



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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**Order to the Registrar to Provide Information on the Detention Regime**

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**Specialist Prosecutor**

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**Counsel for 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 Rules 57(2), 116(1) and (4)(d) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this order.

## I. PROCEDURAL BACKGROUND

1. On 25 September 2020, Hysni Gucati ("Mr Gucati") and Nasim Haradinaj (collectively, "the Accused") 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 the Accused's requests for interim release.<sup>2</sup> The Pre-Trial Judge then reviewed and extended their detention at regular intervals, namely on 24 December 2020, 24 February, 23 April and 23 June 2021.<sup>3</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> F00058, Single Judge, *Decision on Request for Immediate Release of Nasim Haradinaj*, 27 October 2020; F00059, Single Judge, *Decision on Application for Bail*, 27 October 2020.

<sup>3</sup> F00093, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati*, 24 December 2020; F00094, Pre-Trial Judge, *Decision on Review of Detention of Nasim Haradinaj*, 24 December 2020; F00143, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati*, 24 February 2021; F00144, Pre-Trial Judge, *Decision on Review of Detention of Nasim Haradinaj*, 24 February 2021; F00188, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati*, 23 April 2021; F00189/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on Review of Detention of Nasim Haradinaj*, 23 April 2021; F00245, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati*, 23 June 2021; F00246, Pre-Trial Judge, *Decision on Review of Detention of Nasim Haradinaj*, 23 June 2021.

3. On 16 July 2021, the Pre-Trial Judge transmitted the case to Trial Panel II (“Panel”).<sup>4</sup> The Panel then reviewed and extended the detention of the Accused on 23 August 2021.<sup>5</sup>

4. On 15 October 2021, the Defence for Mr Gucati requested that Mr Gucati be released by the Panel under a series of proposed conditions involving the Kosovo Police (“Proposed Conditions”).<sup>6</sup>

5. On 22 October 2021, the Panel ordered the continued detention of Mr Gucati and Mr Haradinaj, noting that it will seek information from the Kosovo Police regarding the enforceability of the Proposed Conditions in relation to both Accused and will review their detention again upon receipt of that information.<sup>7</sup>

## II. SUBMISSIONS

6. The Defence for Mr Gucati requests that Mr Gucati be released under the following conditions: (i) that Mr Gucati be placed under house arrest at his residential address, and that a member of the Kosovo Police Force supervise those entering or leaving that address at all times (either in person or remotely with the use of a CCTV camera); (ii) that Mr Gucati be prohibited from leaving his residential address at any time, except in case of medical or other emergency, in which case he will remain in the physical custody of a police officer at all times, until his return; (iii) that no telephones, telecommunications devices or internet-enabled equipment be permitted inside the residential address at any time; (iv) that Mr Gucati’s residential address be searched in advance of his arrival for

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<sup>4</sup> F00265, Pre-Trial Judge, *Decision Transmitting Case File to Trial Panel II*, 16 July 2021.

<sup>5</sup> F00279, Panel, *Decision on Review of Detention of Hysni Gucati* (“Sixth Detention Decision”), 23 August 2021; F00280, Panel, *Decision on Review of Detention of Nasim Haradinaj* (“Sixth Detention Decision”), 23 August 2021.

<sup>6</sup> F00375, Gucati Defence, *Submissions on the Sixth Review of Detention* (“Gucati Submission”), 15 October 2021, para. 13.

<sup>7</sup> F00390, Panel, *Decision on Review of Detention of Hysni Gucati*, 22 October 2021; F00391, Panel, *Decision on Review of Detention of Nasim Haradinaj*, 22 October 2021

any hidden telephones, telecommunications devices or internet-enabled equipment. The property will be searched again upon his entry, and thereafter on a random basis; (v) that the only persons permitted to enter the residential address, apart from Mr Gucati's immediate family (wife and children) and police officers, will be persons whose names appear on a pre-approved list of family members and other persons entitled to visit him at his place of residence with the advance approval of the Panel. Access will be denied to any person who is not verified as being on the pre-approved list of approved visitors; (vi) that visits of the aforementioned pre-approved persons to Mr Gucati's residential address be coordinated in advance by way of notice to the KPF; (vii) that any person entering the house be required to surrender telephones, telecommunications devices or internet-enabled equipment prior to entering the property; (viii) that any person (including family members) entering the property consents to the subsequent monitoring of their telephones, telecommunications devices or internet-enabled equipment for the duration of Mr Gucati's period of interim release; (ix) that any person entering or leaving the property be searched for the possession of any telephones, telecommunications devices or internet-enabled equipment, written message or other document; (x) that the KPF perform random checks of Mr Gucati's residential address in order to verify whether Mr Gucati, his family members and/or those visiting him are abiding by the above-mentioned terms and conditions of release and, in particular, do not have any telephones, telecommunications devices or internet-enabled equipment at the said residential address; (xi) that the KPF notify the Registry immediately if Mr Gucati or any of his family members or those visiting him at his place of residence be found to have violated the aforementioned terms and conditions of release.<sup>8</sup>

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<sup>8</sup> Gucati Submission, para. 13.

### III. APPLICABLE LAW

7. 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.

8. 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.

### IV. DISCUSSION

9. Having regard to Proposed Conditions and without prejudice to any determination to be made by the Panel on the Accused's conditions of detention, the Panel orders the Registrar to provide submissions, in a confidential filing, on: (i) its approach to restrictions on visits and communications at the SC's detentions facilities, such as ensuring safety, security, or good order in the detention facilities, preventing disorder or crime, protecting health, or protecting the safety, security, rights, or freedoms of others (notably of witnesses and victims); (ii) all applicable and additional restrictions, including the monitoring regime, 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, including the enforceability of applicable and additional restrictions during any hospitalisation or admission into medical facilities of the Accused.

## V. DISPOSITION

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

**ORDERS** the Registrar to provide the submissions detailed in paragraph 9 of the present Order by no later than **26 November 2021**.



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**Judge Charles L. Smith, III**

**Presiding Judge**

Dated this Friday, 22 October 2021

At The Hague, the Netherlands