



**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:** 28 January 2022

**Language:** English

**Classification:** Public

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**Corrected Version of the  
Order Varying the Time Limit for Submissions for the Next Detention Review**

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**Specialist Prosecutor**

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**TRIAL PANEL II** (“Panel”), pursuant to Article 41(10) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 9(5)(a) and 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this order.

## **I. PROCEDURAL BACKGROUND**

1. On 21 December 2021, the Panel rendered its decisions on the eighth review of detention of Hysni Gucati and Nasim Haradinaj (the “Accused”).<sup>1</sup> In both decisions, the Panel ordered the SPO to make submissions on the next review of detention of the Accused by 7 February 2022 and the Defence to respond, if it so wishes, by 14 February 2022.<sup>2</sup>
2. On 31 December 2021, the Defence for Nasim Haradinaj (“Haradinaj Defence”) appealed the decision of the Panel.<sup>3</sup>
3. The Defence for Hysni Gucati (“Gucati Defence”) did not submit an interlocutory appeal.
4. On 14 January 2022, the SPO and the Haradinaj Defence requested the Panel to render its next review of detention ten days after the ruling of the Court of Appeals Panel.<sup>4</sup> The Gucati Defence indicated that they would be satisfied with the amended schedule.<sup>5</sup>

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<sup>1</sup> F00506, Panel, *Public Redacted Version of the Decision on Review of Detention of Hysni Gucati* (“Eighth Gucati Detention Decision”), 21 December 2021; F00507, Panel, *Public Redacted Version of the Decision on Review of Detention of Nasim Haradinaj* (“Eighth Haradinaj Detention Decision”), 21 December 2021.

<sup>2</sup> Eighth Gucati Detention Decision, para. 95; Eighth Haradinaj Detention Decision, para. 93 (12).

<sup>3</sup> IA007-F00001, Haradinaj Defence, *Appeal Against Decision F00507 Denying Provisional Release of Nasim Haradinaj*, 31 December 2021, confidential.

<sup>4</sup> Transcript, 14 January 2022, pp 3083-3084.

<sup>5</sup> Transcript, 14 January 2022, p. 3084.

5. On 21 January 2022, the Panel asked clarifications from the Parties and heard their submissions.<sup>6</sup> The Gucati Defence indicated that it needed additional time to consider the matter.<sup>7</sup>

6. On 28 January 2022, the Panel heard the Gucati Defence, and the other Parties, on the issue.<sup>8</sup> The Gucati Defence put forward, and the Haradinaj Defence and the SPO agreed to, the following proposal: (i) that the review date remains, at this stage at least, 21 February 2022; (ii) that the SPO file their submissions on detention within three days of the Court of Appeals decision or at the latest by 14 February 2022; (iii) that the Defence will respond by 17 February 2022; and (iv) if there has been no Court of Appeals decision received by 13 February 2022, that any joint request to extend the review date to be submitted by 14 February 2022.<sup>9</sup>

## II. APPLICABLE LAW

7. Article 41(10) of the Law and Rule 57(2) of the Rules provide that, until a judgment is final or until release, upon the expiry of two (2) months from the last ruling on detention on remand, the Panel seized with the case shall examine whether reasons for detention on remand still exist and render a ruling by which detention on remand is extended or terminated.

8. Pursuant to Rule 9(5)(a) of the Rules, the Panel may, *proprio motu* or upon showing of good cause, extend or reduce any time limit prescribed by the Rules or set by the Panel.

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<sup>6</sup> Transcript, 21 January 2022, pp 3086-3090.

<sup>7</sup> Transcript, 21 January 2022, p. 3090.

<sup>8</sup> Provisional Transcript, 28 January 2022, pp 3375-3376.

<sup>9</sup> Provisional Transcript, 28 January 2022, p. 3375.

### III. DISCUSSION

9. The Panel notes at the outset that, in accordance with Article 41(10) of the Law, the Panel must review detention at two-month intervals “[u]ntil a judgment is final or until release”. It also provides that such review is required in order to “extend” detention. The Constitutional Court Panel has interpreted this provision as requiring that, upon the expiry of two months, the Accused be released unless the Panel decides to extend the detention for a further two months.<sup>10</sup> The Panel is keenly aware of this interpretation when seized with a request to vary the two-month interval.

10. Nonetheless, the Panel is mindful that the substance of the next review of detention, if any, and the preceding submissions by the Parties may be contingent upon the decision of the Court of Appeals Panel. In this light, the Panel understands the Parties’ endeavour to propose a variation of the timeline for submissions and to defer a future request for the variation of the two-month interval.

11. For these reasons, the Panel grants the request of the Gucati Defence as agreed with the Haradinaj Defence and the SPO, with the minor modification of taking into account the working days in February 2022.

### IV. DISPOSITION

12. In light of the foregoing, and assuming that a decision of the Court of Appeals Panel is rendered and notified by 11 February 2022, the Panel:

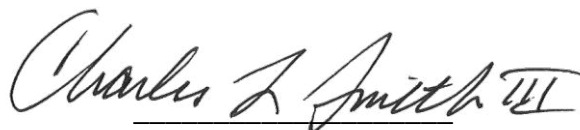
- a. **VARIES** the time limits for the Parties’ submissions set out in the last decisions on the review of detention;

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<sup>10</sup> KSC-CC-PR-2020-09/F00006, Constitutional Court Panel, *Judgment on the Referral of Amendments to the Rules of Procedure and Evidence Adopted by the Plenary on 29 and 30 April 2020, 22 May 2020*, para. 66.

- b. **ORDERS** the SPO to file their submissions on detention within three days of the decision of the Court of Appeals Panel or at the latest by 14 February 2022; and
- c. **ORDERS** the Defence to respond, by **17 February 2022**, if they so wish, to the SPO submissions.

13. In the event that no decision of the Court of Appeals Panel is rendered or notified by **11 February 2022**, the Panel **ORDERS** the Parties to submit, by **14 February 2022**, a joint request or separate requests as regards any variation of the two-month interval.



**Judge Charles L. Smith, III**

**Presiding Judge**

Dated this Friday, 28 January 2022

At The Hague, the Netherlands

In paragraph 9, “Court of Appeals Panel” was changed to “Constitutional Court Panel”.

In footnote 10, “Court of Appeals Panel” was changed to “Constitutional Court Panel”.