



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: Single Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filed by: Dr Fidelma Donlon

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Public Redacted Version of

**'Report on the Arrest and Transfer of Hysni Gucati to the Detention Facilities',
filing KSC-BC-2020-07/F00031 dated 30 September 2020**

Specialist Prosecutor's Office

Jack Smith

Counsel for Hysni Gucati

Jonathan Elystan Rees

Duty Counsel for Nasim Haradinaj

Bastiaan Martens

1. The Registrar hereby reports to the Single Judge on the arrest and transfer of Mr Hysni Gucati ('Mr Gucati') to the Detention Facilities of the Specialist Chambers ('Detention Facilities') located in the Netherlands ('Host State').
2. This report is submitted pursuant to the strictly confidential and *ex parte* Decision on Request for Arrest Warrants and Transfer Orders ('Decision')¹, together with annexed supporting material.² The Registrar previously submitted a preliminary report pursuant to the Decision, pending the receipt of additional relevant information.³

I. ARREST

1. The arrest of Mr Gucati was executed by SPO operational security officers, accompanied by an interpreter, with logistical support from EULEX Kosovo and Kosovo police.
2. Prior to the arrest, the SPO officers and the interpreter tested negative for the novel coronavirus ('COVID-19'). SPO security officers and the interpreter wore facemasks throughout the arrest and transfer.
3. At approximately 11:15 on 25 September 2020, SPO officers, with support from EULEX Kosovo, entered the KLA War Veteran's Association ('KLA WVA') office at UCK street in Pristina, Kosovo. They knocked on the door of Mr Gucati's office before entering. The SPO arresting officer identified himself as police, confirmed Mr Gucati's identity, and then introduced himself by name and as an officer of the SPO. The arresting officer, with the assistance of an interpreter, informed Mr Gucati that he was under arrest pursuant to the relevant arrest warrant.

¹ Decision on Request for Arrest Warrants and Transfer Orders, KSC-BC-2018-01/F00128, 24 September 2020, strictly confidential and *ex parte*, paras 35, 29(f); Order for a New Case File, KSC-BC-2020-07/F0001; *see also* Detention Rule 14.

² Annex 1, Arrest-Transfer File, strictly confidential and *ex parte*.

³ Preliminary report in the arrest and transfer of Hysni Gucati pursuant to Decision KSC-BC-2018-01/F00128, 25 September 2020.

4. At 11:20, the SPO officers conducted a security search incident to arrest of Mr Gucati's person and removed personal property, which they placed in one bag, sealed, and logged under number P03119593.⁴ [REDACTED].⁵

5. The SPO arresting officer effected service of certified copies of the arrest warrant⁶ and transfer order⁷ on Mr Gucati in both English and Albanian.⁸ The arresting officer, in the presence of three other SPO officers, informed Mr Gucati of his rights in English, which were translated into Albanian by the interpreter.⁹ The SPO officer informed Mr Gucati, *inter alia*, that he has: the right to legal assistance of Specialist Counsel of his choice and to have Specialist Counsel assigned free of charge if he does not have sufficient means to pay for it; the right to notify or have notified a family member or another appropriate person of his choice about his arrest; and the right to remain silent and that any statement he makes shall be recorded and may be used in evidence. The SPO officer also provided Mr Gucati with a hardcopy of Articles 21 and 41(4) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office in English and Albanian. At 11:43, Mr Gucati confirmed with his signature that he had been provided with information about his rights.¹⁰

6. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

7. At 12:09, and subsequently at 14:44, Mr Gucati was provided with a telephone [REDACTED].¹¹

⁴ Annex 1, Transfer of Custody (SPO-Registry).

⁵ Annex 1, Transfer of Custody (SPO-Registry); Annex 1, Detainee Transport Log.

⁶ Arrest Warrant for Hysni Gucati, KSC-BC-2018-01/F00128/A01, 24 September 2020, strictly confidential and *ex parte*.

⁷ Order for Transfer to Detention Facilities of the Specialist Chambers, KSC-BD-2018-01/F00128/A02, 24 September 2020, strictly confidential and *ex parte*.

⁸ Annex 1, Memorandum of Service. Although the Memorandum of Service refers only to the Transfer Order, it is confirmed that both the Arrest Warrant and Transfer Order were served on Mr Gucati at that time. In this regard, see also Annex 1 (Information About Rights) confirming that the reasons for arrest were provided through service of the Arrest Warrant and Transfer Order.

⁹ Annex 1, Information About Rights.

¹⁰ Annex 1, Information About Rights.

¹¹ Annex 1, Transfer of Custody (SPO-Registry).

8. At approximately 13:20, the SPO officers transported Mr Gucati [REDACTED] from the KLA WVA to the point of custodial transfer [REDACTED].¹² [REDACTED]. A large crowd, including media, had gathered outside the KLA WVA and were held back by EULEX Kosovo personnel and Kosovo police as Mr Gucati exited. Mr Gucati was compliant with the SPO officers throughout the arrest and transport.

9. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].¹³ [REDACTED].¹⁴ [REDACTED].¹⁵

II. TRANSFER

10. The transfer of Mr Gucati into the custody of the Specialist Chambers was executed by the Registry's mission security coordinator ('MSC'), accompanied by the Registry's escort team. A transport log detailing the transfer process was prepared in real time by the MSC, which is annexed to this report in its original, handwritten form along with a transcription prepared and certified by the MSC.¹⁶

11. Prior to transfer, the MSC and escort team members tested negative for COVID-19.¹⁷ Throughout the transfer, the MSC and the escort team wore facemasks and gloves, and ensured that Mr Gucati was also provided with a facemask and hand sanitiser gel. Restraints and tactile surfaces in the aircraft were also cleaned prior to transfer.¹⁸

12. At 15:21, the MSC confirmed Mr Gucati's identity and signed for the transfer of custody of Mr Gucati from SPO to the Specialist Chambers.¹⁹ The MSC also signed for the transfer of one sealed bag of personal property logged under number P03119593,

¹² Annex 1, Transfer of Custody (SPO-Registry).

¹³ Annex 1, Transfer of Custody (SPO-Registry).

¹⁴ Annex 1, [REDACTED].

¹⁵ Annex 1, Detainee Transport Log.

¹⁶ Annex 1, Detainee Transport Log.

¹⁷ Annex 1, Detainee COVID Checklist (Transfer).

¹⁸ Annex 1, Detainee COVID Checklist (Transfer).

¹⁹ Annex 1, Transfer of Custody (SPO-Registry); Annex 1, Detainee Transport Log.

[REDACTED].²⁰ The MSC then explained the transfer process to Mr Gucati, after which he was security searched and photographed.²¹

13. [REDACTED].²²

14. At 16:06, the airplane departed [REDACTED].

15. At 16:15, the Registrar informed the Embassy of the Republic of Kosovo in The Hague that Mr Gucati was being transferred to the Detention Facilities in the Host State pursuant to the arrest warrant and transfer order.²³

16. While in transit, Mr Gucati was served refreshment. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].²⁴

17. [REDACTED].²⁵

18. At 18:56, the airplane landed [REDACTED].

19. At 19:03, the MSC transferred Mr Gucati [REDACTED] into the custody of the Transport and Support Service of the Netherlands ('DV&O'), along with the sealed bags of personal property, P03119593 and M01262249.²⁶

20. At 19:45, DV&O transferred Mr Gucati into the custody of the Chief Detention Officer, who received Mr Gucati into the Detention Facilities.²⁷ DV&O reported to the MSC that no incidents occurred during transport [REDACTED]. [REDACTED].

21. Upon Mr Gucati's arrival at the Detention Facilities, the Chief Detention Officer promptly notified the Registrar, who immediately informed the Single Judge²⁸ and the Head of the Defence Office in accordance with Detention Rule 10, as well as the President and the Ombudsperson. The Registrar also informed the International

²⁰ Annex 1, Transfer of Custody (SPO-Registry).

²¹ Annex 1, Detainee Transport Log; Annex 1, photographs (at point of transfer).

²² Annex 1, Detainee Transport Log.

²³ Note Verbale, Ref. NV2020/0029, 25 September 2020.

²⁴ Annex 1, Detainee Transport Log.

²⁵ Annex 1, Detainee Transport Log.

²⁶ Annex 1, Detainee Transport Log; Annex 1, Request for Transport from Airport and Transfer of Detained Person.

²⁷ Annex 1, Request for Transport from Airport and Transfer of Detained Person.

²⁸ See Notification of the Reception of Hysni Gucati in the Detention Facilities of the Specialist Chambers, KSC-BC-2018-01/F00135, 25 September 2020.

Committee of the Red Cross.²⁹ Mr Gucati was processed into the Detention Facilities in accordance with the Rules of Detention.³⁰

22. [REDACTED].³¹ [REDACTED].

23. The Chief Detention Officer conducted an arrival interview with Mr Gucati, with the assistance of an interpreter. During the arrival interview, Mr Gucati was provided with the information and documentation referenced in Detention Rule 12.3. Mr Gucati was also provided with contact information for his consular office.

24. At 21:12, the Head of the Defence Office spoke to Mr Gucati by video-conference, along with the assistance of an interpreter. The Head of the Defence Office provided Mr Gucati with information and documentation concerning the availability of legal assistance pursuant to Detention Rule 12.2 and confirmed that the Administrative Office of DMU had provided Mr Gucati with all relevant documents concerning legal aid, as well as a letter explaining his right to counsel, in both English and Albanian.³²

25. The Head of the Defence Office also informed Mr Gucati that Duty Counsel had been appointed to him by the Registrar, should he wish to consult Duty Counsel at that time. [REDACTED]. [REDACTED]. [REDACTED].

26. [REDACTED].

27. Thereafter, at 22:50, Mr Gucati was served a meal.

28. [REDACTED].

29. At 12:10, the Head of the Defence Office spoke to Mr Gucati again by video-conference, along with the assistance of an interpreter. [REDACTED]. The Head of the Defence Office informed Mr Gucati that he had received a call from List Counsel Jonathan Rees, [REDACTED]. [REDACTED].

²⁹ See Agreement between the Kosovo Specialist Chambers and the International Committee of the Red Cross on Visits to Persons Deprived of Liberty Pursuant to the Jurisdiction of the Kosovo Specialist Chambers, 28 January 2019, para. 12(2).

³⁰ KSC-BC-2018-01/F00135/A01.

³¹ Annex 1, [REDACTED].

³² Annex 1, Letter from the Head of the Defence Office, KSC/REG/DEF/0127, 25 September 2020.

30. [REDACTED].

31. [REDACTED].

32. [REDACTED].

33. [REDACTED].

34. On 28 September 2020, Mr Gucati submitted to the Registrar, through the Head of the Defence Office, a request for the appointment of Mr Rees as Counsel and signed a Power of Attorney. On 28 September 2020, the Registrar appointed Mr Rees as Counsel to Mr Gucati.³³

III. CLASSIFICATION

35. This report is submitted as strictly confidential and *ex parte* consistent with the classification of KSC-BC-2018-01/F00128, along with one strictly confidential and *ex parte* Annex.

36. The Registrar does not object to the reclassification of the core filing as public, subject to any objections by the SPO; however, it would likely be necessary to redact from any public version of the filing certain confidential [REDACTED] data and other personal details of Mr Gucati.

³³ Notification of the Appointment of Counsel, KSC-BC-2020-07, 28 September 2020.

37. The Annex should not be reclassified until the names and initials of SPO officers and Registry staff members are redacted due to the important interests at stake, including the privacy and safety of those individuals, many of whom are involved in ongoing investigative activity and will be involved in future investigative activity, as well as future arrest and transfer operations, if any. Should the Single Judge consider reclassifying the Annex, the Registrar requests the opportunity to submit a public, redacted version of the Annex to the Single Judge or to submit comments on a proposed redacted version of the Annex to the Single Judge.

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Dr Fidelma Donlon

Registrar

Wednesday, 14 October 2020

At The Hague, the Netherlands