*, 29 September 2021, paras 15, 20, 53-54, 56-57, 90, 93-94; Oral Order on the Admissibility of Certain Exhibits, Transcript, 19 October 2021, pp. 937-939.

<sup>31</sup> Sixth Detention Decision, para. 16. *See also* 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.

<sup>32</sup> Sixth Detention Decision, para. 16. *See also* 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"; *Thaçi Appeal Decision*, para. 23.

<sup>33</sup> Sixth Detention Decision, para. 16. *See also* KSC-BC-2020-05, F00127, Trial Panel I, *Fourth Decision on Review of Detention*, 25 May 2021, para. 15.

reasoning and rely on concrete grounds when authorising continued detention.<sup>34</sup> 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.<sup>35</sup>

18. The Panel observes that the SPO confines its submissions on the Article 41(6)(b) risks to recalling the findings of the Sixth Detention Decision and to asserting that "[i]n the specific circumstances of this case, detention remains warranted for the same reasons previously justifying these findings".<sup>36</sup> The Panel cautions the SPO that such general assertion might not satisfy the SPO's burden to demonstrate that there are articulable grounds to believe that such risks "still" exist. The SPO is obliged to provide at each review of detention detailed, up-to-date and concrete information or evidence that will satisfy the requirement of articulable grounds at the time relevant to the decision to be made by the Panel. The Panel will nonetheless assess, *proprio motu*, whether its Sixth Detention Decision findings on Article 41(6)(b) risks remain accurate in the present circumstances of the case.

### **1. Risk of Flight**

19. The Panel observes that the SPO makes no submissions on Mr Gucati's flight risk. The Panel remains satisfied that any potential risk of Mr Gucati fleeing could be sufficiently mitigated by a set of alternative measures.<sup>37</sup>

20. The Panel therefore finds that Mr Gucati's continued detention may not be justified on the ground of the risk of flight.

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<sup>34</sup> Sixth Detention Decision, para. 16. *See also* Thaçi Appeal Decision, para. 22.

<sup>35</sup> Sixth Detention Decision, para. 16. *See also* Thaçi Appeal Decision, para. 22.

<sup>36</sup> SPO Submission, para. 2.

<sup>37</sup> Sixth Detention Decision, para. 17. *See also* Third Detention Decision, para. 40; Fourth Detention Decision, paras 15-16; Fifth Detention Decision, paras 12-13.



## 2. Risk of Obstructing the Proceedings

21. The Panel recalls the Pre-Trial Judge's finding that there was a well-grounded suspicion, *inter alia*, that Mr Gucati: (i) intentionally participated in the unauthorised dissemination of protected information and threatened (potential) information providers;<sup>38</sup> (ii) published on repeated occasions SPO/SITF-related documents received by the KLA WVA, which contained, *inter alia*, names of (potential) information providers;<sup>39</sup> (iii) made various accusations regarding such persons for having allegedly interacted with the SITF/SPO;<sup>40</sup> and (iv) vowed to continue to publish such information in the future,<sup>41</sup> despite being ordered by the Single Judge to refrain from doing so.<sup>42</sup> As noted, any analysis of continued detention must take as a starting point the Accused's presumption of innocence. The Panel nevertheless takes into consideration these findings when determining whether there are articulable grounds to believe that Mr Gucati's release poses a risk of obstructing the present proceedings.

22. Furthermore, the Panel observes that Mr Gucati, by virtue of the commencement of the evidentiary hearing in the SPO case, is increasingly aware of the details of the SPO case and incriminating evidence, including confidential information received through the disclosure process. The Panel confirms its finding that, as head of the KLA WVA, Mr Gucati, if released, would have the means to disseminate information received through the disclosure process or any

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<sup>38</sup> Confirmation Decision, paras 100, 102-103, 105, 108-109, 111-113, 115-117.

<sup>39</sup> Confirmation Decision, paras 101, 106.

<sup>40</sup> Confirmation Decision, paras 111, 115.

<sup>41</sup> Confirmation Decision, para. 102.

<sup>42</sup> 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.

other protected material he may obtain once released by communicating with the media or with the assistance of others within the KLA WVA.<sup>43</sup>

23. The Panel considers that these observations, assessed together with the Pre-Trial Judge's findings summarised above, lead to the conclusion that there is a risk that Mr Gucati, if released, would disseminate confidential information which, in turn, would risk obstructing the conduct of the present proceedings. As the Panel has previously held,<sup>44</sup> it does not consider that the Defence's submissions regarding Mr Gucati's good character and compliant conduct during his arrest and detention,<sup>45</sup> have any bearing on the Accused's willingness or capability (or absence thereof) to disseminate such information.

24. In light of the foregoing, the Panel finds that there remain 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.

### **3. Risk of Committing Offences**

25. Considering the above findings regarding the risk of obstructing the proceedings and, more specifically, Mr Gucati's past conduct, including his vow to continue to publish SITF/SPO-related information, the Panel finds that there remain 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. The Panel reiterates that this finding, based on the threshold

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<sup>43</sup> Sixth Detention Decision, paras 20-21. *See also* First Detention Decision, para. 17; Fifth Detention Decision, para. 17. *See also* in this regard SPO Submission, Annex 1.

<sup>44</sup> Sixth Detention Review, para. 21.

<sup>45</sup> Gucati Submission, para. 17; F00270/COR, Gucati Defence, *Corrected Version of Submissions on the Fifth Review of Detention*, 5 August 2021, para. 14.

of articulable grounds to believe, is without prejudice to the determination it will make in relation to the charges after having heard and assessed all relevant evidence and arguments put forth by the Parties at trial.<sup>46</sup>

#### 4. Conclusion

26. 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 now assess whether the application of alternative measures can adequately address these risks.

#### C. MEASURES ALTERNATIVE TO DETENTION

27. Article 41(12) of the Law sets out a number of options to consider in order to ensure the Accused's presence at trial, to prevent reoffending, or to ensure successful conduct of proceedings.<sup>47</sup> 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.<sup>48</sup> The Panel must therefore consider *proprio motu* all reasonable alternative measures that could be imposed and not only those raised by the Defence or the SPO.<sup>49</sup>

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<sup>46</sup> Sixth Detention Decision, para. 23.

<sup>47</sup> Article 41(12) of the Law; *Sixth Detention Decision*, para. 25.

<sup>48</sup> Sixth Detention Decision, para. 25. See also 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 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*.

<sup>49</sup> 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.

28. While the SPO makes no new submissions on proposed alternative measures, the Defence requests the Panel to consider, in addition to the conditions it previously proposed, granting Mr Gucati's release on the Proposed Conditions.<sup>50</sup> The Panel shall consider whether any measures, either those previously proposed or the new Proposed Conditions, could mitigate the aforementioned risks.

29. The Panel will first address the measures previously proposed. The Panel recalls its previous 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. The Panel found in the Sixth Detention Decision 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 Panel also found that it was only through the communication monitoring framework applicable at the SC's detention facilities that Mr Gucati's communications could be effectively controlled. The Panel further noted 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.<sup>51</sup>

30. With one qualification, the Panel considers that the above findings, relating to the alternative measures previously proposed by the Defence or *proprio motu* envisaged by the Panel, still stand in the present conditions. The qualification is that, as the Court of Appeals Panel has held, when assessing: (i) whether alternative measures can be effectively enforced and (ii) whether any proposed

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<sup>50</sup> Gucati Submission, para. 13.

<sup>51</sup> Sixth Detention Decision, paras 25, 27. *See also* Fifth Detention Decision, paras 23, 25.

conditions can sufficiently mitigate the identified Article 41(6)(b) risks, the competent Panel must enquire into the enforceability of the alternative measures.<sup>52</sup>

31. Consistent with this holding, the Panel will ask the Kosovo Police, by way of a separate order, to provide information regarding: (i) its authority and capability to restrict the movements of individuals subject to temporary release, monitor and restrict such individuals' communications, administer house arrest and ensure the equivalent of the aforementioned measures during hospitalisation; (ii) the enforceability of the aforementioned measures attaching to temporary release; and (iii) previous instances of enforcing such measures attaching to the temporary release of persons accused of offences against the administration of justice.

32. In addition, the Panel will also ask the Registry, in a separate order, to provide submissions on: (i) its approach to restrictions on visits and communications at the SC's detentions facilities; (ii) all restrictions relating to visits, telephone conversations and correspondence at the SC's detention facilities and related urgent security measures; (iii) any other relevant aspects of the security environment or detention regime at the SC's detention facilities that may have an impact on visits, telephone conversations and correspondence; and (iv) any other matter relevant to the detention regime pertaining to the Accused at the SC's detention facilities.

33. Upon receipt of the above information, the Panel will assess the enforceability of the Proposed Conditions, in comparison with the regime at the SC's detention facilities.

34. In light of the foregoing, the Panel finds that, for the time being, 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. Pending the submission of

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<sup>52</sup> Veseli Appeals Detention Review Detention, paras 48-53.

information from the Kosovo Police and the Registrar, 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. The Panel clarifies that this finding is without prejudice to the assessment it will carry out upon receipt of the information from the Kosovo Police and the Registry.

#### D. REASONABLENESS OF DETENTION

35. 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.<sup>53</sup> The Panel is accordingly under an obligation to ensure that the time spent in detention is reasonable, including during trial.<sup>54</sup>

36. The Panel observes that Mr Gucati has been in detention for almost thirteen months since his arrest. In this regard, the Panel notes the Defence's argument that the SPO updated Rule 102(3) notices hindered the pace of the proceedings, thereby rendering the continued detention of Mr Gucati no longer necessary or proportionate.<sup>55</sup> While the Panel accepts that the updated Rule 102(3) notices caused some procedural difficulties, the Panel is not persuaded that they result in any significant delays or rendered the detention of Mr Gucati disproportionate or unnecessary. To the contrary, significant developments occurred in the case during the time that Mr Gucati spent in detention including, *inter alia*, steps taken for the preparation of the case for trial;<sup>56</sup> the transmission of the case file to the

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<sup>53</sup> Selimi Appeal Decision, para. 79.

<sup>54</sup> SCCC 22 May 2020 Judgment, para. 63.

<sup>55</sup> Gucati Submission, para. 11.

<sup>56</sup> Sixth Detention Decision, para. 30. *See also* Second Detention Decision, para. 46; Third Detention Decision, para. 41; Fourth Detention Decision, para. 28; Fifth Detention Decision, paras 29-30.

Panel in mid-July;<sup>57</sup> the Trial and SPO Preparation Conferences in September;<sup>58</sup> the presentation of the SPO's opening statements early October;<sup>59</sup> and on this week of 18 October 2021, the completion of the direct examination of the SPO first witness and the beginning of the Defence cross-examination.<sup>60</sup> Considering these substantial advancements in the proceedings, the Panel does not consider that the impugned updated Rule 102(3) notices impacted the proceedings to an extent that would render Mr Gucati's detention unreasonable or disproportionate.

37. In light of these significant developments and the 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 at this stage, the Panel finds that Mr Gucati's continued detention is necessary and reasonable in the specific circumstances of the case.

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<sup>57</sup> Sixth Detention Decision, para. 4; F00265, Pre-Trial Judge, *Decision Transmitting Case File to Trial Panel II*, 16 July 2021, public.

<sup>58</sup> F00267, Panel, *Order for Submissions and Scheduling the Trial Preparation Conference*, 21 July 2021; F00297, Panel, *Order on the Agenda for the Specialist Prosecutor's Conference*, 6 September 2021. See also Sixth Detention Decision, para. 5; Transcripts, 1-2 September 2021; Transcript, 8 September 2021.

<sup>59</sup> Transcript, 7 October 2021.

<sup>60</sup> Transcripts, 18-21 October 2021.

**V. DISPOSITION**

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

**ORDERS** Mr Gucati's continued detention until its decision following the receipt of information from the Kosovo Police and the Registrar.



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**Judge Charles L. Smith, III**

**Presiding Judge**

Dated this Friday, 22 October 2021  
At The Hague, the Netherlands