



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2018-01

Before: Single Judge Panel
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 24 September 2020

Language: English

Classification: Public

**Public Redacted Version of
Arrest Warrant for Hysni Gucati**

Specialist Prosecutor

Jack Smith

To be served on

Mr Hysni Gucati

I, Judge Nicolas Guillou, Single Judge of the Kosovo Specialist Chambers, assigned by the President of the Specialist Chambers pursuant to Article 33(2) of Law No. 05/L-53 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”);

Being seised of the Specialist Prosecutor’s “Urgent request for arrest warrants and related orders” dated 22 September 2020;

Pursuant to Articles 39(3) and 41(6) of the Law, Rule 53 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”) and Articles 387, 388 and 392 of the 2019 Kosovo Criminal Code, No. 06/L-074 (“Criminal Code”);

ISSUE AN ARREST WARRANT FOR

<p>HYSNI GUCATI (father’s name [REDACTED]), born on 30 March 1967 in Morinë, Skënderaj/Srbica, Kosovo, PERSONAL IDENTIFICATION NUMBER [REDACTED], last known residence in [REDACTED], Kosovo.</p>
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1. Crimes and Concise Statement of Facts

1. There is a grounded suspicion that Hysni Gucati (“Mr Gucati”) is criminally responsible for attempting to commit the offence of intimidation during criminal proceedings, pursuant to Article 387 of the Criminal Code. Specifically, there is a grounded suspicion that Mr Gucati held three press conferences on 7, 16 and 22 September 2020, where he distributed or otherwise made available to the media confidential and non-public information and documents relating to the work of the Specialist Prosecutor’s Office, and made no interventions when Nasim Haradinaj mentioned by name certain (potential) witnesses and gave information regarding their place of residence and other personal details. This conduct amounts to a serious threat or other means of compulsion to induce another person from making a statement or

to make a false statement or to otherwise fail to state true information to the Specialist Prosecutor's Office and/or the Specialist Chambers.

2. There is also a grounded suspicion that Mr Gucati is criminally responsible for committing the offence of retaliation, pursuant to Article 388 of the Criminal Code. Specifically, there is a grounded suspicion that Mr Gucati held three press conferences on 7, 16 and 22 September 2020, where he distributed or otherwise made available to the media confidential and non-public information and documents relating to the work of the Specialist Prosecutor's Office, including the names and personal details of (potential) witnesses, thus exposing these individuals to potential threats to their safety. This conduct amounts to a harmful act with the intent to retaliate for providing truthful information to the Special Investigative Task Force and/or the Specialist Prosecutor's Office relating to the alleged commission of criminal offences.

3. Further, there is a grounded suspicion that Mr Gucati is criminally responsible for committing the offence of violating the secrecy of proceedings, pursuant to Article 392 of the Criminal Code. Specifically, there is a grounded suspicion that Mr Gucati held three press conferences on 7, 16 and 22 September 2020, where he distributed or otherwise made available to the media confidential and non-public information and documents relating to the work of the Specialist Prosecutor's Office, including the names and personal details of (potential) witnesses.

4. There are articulable grounds to believe that Mr Gucati's arrest is necessary because he is at risk of flight, considering his: (i) awareness of the notification of the alleged offences contained in this arrest warrant, and the potential penalties attached to them; (ii) access to significant funds as head of the Kosovo Liberation Army War Veterans Association; (iii) reliance on a vast network of supporters which include persons with security, police and intelligence expertise; and (iv) ability to travel, both legally and illegally, to jurisdictions which have no obligation to transfer them to the Specialist Chambers.

5. There are also articulable grounds to believe that Mr Gucati's arrest is necessary because specific circumstances indicate that he has the incentive, means and opportunity to obstruct the progress of criminal proceedings, considering that: (i) he distributed confidential and non-public information and documents emanating from the Special Investigative Task Force and/or Specialist Prosecutor's Office; (ii) he indicated that he will continue to disclose confidential and non-public information and encouraged members of the media to make similar disclosures; and (iii) such disclosures have been made with explicit indifference to security risks posed to (potential) witnesses and with the aim of delegitimising the Specialist Prosecutor's Office and the Specialist Chambers, which he does not recognise.

6. Further, there are articulable grounds to believe that Mr Gucati's arrest is necessary because specific circumstances indicate that he will repeat or attempt to repeat the criminal offences, considering that he made explicit his intention to continue to make public confidential and non-public information and documents regarding (potential) witnesses and Special Investigative Task Force and/or Specialist Prosecutor's Office investigations, thereby demonstrating a continuing risk that he may threaten, intimidate, and put at risk (potential) witnesses through similar disclosures.

2. Transfer and Detention Facility

7. Pursuant to Article 41(7) of the Law and Rule 55(4) of the Rules, in case Mr Gucati is arrested in Kosovo or a Third State, he shall be transferred to the detention facilities in The Netherlands, overseen by the Specialist Chambers and managed by the Registry.

3. Mr Gucati's Rights

8. Upon arrest, Mr Gucati is entitled to the rights under Articles 21, 38(3) and 41(4) of the Law, which must be read out to him upon arrest by the Specialist Prosecutor's Office.

9. Mr Gucati shall be brought without delay before the Single Judge pursuant to Article 41(5) of the Law.

10. Upon arrest, Mr Gucati has the right to challenge, pursuant to Article 41(2) and (5) of the Law, the lawfulness of his arrest, the transfer order and the conditions of detention before the Single Judge and he has the right to appeal before the Specialist Chamber of the Court of Appeal.

4. Other Orders

11. The arrest warrant, currently classified strictly confidential *ex parte*, may be communicated, or its existence be revealed, to the suspect and other competent authorities of Kosovo or Third States, including the Host State, as necessary for the execution of the arrest warrant.

12. Considering the classification of the present arrest warrant, the Single Judge requests the competent authorities of Kosovo or any Third State, as the case may be, to refrain from disclosing the existence and contents of this arrest warrant, except to those persons whose involvement is strictly necessary for its execution and service upon Mr Gucati.

13. Should any entity, any official of the Kosovo Government, or any other person in Kosovo obstruct the execution of the present arrest warrant, this may constitute an offence pursuant to Article 15(2) of the Law.

14. Pursuant to Articles 53(3) and 54(1) of the Law, the Specialist Chambers have primacy over all other courts in Kosovo, and the present arrest warrant has the same force and effect as an order issued by any other Kosovo court.



Judge Nicolas Guillou
Single Judge

Dated this Thursday, 24 September 2020
At The Hague, the Netherlands.