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Guptas' extradition could take up to two years, says legal expert

Dutch specialist in extradition cases expects a strong challenge full of surprises

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Atul Gupta. Picture: THE SUNDAY TIMES

While the arrest of the Gupta brothers, Atul and Rajesh, in the United Arab Emirates (UAE) is a positive step in SA's fight against state capture and corruption, a legal expert says it could take up to two years to complete their extradition to SA.

The Gupta brothers are friends of former president Jacob Zuma and business partners of his son Duduzane. They are alleged to have used these associations to steal billions of rand from the government and state-owned enterprises (SOEs). The Guptas and Zumas deny all claims of breaking the law.

The Guptas fled SA soon after Zuma stepped down as head of state on February 14 2018, under political pressure from inside the ANC that he be recalled, and after growing public demonstrations against him.

The commission of inquiry into allegations of state capture, which Zuma reluctantly signed into effect after challenging it in court for

more than a year, began hearings in August 2018. Several witnesses testified about the Guptas and Zumas, and forensic experts verified the content of a hard drive with detailed evidence sourced from the Sahara Computers server.

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Dubai police arrested Atul and Rajesh on Monday June 6. They must next appear in court before a judge, which typically occurs within 24 to 48 hours of arrest.

A Dutch criminal defence attorney specialising in Interpol cases, Bob Kaarls, expects the Guptas will fight back. "I expect they will challenge the extradition, then it can really take up to one or two years," he said.

Kaarls has argued for clients disputing extradition, including from the UAE, in terms of Red Notices from global policing body Interpol.

He warned the National Prosecuting Authority (NPA) must "be on top of the case to avoid any surprises" as the next steps in the UAE process unfold.

André Thomashausen, professor emeritus of international law at Unisa, agreed. "My worry is that the NPA may not be ready."

The academic, who has worked for the UAE government, said the Guptas' arrest sends a strong message.

"The UAE has been a bit under pressure from the World Bank and many other institutions of becoming a safe haven for money launderers and people who have ill-gotten gains. It does not want to be seen as a safe haven for big international criminals," he said.

On Tuesday, Dubai police confirmed they had arrested the two brothers on Monday. Justice minister Ronald Lamola was reportedly instrumental in getting the UAE authorities to make a formal statement after news of the arrests broke on Monday night.

In addition to the high-profile Gupta arrests, the Dubai police's press release about them could signal that frosty relations between the two states are beginning to thaw.

Dubai police described the two Gupta brothers as among SA's "most wanted suspects" who are wanted "in connection with money laundering and criminal charges".

Asked to estimate when the brothers' extradition to SA would occur, Thomashausen was optimistic, provided the NPA's charge sheet is in order. "If the paperwork is in good order, including the required Arabic translations of all papers, it can be quick, one or two weeks."

Both experts highly doubted the Guptas would succeed in challenging their extradition by, for example, claiming the SA authorities were pursuing a witch-hunt, had brought an unfair trial, or were denying them their human rights.

Thomashausen said the UAE court might note that the Guptas are SA citizens and that they could raise their objections in an SA court of law.

Kaarl's was interested to see if the UAE court would grant the Guptas bail and at what price. "I think there is a serious risk of fleeing. That is what the prosecutor will probably bring up."

The criminal defence attorney, based in The Netherlands, expects the duo will lawyer up with a "serious defence" from the UAE and the UK who could tackle their case together.

"I've seen other cases in the UAE where they bombard the courts below with all kinds of requests, documentation, arguments, etcetera. The justice system there is still developing, meaning that you have to be aware that strange surprises can happen.

"Considering their background and financial means, I expect that they will try everything possible to challenge the extradition," Kaarl's said.

He knew of a few cases in the UAE where counsel, himself included, “were able to show that some things were not right with the exhibition requests, and that led to the decision not to extradite”.

Thomashaussen, however, predicted the Emirati authorities will be decisive: “I think the UAE will [...] not question what is behind the extradition papers.”

Dubai police did not indicate when the two Guptas will appear in court. An email to their media office and calls to Gupta lawyers went unanswered.

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