

1 Thursday, 1 October 2020

2 [First Appearance]

3 [Open session]

4 [The suspect Gucati entered court]

5 --- Upon commencing at 3.00 p.m.

6 JUDGE GUILLOU: Good afternoon and welcome everyone in and
7 outside the courtroom.

8 Before we start, and pursuant to my decision setting the date
9 for this First Appearance, the court photographer is permitted to
10 take a few photos for one and a half minutes.

11 MR. REES: Your Honour, before that takes place, can I raise one
12 short matter to do with the photographs. There's not objection to
13 the photographs taking place, but I do question the need for the
14 officers to be in court surrounding Mr. Gucati in these
15 circumstances, bearing in mind the matters for which he is before
16 Your Honour which are matters of obstruction but not substantive
17 offences under the jurisdiction of this Court. And I do question
18 whether it is necessary for photographs to take place with officers
19 surrounding Mr. Gucati or indeed why officers in what is obviously a
20 secure courtroom are necessary in court in the first place.

21 JUDGE GUILLOU: Counsel, would it be satisfying for you if there
22 were pictures of your client without the security guards around him?

23 MR. REES: Yes, I would certainly invite that to take place.
24 There is no objection on his part to the photograph taking place, but
25 I raise a concern on his behalf of the necessity for a police officer

1 to be sat around him, firstly, when that photograph takes place and
2 indeed during the course of the hearing.

3 JUDGE GUILLOU: I mean, for the first part of your request, we
4 can totally ask -- I mean, I will order the photographer not to take
5 any picture of your client with the security guards around, so I
6 think that can solve your first concern.

7 For the second concern, I think it's a common practice in every
8 courtroom in all the international tribunals, and even a lot of
9 domestic tribunals, that when you have a suspect or accused who is
10 currently in detention, he or she is escorted by security guards who
11 most of the time stay around him.

12 So I don't see especially the need not to follow this practice,
13 but, I mean, I can ask Madam Prosecutor if she has anything to say on
14 it.

15 Madam Prosecutor.

16 MS. BOLICI: Thank you, Your Honour. The Prosecution is also in
17 favour of confirming the established practice of maintaining security
18 in the courtroom while the arrested suspect is present.

19 JUDGE GUILLOU: Thank you, Madam Prosecutor.

20 If the -- sorry, do you want to reply, counsel?

21 MR. REES: Well, no, it's a short point, Your Honour, and I've
22 made it, and I'm grateful for Your Honour's ruling in relation to the
23 photographs. For today's hearing, I won't press the point any
24 further, but it may be in due course I make some further submissions
25 once I've looked further into the matter for another occasion.

1 JUDGE GUILLOU: Duly noted.

2 So, Madam Photographer, I instruct you to make pictures of the
3 suspect only at close range, which means without any security officer
4 around.

5 You can proceed, thank you.

6 Thank you very much, Madam Photographer. You may now leave the
7 courtroom.

8 Madam Court Officer, can you please call the case.

9 THE COURT OFFICER: Thank you, Your Honour. This is
10 KSC-BC-2020-07, The Specialist Prosecutor versus Hysni Gucati and
11 Nasim Haradinaj. Thank you.

12 JUDGE GUILLOU: Thank you very much, Madam Court Officer.

13 Before asking those present in the courtroom to introduce
14 themselves, I would like to remind everyone of a few rules that must
15 be observed at all times in order to make the proceedings smooth.

16 So please make sure you activate your microphone before speaking
17 and you switch it off as soon as you finish. Talk slowly and clearly
18 as we have interpretation into and from Albanian and Serbian. Wait
19 five seconds before responding to me or a party or participant in
20 order to allow the interpreters to finish the interpretation.

21 What is said in this hearing is transcribed in realtime and will
22 be reflected in a transcript available to the parties and to the
23 public after this hearing.

24 I would also like to remind the parties that certain information
25 in this case is subject to protective measures and confidentiality

1 orders. Confidential information shall not be disclosed in open
2 session. If any party or participant must go into private session
3 and refer to any confidential information, please indicate the
4 reasons.

5 Now, I would kindly ask the parties and participants to
6 introduce themselves, starting with the Specialist Prosecutor's
7 Office.

8 Madam Prosecutor.

9 MS. BOLICI: Thank you, Your Honour. For the Specialist
10 Prosecutor's Office are present Mr. Jack Smith,
11 Specialist Prosecutor; Mr. Alex Whiting, Deputy
12 Specialist Prosecutor; Mr. James Pace, Associate Prosecutor;
13 Ms. Line Pedersen, Case and Evidence Manager; and I am
14 Valeria Bolici, Prosecutor with the Specialist Prosecutor's Office.

15 JUDGE GUILLOU: Thank you very much, Madam Prosecutor.

16 Counsel, if you can introduce the Defence, please.

17 MR. REES: My name is Jonathan Elystan Rees, Queen's Counsel. I
18 am Specialist Counsel for Mr. Gucati. I am assisted by Specialist
19 Co-Counsel for Mr. Gucati, Mr. Valon Gasani, and a team member,
20 Mr. Huw Bouden.

21 JUDGE GUILLOU: Thank you very much, counsel.

22 And your client, Mr. Gucati, is also present in the courtroom,
23 for the record.

24 MR. REES: He is, for the record.

25 JUDGE GUILLOU: Thank you very much.

1 Now I turn to the Registry.

2 Madam Registrar, please.

3 THE REGISTRAR: Thank you, Your Honour. Fidelma Donlon,
4 Registrar.

5 JUDGE GUILLOU: Thank you, Madam Registrar.

6 And for the record, I am Nicolas Guillou, Single Judge for this
7 case.

8 The suspect is appearing today for the first time before the
9 Specialist Chambers following his arrest and transfer. I note that
10 Mr. Gucati's counsel said that he could not be present at
11 First Appearance before today. I took this concern into
12 consideration upon issuance of my Scheduling Order of 29 September
13 2020.

14 I now wish to address the suspect. Mr. Gucati, will you please
15 rise. Yes, you can put on the microphone like this, on the button on
16 the right. Exactly.

17 Could you please tell us your full name, please.

18 THE SUSPECT GUCATI: [Interpretation] My name is Hysni Gucati.

19 JUDGE GUILLOU: What is your date and place of birth?

20 THE SUSPECT GUCATI: [Interpretation] 30 March 1967, in the
21 village of Morine, Skenderaj municipality.

22 JUDGE GUILLOU: What is your citizenship?

23 THE SUSPECT GUCATI: [Interpretation] I am a citizen of Kosovo.

24 JUDGE GUILLOU: And what is your current profession?

25 THE SUSPECT GUCATI: [Interpretation] I'm a secretary in the

1 elementary school, Ahmet Delia, and at the same time, head of the war
2 veterans organisation of the Kosovo Liberation Army.

3 JUDGE GUILLOU: Thank you very much.

4 Before we proceed any further, I would like to ask you to make
5 sure that you can follow the proceedings in a language that you
6 understand and speak. Can you confirm that you understand and speak
7 Albanian?

8 THE SUSPECT GUCATI: [Interpretation] Yes, I speak and understand
9 the Albanian language.

10 JUDGE GUILLOU: Thank you very much, Mr. Gucati. By this I am
11 satisfied that you can follow the proceedings in Albanian, a language
12 that you understand and speak in accordance with Article 41.

13 If at any moment in the course of proceedings you are not
14 receiving interpretation, please draw my attention to it immediately.

15 THE SUSPECT GUCATI: [Interpretation] Thank you.

16 JUDGE GUILLOU: Thank you, Mr. Gucati. You may be seated.

17 Let me now move to the procedural history of the case.

18 On 24 September 2020, I issued an arrest warrant against the
19 suspect in my capacity as Single Judge, having found grounded
20 suspicion that Mr. Gucati is criminally responsible for the following
21 offences:

22 Intimidation during criminal proceedings, pursuant to Article
23 387 of the Kosovo Criminal Code;

24 Retaliation, pursuant to Article 388 of the Kosovo Criminal
25 Code; and

1 Violation of the secrecy of proceedings, pursuant to Article 392
2 of the Kosovo Criminal Code.

3 The Specialist Chambers have jurisdiction to prosecute these
4 offences by virtue of Article 15 of the Law on the Specialist
5 Chambers.

6 The suspect was arrested in Kosovo on 25 September 2020, at
7 which point he was served with the arrest warrant and informed of his
8 rights.

9 He was transferred to the detention facilities of the Kosovo
10 Specialist Chambers in The Hague on the same day.

11 I take this opportunity to note that there have been a number of
12 new filings in the case file.

13 Mr. Gucati, I have before me four requests challenging various
14 aspects of your arrest and detention.

15 With respect to these requests, I instruct the Specialist
16 Prosecutor's Office to file a consolidated response by Friday,
17 9 October.

18 MS. BOLICI: Duly noted.

19 JUDGE GUILLOU: Thank you.

20 And, Mr. Rees, as you may have seen, I also issued two orders
21 yesterday: An order on reclassification of filings and an order on
22 the working language of the proceedings.

23 With regard to the order on reclassification, I have already
24 noted my intention to reclassify documents in the case file as soon
25 as possible so the Defence can have access to all filings relevant to

1 the arrest and detention of Mr. Gucati. The Specialist Prosecutor's
2 Office and the Registry have been given until 14 October at the
3 latest to respond.

4 Now allow me to explain the specific purpose of this
5 First Appearance for the benefit of the suspect and those joining us
6 in the public gallery and following the proceedings online.

7 Today's hearing is not a trial. The suspect has not been
8 charged yet in the sense that no indictment has been yet submitted by
9 the Specialist Prosecutor. No evidence will be presented or debated.
10 And the guilt or innocence of the suspect will not be discussed or
11 decided.

12 The purpose of this First Appearance is regulated by Article 41
13 of the Law and Rule 55 of the Rules. According to these provisions,
14 as Single Judge, I shall ascertain:

15 Whether the suspect has been informed of the reasons for his
16 arrest, namely, the offences allegedly committed and the reasons for
17 keeping the suspect in detention; and

18 Whether the suspect has been informed of his rights under the
19 Law and the Rules, including his right to legal assistance.

20 I expect the parties to limit their submissions to these
21 matters, which I will address in turn.

22 Should either party wish to discuss any other matter not
23 expressly foreseen in the context of the First Appearance, they're
24 invited to do so in writing by making a filing before me.

25 First, may I ask you, Mr. Gucati, to confirm that you have

1 received the arrest warrant dated 24 September 2020 in a language
2 that you understand and speak?

3 THE SUSPECT GUCATI: [Interpretation] The arrest warrant was
4 handed over to me on that day of the arrest.

5 JUDGE GUILLOU: Thank you very much, Mr. Gucati.

6 I will now ask the Court Officer to read the reasons for
7 Mr. Gucati's arrest, as indicated in the arrest warrant.

8 Please proceed.

9 THE COURT OFFICER: Thank you, Your Honour.

10 According to the arrest warrant:

11 First, there is a grounded suspicion that Mr. Gucati is
12 criminally responsible for attempting to commit the offence of
13 intimidation during criminal proceedings, pursuant to Article 387 of
14 the Kosovo Criminal Code. Specifically, there is a grounded
15 suspicion that Mr. Gucati held three press conferences on 7, 16, and
16 22 September 2020, where he distributed or otherwise made available
17 to the media confidential and non-public information and documents
18 relating to the work of the Specialist Prosecutor's Office, and made
19 no interventions when Nasim Haradinaj mentioned by names certain
20 potential witnesses and gave information regarding their place of
21 residence and other personal details.

22 This conduct amounts to a serious threat or other means of
23 compulsion to induce another person from making a statement or to
24 make a false statement or to otherwise fail to state true information
25 to the Specialist Prosecutor's Office and/or the Specialist Chambers.

1 Second, there is a grounded suspicion that Mr. Gucati is
2 criminally responsible for committing the offence of retaliation,
3 pursuant to Article 388 of the Kosovo Criminal Code. Specifically,
4 there is a grounded suspicion that Mr. Gucati held three press
5 conferences on 7, 16, and 22 September 2020, where he distributed or
6 otherwise made available to the media confidential and non-public
7 information and documents relating to the work of the Specialist
8 Prosecutor's Office, including the names and personal details of
9 potential witnesses, thus exposing these individuals to potential
10 threats to their safety.

11 This conduct amounts to a harmful act with the intent to
12 retaliate for providing truthful information to the Special
13 Investigative Task Force and/or the Specialist Prosecutor's Office
14 relating to the alleged commission of criminal offences.

15 Third, there is a grounded suspicion that Mr. Gucati is
16 criminally responsible for committing the offence of violating the
17 secrecy of proceedings, pursuant to Article 392 of the Kosovo
18 Criminal Code. Specifically, there is a grounded suspicion that
19 Mr. Gucati held three press conferences on 7, 16, and 22 September
20 2020, where he distributed or otherwise made available to the media
21 confidential and non-public information and documents relating to the
22 work of the Specialist Prosecutor's Office, including the names and
23 personal details of potential witnesses.

24 Furthermore, there are articulable grounds to believe that
25 Mr. Gucati's arrest is necessary because specific circumstances

1 indicate that he:

2 (i) is a flight risk;

3 (ii) has the incentive, means, and opportunity to obstruct the
4 progress of criminal proceedings; and

5 (iii) will repeat or attempt to repeat the criminal offences.

6 Thank you, Your Honour.

7 JUDGE GUILLOU: Thank you, Madam Court Officer.

8 Mr. Gucati, I wish to remind you that it is not the time to
9 contest the reasons for your arrest today but to acknowledge that you
10 have been informed and you are aware of the reasons.

11 You have the opportunity to challenge your arrest in writing
12 with the assistance of your counsel and co-counsels.

13 Mr. Gucati, can you please confirm that you have been informed
14 of the reasons of your arrest?

15 THE SUSPECT GUCATI: [Interpretation] I wasn't informed of the
16 reasons of my arrest until the moment the EULEX police came to my
17 office.

18 JUDGE GUILLOU: Thank you, Mr. Gucati.

19 Do you wish to add anything on that, on the time you had to
20 wait? Or if you want to add anything specific, you can.

21 THE SUSPECT GUCATI: [Interpretation] Could you ask the question
22 again, please? I don't understand the question.

23 JUDGE GUILLOU: There was an issue with the interpretation. I'd
24 asked you if there was anything you wanted to add to this, the fact
25 that you were informed when the EULEX police arrived. And I think

1 that there has been a problem with the interpretation.

2 If you can answer again, Mr. Gucati. I'm sorry for this.

3 THE SUSPECT GUCATI: [Interpretation] I have nothing to add to
4 that.

5 JUDGE GUILLOU: Thank you very much.

6 Can you confirm that you had the opportunity to notify or have
7 notified to a family member or another appropriate person of your
8 arrest?

9 THE SUSPECT GUCATI: [Interpretation] I was informed myself. But
10 they didn't need to arrest me. They could have invited me and I
11 would have presented myself. They didn't need to bring the EULEX
12 police to arrest me.

13 JUDGE GUILLOU: I understand what you're saying, but my question
14 is have you been able, when you were arrested, to inform a family
15 member or another appropriate person?

16 THE SUSPECT GUCATI: [Interpretation] An hour and a half later, I
17 informed my son that I have been arrested.

18 JUDGE GUILLOU: Thank you, Mr. Gucati.

19 Now let me inform you about your rights before this court. The
20 Law on the Specialist Chambers and the Rules of Procedure and
21 Evidence guarantee detained suspects a number of rights. I will read
22 out the most important ones.

23 First, you shall be presumed innocent until proven guilty beyond
24 reasonable doubt.

25 You are entitled to a fair and public hearing, subject to any

1 measures ordered for the protection of victims and witnesses.

2 You are entitled to challenge the lawfulness of your arrest and
3 to request review of decisions on your detention, and to appeal such
4 decisions directly before the Court of Appeal.

5 You have the right not to be detained for an unreasonable period
6 prior to the opening of the case, and you have the right to be
7 released if the Specialist Prosecutor does not submit an indictment
8 against you at the latest within a year.

9 You are entitled to a trial within a reasonable time or to
10 release pending trial if the relevant conditions are met.

11 You have the right to have counsel assigned to you and without
12 payment by you if you do not have sufficient means to pay for it.

13 You have the right to have adequate time and facilities for the
14 preparation of your defence and to communicate with the counsel of
15 your own choosing.

16 You have the right to have the free assistance of an interpreter
17 if you cannot understand or speak the language used in the court.

18 You have the right not to be compelled to testify against
19 yourself or to admit guilt.

20 And you have the right to remain silent and no adverse inference
21 shall be drawn from your silence.

22 Mr. Gucati, you heard the most important rights that you enjoy
23 as a detained suspect in accordance with the applicable legal
24 framework of the Specialist Chambers. Do you understand these
25 rights?

1 THE SUSPECT GUCATI: [Interpretation] Yes, thank you.

2 JUDGE GUILLOU: Thank you, Mr. Gucati.

3 I wish to inform you that according to Article 21(5) of the Law,
4 you may not represent yourself because you are currently in
5 detention. Therefore, representation by Specialist Counsel is
6 mandatory.

7 It is my duty as Single Judge to ensure that your right to
8 counsel is respected. To this end, I have noted the Registrar's 18
9 September filing informing the Panel of the appointment of counsel
10 and co-counsel.

11 I hereby inform you that you have the right to be represented by
12 counsel appointed for the entire duration of the proceedings. If at
13 any point you do not have sufficient means to pay for your counsel,
14 you may apply to be declared indigent. And in such a case, you have
15 the right to have counsel assigned to you.

16 At this point, I would like to invite the Specialist Prosecutor
17 to give any indication on the next procedural steps, in particular,
18 when he intends to issue an indictment against Mr. Gucati.

19 Certain submissions on this topic were made during the
20 First Appearance of Mr. Haradinaj on Tuesday, but the second suspect
21 in the case, Mr. Gucati, was not present. I'm aware that there may
22 not be a clear timeline on this point, but I would like to remind the
23 Prosecutor that there are two suspects currently in detention, and I
24 expect the judicial process to be fair and expeditious.

25 Madam Prosecutor.

1 MS. BOLICI: Thank you, Your Honour. As already highlighted in
2 a previous hearing held on this case on 29 September, the
3 expeditiousness of these proceedings are an absolute priority for the
4 Specialist Prosecutor's Office.

5 At the same time, the completeness of the evidentiary material
6 to be submitted in support of the indictment are of no less a
7 priority for our office in the interests of all parties to the
8 proceedings, primarily the suspects but also the potential victims in
9 this case, and in the interests of the Court as well, of course.

10 I note that the criminal offences for which a grounded suspicion
11 has been found date at least up to 22 September 2020, which is only
12 about one week ago. As previously highlighted, there are a number of
13 indispensable investigative steps that our office is undertaking,
14 including collection of information from witnesses who have felt
15 intimidated, the transcription and translation of the relevant
16 audio-visual material, the request of records from third parties, as
17 well as the analysis of seized materials, including computers,
18 telephone, and other items.

19 In view of all these investigative steps and confirming that we
20 are committed to assure a speedy and efficient process, I can confirm
21 that our office intends to file an indictment in this case within a
22 30-day time-period.

23 Thank you.

24 JUDGE GUILLOU: Thank you very much, Madam Prosecutor.

25 I just note for the record that I mentioned a filing of

1 28 September by the Registrar. It's by the Registry.

2 I would like to ask the parties now if they have any urgent
3 issues that they would like to raise which cannot be addressed
4 through written submissions. I remind the parties that they need to
5 give prior notice if any submission requires the disclosure of
6 confidential information so that appropriate measures can be taken.

7 Mr. Rees, you have the floor. And I just want to mention, I've
8 received your four filings dated, I think, 28, 29, and -- or 29, 30,
9 and 1st October, so no need to come back to all of them in detail.
10 But if you want to add something, of course, you can.

11 Please, counsel.

12 MR. REES: Well, as Your Honour has acknowledged, Mr. Gucati has
13 already challenged in writing both the lawfulness of the arrest and
14 transfer and the factual matters that are raised within the warrant.

15 Your Honour has directed a response from the SPO in relation to
16 the matters that are set out in the written submissions on those
17 points. And I take it from that that Your Honour is not in a
18 position to deal with those matters as they are raised today in
19 argument.

20 There is one matter that I do wish to raise orally, and that is
21 the issue of bail, because whilst the SPO have been given time to
22 respond to the challenge in writing to both the lawfulness of the
23 warrant and the factual matters that are referred to therein,
24 Mr. Gucati is currently in detention and will remain in detention
25 while he awaits the SPO's consideration of these matters, and then

1 thereafter, the opportunity of the Court to consider both the written
2 submissions made on behalf of Mr. Gucati by myself and co-counsel
3 Mr. Gasani and indeed the submissions by the SPO.

4 So I do intend to ask Your Honour to consider granting bail in
5 the interim. There is a submission which I have put in writing which
6 raises the matter of bail. It is my submission that notwithstanding
7 and without prejudice to the challenge that we raised to the
8 lawfulness of the arrest and detention in the first instance, that it
9 must only be right for this Court, in those circumstances where there
10 is a challenge outstanding, to be able to consider granting bail
11 whilst those matters are being decided. After all, in Article
12 40(1)(ii) of the Law, there is a right for a speedy determination of
13 matters relating to detention. So I do ask Your Honour to consider
14 granting bail whilst these matters are being determined.

15 I note, without accepting, but note that the arrest warrant
16 finds that there are articulable grounds to believe a risk of flight,
17 of obstructing the progress of criminal proceedings, and the risk of
18 further offences being committed in relation to Mr. Gucati.

19 Again, without prejudice to my submission that the arrest itself
20 was unlawful and without accepting the factual matters that are
21 alleged in the arrest warrant, it is my submission that any such risk
22 that exists in relation to those three matters can be met, in
23 Mr. Gucati's case, by bail together with a package of conditions that
24 are designed to meet those risks.

25 And if the Court agrees that the risks are met by the conditions

1 proposed, that in those circumstances Article 41(6) of the Law would
2 no longer apply to justify detention because there would be no longer
3 articulable grounds to believe in the three risks that are identified
4 therein.

5 Just to give Your Honour some background. Mr. Gucati is a
6 man -- a family man who is a father of some seven children. They all
7 live in the Skenderaj area, the area where he is from. He has deep
8 family ties to that area. His children are aged between 23 and 34
9 years. He has eight grandchildren also who, again, live in the
10 Skenderaj area. His whole family is based where he lives. The
11 youngest of his grandchildren are some four and a half months. The
12 oldest, some nine years.

13 He is not a man of good health. He suffers from diabetes
14 type 2, he takes insulin, and he suffers from high blood pressure.
15 He also has a problem with mobility, quite a serious problem, which
16 he was due today to have addressed with a planned appointment in the
17 hospital in Prishtina with a view to moving towards an operation in
18 due course to help him with that mobility problem.

19 He suffers from asthma also. And as Your Honour has already
20 heard, he works and has worked for 13 and a half years as a secretary
21 with the local primary school in Skenderaj. He has deep family and
22 community ties to that area.

23 It's in those circumstances where, in my submission, bail could
24 properly be granted on the following conditions that are proposed in
25 the written submission, so both Your Honour and the SPO have had

1 advanced notice of them. It's proposed a surety in the sum of 5.000
2 euros, surrender of his passport, a requirement that he lives and
3 sleeps each night at his home address, daily reporting if necessary
4 to EULEX police headquarters.

5 Each of those four conditions, together with the fact that he
6 has deep family ties, his whole family - children and grandchildren -
7 are based in the Skenderaj area where he lives. All, in my
8 respectful submission, can meet the concern of a risk of flight.

9 We've also proposed in the written submission on bail that the
10 Court could consider a condition not to contact directly or
11 indirectly any person the Court thinks it appropriate to restrict
12 contact with. Mr. Gucati is determined that he will abide by any
13 conditions that Your Honour grants while his challenge to the
14 lawfulness of his arrest and detention is being considered.

15 And we've also proposed a condition that Mr. Gucati does not go
16 within 100 metres of the offices of the Kosovo Liberation Army war
17 veterans association. Your Honour, of course, has heard from
18 Mr. Gucati as to his role there. But he understands that whilst his
19 challenge to the lawfulness of his arrest and detention is
20 outstanding, and there is an issue over the factual matters contained
21 in that warrant, that it's proper for the Court to consider
22 restricting his role, his active role, while those matters are being
23 considered. And he would abide by any such condition.

24 It's my submission that bail granted on those conditions would
25 properly meet any concerns that otherwise arise out of 41(6)(b), the

1 risk of flight, obstructing the progress of proceedings, or
2 committing further offences.

3 Particularly bearing in mind Mr. Gucati's background, the fact
4 that he was cooperative on arrest, the fact that he has not been
5 charged with any offence, and he may never be, the fact that the
6 offences under investigation do not appear from the warrant itself to
7 involve allegations of force being used, that the offences under
8 investigation according to the warrant do not appear to involve
9 allegations of actual threats being uttered, and that the offences
10 under investigation do not appear to involve allegations of actual
11 harm being caused again from the content of the warrant.

12 It would also, in my respectful submission, be proportionate,
13 proper to consider bail pending the resolution of his challenge to
14 the lawfulness of his arrest and detention in light of the fact that
15 the offences for which he is being investigated are not substantive
16 offences which fall under the jurisdiction of this Court but are
17 offences relating to the administration of the system, which derive
18 out of the Kosovo criminal procedure code and carry maximum terms of
19 one years imprisonment in one case, three in the case of the offence
20 of retaliation. And although the maximum custodial sentence for the
21 offence of intimidation is a higher figure, up to ten years, there is
22 a range of 2 to 10.

23 And in circumstances where as alleged in the warrant - that is,
24 the offences do not appear to involve allegations of actual threat or
25 force or actual harm being caused - obviously, the higher end of the

1 range for the offence of intimidation must always be reserved for
2 those cases that do by contrast involve force or an actual threat.

3 So it is my submission that it is entirely proper for the Court
4 to consider, and indeed would indeed be right, for the Court to grant
5 bail with or without the conditions that we have proposed pending the
6 challenge to his -- that he raises to the lawful or otherwise arrest
7 and detention.

8 Unless I can assist any further, Your Honour.

9 JUDGE GUILLOU: Thank you very much, counsel.

10 Madam Prosecutor, do you have anything to say about this?

11 MS. BOLICI: Yes, thank you, Your Honour.

12 While The Prosecution Office will certainly reply in writing as
13 instructed by Your Honour, there are a couple of matters that I would
14 like to address in response to counsel.

15 The detention of Mr. Gucati remains absolutely necessary at this
16 stage, considering that no new circumstances arise which could in any
17 way adversely impact the findings underlying the arrest warrants.
18 Not only the same circumstances that were highlighted in the arrest
19 warrant remain in place, but new additional factual elements are to
20 be taken into consideration in relation to the detention matter.

21 First of all, since the issuance of the arrest warrant
22 Mr. Gucati has been notified of the criminal offences he is being
23 investigated for and of the sanctions attached therein. These
24 circumstances provide additional motives for Mr. Gucati to evade
25 justice.

1 But above all, in a number of previous public statement,
2 Mr. Gucati has publicly affirmed that he would continuedisclosing
3 any materials pertaining to official proceedings ofthis Court. He
4 stated that on a number of occasions, and he undertook action after
5 this statement in line with the announced intention that hemade
6 public.

7 Mr. Gucati made such statements up to the date of the arrest and
8 a repetition of a pattern of criminal conduct that has been founded
9 as -- grounded, at least, in terms of grounded suspicion inthe
10 arrest warrant, has been only interrupted because of thearrest.

11 It is the Specialist Prosecution's Office's position that if
12 released Mr. Gucati would continue on this pattern ofbehaviour.
13 Also considering that he would be able to rely on a network of
14 support. And in relation to that, I would like to refer to the fact
15 that today has been made public that the organisation of which
16 Mr. Gucati presides has been ordered not to disclose public --
17 non-public or confidential materials pertaining to these proceedings.

18 In relation to all of these considerations and reserving any
19 further arguments for the written submission, our office observes
20 that the conditions set forward by the Defence counsel for Mr. Gucati
21 are totally inadequate to address the risks highlighted in
22 Article 41(6) of the Law. Thank you.

23 JUDGE GUILLOU: Thank you very much, Madam Prosecutor.

24 Counsel?

25 MR. REES: Can I reply very shortly, Your Honour.

1 JUDGE GUILLOU: Very shortly.

2 MR. REES: Very shortly. Very shortly.

3 There is a change of circumstances since when the arrest warrant
4 was granted, and that is we have proposed what we say is a
5 comprehensive package of conditions which Your Honour can apply and
6 be satisfied that they meet the concerns that might have otherwise
7 arisen under 46(1)(b).

8 Although I add the caveat that we do not accept that. I am
9 approaching the matter on the basis now that there will be a
10 challenge to the warrant in due course to be considered, but we are
11 addressing you now for bail in the interim period.

12 Your Honour will also know that there was a request for
13 disclosure of the evidence upon which the warrant was based so that
14 submissions could be made upon it. That request to the Specialist
15 Prosecutor's Office was refused point-blank. And I am grateful for
16 Your Honour's indication at the start of this hearing that
17 Your Honour has, in fact, granted the application for disclosure that
18 we were forced to make to the Court because the Specialist
19 Prosecutor's Office refused itself to make disclosure of such
20 evidence that would allow us to make representations on the evidence
21 today.

22 So I don't make representations on the evidence. I seek to
23 address the concerns that were in the warrant by reference to the
24 conditions that I propose. I note that contrary to Your Honour's
25 position set out very clearly at the start of the hearing, that there

1 would be no discussion of the evidence, the SPO in their response
2 have taken the approach of not only referring to the evidence they
3 had previously but have refused to disclose to us but indeed refer to
4 a moving feast.

5 I ask Your Honour to consider the matter as I have put it.
6 Namely, I accept for these purposes that we have a challenge
7 outstanding to the lawfulness of the warrant and the content of the
8 matters therein. But given that challenge has been adjourned, and I
9 understand why Your Honour has done that, inviting submissions in
10 writing from the SPO, to look to see whether conditions and bail can
11 be imposed to deal with the concerns that were otherwise in the
12 warrant not in terms of the factual matter or grounded suspicion but
13 in terms of the risk of flight, of further offences, and of
14 obstructing the progress of criminal proceedings.

15 And it's my submission that it's entirely proper and
16 proportionate given Mr. Gucati's background, given the matters that
17 are under investigation, the nature of those, and in contrast to
18 other offences which come before the jurisdiction of this Court,
19 together with what is quite a stringent package of conditions that we
20 have proposed.

21 Thank you.

22 JUDGE GUILLOU: Thank you, counsel.

23 MS. BOLICI: May I, Your Honour?

24 JUDGE GUILLOU: Very briefly, please.

25 MS. BOLICI: Yes, a very short reply.

1 Not on the merits of the request on bail, which was addressed
2 earlier in my intervention, but in relation to the disclosure from
3 the Prosecution of material to these proceedings.

4 The Defence has requested material in support of the indictment
5 and has been informed that at the moment there are no materials in
6 support of the indictment. He later requests further supporting
7 materials and has been informed that they would be disclosed in the
8 framework of the legal proceedings and not outside the legal
9 proceedings via e-mail, as requested by the counsel.

10 In relation to that, I wish to highlight that already today the
11 Specialist Prosecutor's Office filed a public redacted version of the
12 SPO's request for an arrest warrant and a confidential redacted
13 version for the benefit of the Defence. And that pursuant to the
14 Single Judge's order of 30 September, the SPO will continue to submit
15 all materials as instructed by the Single Judge.

16 Thank you.

17 JUDGE GUILLOU: Thank you, Madam Prosecutor.

18 The material will be dealt with very expeditiously.

19 Now, I would like to ask Mr. Gucati if you have any issues to
20 raise in relation to your arrest, transfer, or detention.

21 And there is a further question that I would like to ask you.
22 I've heard your counsel call your name Gucati. I just want to make
23 sure that I pronounce it correctly, so if you can please tell me how
24 it has to be pronounced as well so we all follow the exact
25 pronunciation.

1 THE SUSPECT GUCATI: [Interpretation] So my last name is Gucati.
2 So I have nothing to add to what was said by my counsel. So the
3 arrest from Prishtina and also the transfer from Prishtina to The
4 Hague has been very good. And I really wish to thank the security
5 team.

6 So as was already highlighted by my counsel, I have many health
7 issues. And I have to say that these health issues have been taken
8 into account by the people, by the personnel that have accompanied
9 me. And I really wish to thank the detention facility personnel for
10 all the support that they have given to me.

11 So I'm not going to enter into the details to what the counsel
12 has already highlighted so far. I stick to what he has said thus
13 far, and this is the end of my intervention. Thank you.

14 JUDGE GUILLOU: Thank you very much, Mr. Gucati. Am I
15 pronouncing it correctly, I hope.

16 THE SUSPECT GUCATI: [Interpretation] Thank you very much indeed.

17 JUDGE GUILLOU: Thank you.

18 Mr. Gucati, I would like to tell you that pursuant to Article 41
19 and Rule 57, I shall review your detention at least every two months
20 upon your counsel's or the Prosecutor's request or at my own
21 initiative.

22 Taking into consideration the type of offences and mindful of
23 Rule 57(1), I also invite the Prosecutor to stick to the timeline
24 that you mentioned regarding the indictment.

25 This concludes today's hearing. I thank the parties and the

1 Registry for their attendance. I also wish to thank the
2 interpreters, stenographers, audio-visual technicians, and security
3 personnel for their assistance.

4 The hearing is adjourned.

5 --- Whereupon the hearing adjourned at 3.51 p.m.

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