

1 Tuesday, 5 July 2022

2 [Pre-Appeal Conference]

3 [Open session]

4 [The Appellant Haradinaj entered court]

5 [The Appellant Gucati not present]

6 --- Upon commencing at 2.00 p.m.

7 PRESIDING JUDGE PICARD: Good afternoon and welcome, everyone.

8 I am Judge Picard, Presiding Judge in this case.

9 Madam Court Officer, could you please call the case.

10 THE COURT OFFICER: Good afternoon, Your Honours. This is
11 KSC-CA-2022-01, The Specialist Prosecutor versus Hysni Gucati and
12 Nasim Haradinaj.

13 PRESIDING JUDGE PICARD: Thank you.

14 Now, I turn to the Defence, starting with counsel for
15 Mr. Gucati.

16 MR. REES: Your Honour, I appear on behalf of Mr. Gucati. I am
17 assisted by co-counsel Ms. Eleanor Stephenson, also by team member
18 Mr. Muharem Halilaj.

19 PRESIDING JUDGE PICARD: Thank you.

20 Counsel for Mr. Haradinaj.

21 MR. CADMAN: Good afternoon, Your Honour. Toby Cadman for
22 Mr. Haradinaj, joined today by Ms. Bernabeu, Mr. Berisha, and online
23 by Mr. Buckley.

24 PRESIDING JUDGE PICARD: Thank you.

25 Now I turn to the Registry.

1 MR. NILSSON: Good afternoon, Your Honour. And good afternoon,
2 colleagues. Jonas Nilsson, Head of Judicial Services Division,
3 representing Registry.

4 PRESIDING JUDGE PICARD: Thank you. I note that Mr. Haradinaj
5 is present in the courtroom, and I also note that Mr. Gucati has
6 waived his right to be present at the hearing.

7 I forgot the SPO. I'm sorry.

8 MR. HALLING: Not at all, Your Honour. Appearing for the SPO
9 today --

10 PRESIDING JUDGE PICARD: It's the first time, you know.

11 MR. HALLING: We quite understand.

12 Appearing for the SPO today is Deputy Specialist Prosecutor
13 Alex Whiting; Associate Prosecutor James Pace; Case and Evidence
14 Manager Line Pedersen; and I am Prosecutor Matt Halling. Thank you.

15 PRESIDING JUDGE PICARD: Thank you very much.

16 Before we start, I would like to recall that Judge Ambos and
17 Judge Jorgensen and myself have been assigned to the Court of Appeal
18 Panel to decide on this appeal against the trial judgement issued in
19 this case on 18 May 2022.

20 In accordance with Rule 178 of the Rules, the purpose of this
21 Pre-appeal Conference is to give the accused the opportunity to raise
22 issues in relation to their detention, including their mental and
23 physical condition. To this end, on 22 June 2022, I issued an order
24 on behalf of the Panel to convene this Pre-appeal Conference and to
25 set out the agenda to be followed during this hearing.

1 For today's session, I would like to request the parties to
2 present their submissions in a concise manner and to avoid repeating
3 written submissions on matters either pending before the Panel or
4 already disposed of. I am referring here to the SPO's request to
5 maintain the accused's detention. This matter will be decided in
6 writing.

7 I'm also referring to Mr. Haradinaj's request for an extension
8 of work for the filing of his appeal brief and to the SPO's request
9 for an order to Mr. Haradinaj to refile his Notice of Appeal. The
10 parties have already been notified of the Panel's decision on these
11 issues last Friday.

12 Likewise, the Panel has dismissed the request filed by Gucati
13 for an extension of words to refile his Notice of Appeal in a
14 decision filed earlier today. I would like to recall that we have to
15 use our time as efficiently as possible, given that this hearing must
16 be completed by the end of today.

17 I would also like to remind everyone that a few rules must be
18 observed at all times in order to make for an effective courtroom
19 process with an accurate record, bearing in mind the necessity of a
20 good translation which requires a bit of additional time sometimes
21 after you have finished speaking.

22 Please rise to ask permission to speak, and do not forget to use
23 your microphone. This hearing is transcribed in realtime and will be
24 reflected in a transcript available to the parties and to the public.

25 I remind the parties to give prior notice should any submission

1 require the disclosure of confidential information so that we can go
2 into private or closed session.

3 Hope I'm not going too fast.

4 As per the Scheduling Order setting out the agenda for today, I
5 will first hear submissions related to the accused's detention. I
6 also inform the Registrar that I would invite the submissions on the
7 progress made on the translations of the trial judgement into
8 Albanian and its expected finalisation.

9 In addition, I have a couple of subsidiary issues that I would
10 like to raise on behalf of the Panel.

11 The Panel and the parties have been notified that the Defence
12 for Mr. Haradinaj wishes to seek clarity on whether the substantive
13 appeal will be heard by way of oral or written submissions, or
14 whether the Defence will only be allowed to make written submissions.

15 The Defence team for Mr. Gucati has not informed the Panel of
16 any additional matters to be addressed today.

17 Finally, I note that the SPO does not wish to raise additional
18 issues at today's hearing. Today's hearing will be conducted in
19 compliance with this agenda.

20 Accordingly, I will invite the Defence, starting with counsel
21 for Mr. Gucati, and then counsel for Mr. Haradinaj, to raise any
22 issues related to the detention of the accused they respectively
23 represent.

24 I recall the Defence to request that we go into private session
25 should they wish to refer to any confidential information related to

1 the health or any medical condition of the accused.

2 Now, counsel for Mr. Gucati -- I see counsel for Mr. Haradinaj.

3 MR. CADMAN: Just very briefly, Your Honour. Just to say we
4 withdraw the request at this stage as premature as to whether the
5 appeal will be disposed of by way of written submissions or an oral
6 hearing. I'm not requesting that you deal with that matter today.

7 And I can address you on detention after Mr. Rees, but I'm not
8 intending to make any submissions today.

9 PRESIDING JUDGE PICARD: Thank you very much. Well, I was, in
10 fact, going to say that your requests were premature at this time.

11 Now, counsel for Mr. Gucati, you may proceed.

12 MR. REES: Your Honour, in relation to the general position on
13 custody, we have submitted a filed response to the Prosecution
14 request to maintain detention. Our position, I think, is set out
15 quite clearly in that, and I don't rehearse anything therein.

16 The only other matter that we sought to assist Your Honour with
17 today was an update in relation to Mr. Gucati's health.

18 Mr. Gucati, we understand -- and perhaps this is a matter in
19 which we should go into private session, Your Honour.

20 PRESIDING JUDGE PICARD: Okay. Let's go in private session,
21 please.

22 [Private session]

23 [Private session text removed]

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1 [Private session text removed]

11 [Open session]

12 THE COURT OFFICER: Your Honour, we are now in public session.

13 PRESIDING JUDGE PICARD: Thank you.

14 So counsel for Mr. Haradinaj has something to add about the
15 detention of Mr. Haradinaj?

16 MR. CADMAN: Only to say that the position was left open in the
17 written submissions in order to take full instructions from
18 Mr. Haradinaj. Having done that, no submissions are made in respect
19 of detention at this stage, and no issues as to health need to be
20 raised.

21 PRESIDING JUDGE PICARD: Thank you.

22 Mr. Prosecutor, do you have anything to add about that?

23 MR. HALLING: Briefly, Your Honour. Thank you.

24 Mr. Rees mentioned that the Gucati Defence filed a response to
25 our request, filing F10, to maintain the detention of the accused.

1 There is no such response in the case record, nor can we detect a gap
2 in the filing numbers where such a response would be.

3 As far as we are concerned, they are out of time to make a
4 submission on the current detention review, and we maintain our
5 submissions in filing F10 in the appellate record.

6 MR. REES: Your Honour, can I address that?

7 PRESIDING JUDGE PICARD: Yes, I believe you must address that.

8 MR. REES: No, I hope that Your Honour has seen the response.

9 PRESIDING JUDGE PICARD: No, I haven't seen the response.

10 MR. REES: Well --

11 PRESIDING JUDGE PICARD: May I ask -- do we have the response?
12 No.

13 [Trial Panel and Court Officer confers]

14 PRESIDING JUDGE PICARD: How was it sent, by e-mail or --

15 MR. REES: It was sent by e-mail to the CMU after contact with

16 *[REDACTED] Pursuant to Post-Session Redaction Order F26.. And it was
agreed that because of difficulties with*

17 *filing, and Your Honour will, I'm sure, be well aware of the various
18 disturbances and disruption in Legal Workflow in recent days.*

19 PRESIDING JUDGE PICARD: That's true, yes.

20 MR. REES: I spoke to *[REDACTED] Pursuant to Post-Session Redaction
Order F26.. It was agreed that I would*

21 *e-mail the response to him. It was e-mailed to him in time. And he
22 would ensure that the CMU, who were copied into the e-mail to*

23 *[REDACTED] Pursuant to Post-Session Redaction Order F26. would file the
response via that route. It was the*

24 *same route that was taken with the filing of the Notice of Appeal,*

25 *because, again, the difficulties with Legal Workflow at the time.*

1 The matter was filed -- well, the matter was submitted for
2 filing within time.

3 PRESIDING JUDGE PICARD: Okay. We'll check if we have that from
4 the CMU.

5 MR. REES: I can assist. In case Mr. Halling thinks there is
6 anything untoward and there is an attempt to take advantage, I can
7 assist by running through quickly what was the substance of the
8 response.

9 We noted that Article 46(8) of the Law on Specialist Chambers
10 and Specialist Prosecutor's Office provides that:

11 "Unless the Trial or Court of Appeals Panel orders otherwise, a
12 convicted person shall remain in custody pending an appeal."

13 We noted as well that there was no application we had made, to
14 either the Trial Panel or the Court of Appeals Panel, for such an
15 order. And, therefore, we took the view that the Prosecution request
16 was neither necessary nor did it, in fact, seek or require any order
17 or relief, and we made no substantive response to it.

18 The only thing we do do at this stage is, as Mr. Cadman does on
19 behalf of Mr. Haradinaj, reserve the right to make an application for
20 any such order under Article 46(8) for release from custody at any
21 stage in the appeal proceeding with or without any change in
22 circumstances, but I don't make one at this stage.

23 PRESIDING JUDGE PICARD: Okay. Thank you. So we will read it
24 and we'll take a decision, if necessary, on it.

25 MR. REES: Your Honour.

1 PRESIDING JUDGE PICARD: Nothing else for the detention? No.
2 On detention? Okay.

3 The next item on the agenda now is the progress made on the
4 translation of the trial judgement into Albanian.

5 May I ask the representative of the Registrar's Office to take
6 the floor.

7 MR. NILSSON: Thank you, Your Honour. With regard to the
8 translation of the trial judgement into Albanian, that is -- so it's
9 being done in three phases. A first unrevised translation without
10 footnotes was going to be finalised by 20 June; a second unrevised
11 translation with footnotes by 4 July; and then, finally, a revised
12 translation by 15 August.

13 So this was the schedule and that has been respected, with the
14 first unrevised translation finalised and communicated to the parties
15 through Legal Workflow on the date indicated, 20 June.

16 The second unrevised translation was completed some days ahead
17 of schedule and communicated to the parties, again, through Legal
18 Workflow on 27 June.

19 And the date for the revised translation remains 15 August.

20 Thank you.

21 PRESIDING JUDGE PICARD: Thank you. So I remind the parties
22 that 15 August is four days before the appeal briefs are due. I
23 believe it's understood, but we'll see if you need an extension of
24 time at that time.

25 Let me now move to the remaining issues in light of the decision

1 we already issued last Friday, ordering that the Defence teams refile
2 their Notices of Appeal. So I will not make lengthy comments on the
3 defects of the Notices of Appeal filed by the Defence teams, and
4 especially on the one filed on behalf of Mr. Haradinaj.

5 Let me just reiterate that the Panel strongly disapproved of the
6 failure to comply with formal requirements on appeal.

7 Now, I will turn to the issue that has been notified by the
8 Defence team for Mr. Haradinaj at this hearing, but we already spoke
9 about it at the beginning of this hearing, whether the appeal will be
10 heard by way of oral or written submission.

11 As we stated at the beginning of this hearing, this question is
12 premature. And I remind you that according to Rule 72(3) of the
13 Rules:

14 "Unless otherwise ordered by the Court of Appeals Panel, appeals
15 against a Judgement by a Trial Panel under Article 15(2) of the Law
16 shall be heard expeditiously on the basis of the case file. Such
17 appeals may be determined entirely on the basis of written
18 submissions."

19 So it may be done by written or oral, but only "may," and we'll
20 decide depending whether you request an oral hearing or not.

21 I see now -- well, I don't have any other items to raise.

22 MR. REES: It's been an efficient use of Your Honour's time.

23 PRESIDING JUDGE PICARD: Thank you. Thank you, everybody, I
24 must say.

25 Mr. Cadman.

1 MR. CADMAN: Just one quick point.

2 In your order on refiling the notice, you had said one week, and
3 then in the decision this morning in relation to Mr. Rees'
4 application you said the 12th. I just want to be certain that it is
5 12 July for both the Gucati and the Haradinaj notice to be refiled.

6 PRESIDING JUDGE PICARD: Let me think about that. I am not so
7 sure -- yes. Yes, 12th.

8 So I will adjourn the hearing now, if there is nothing else to
9 raise. Thanks to the parties and the Registry for their attendance
10 and contribution. Thanks to the interpreters, stenographers,
11 audio-visual technicians, and security personnel for their
12 assistance.

13 The hearing is adjourned.

14 --- Whereupon the hearing adjourned at 2.22 p.m.

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