



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2020-07
The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: **Trial Panel II**
Judge Charles L. Smith, III, Presiding Judge
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

Date: 9 May 2022

Language: English

Classification: Confidential

**Prosecution response to Gucati Request for Temporary Release on Compassionate
Grounds**

Specialist Prosecutor's Office

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Toby Cadman

1. The Specialist Prosecutor's Office ('SPO') hereby responds to the Temporary Release Request.¹ Subject to the conditions outlined below, the SPO does not oppose a strictly supervised, fully custodial visit of limited duration in light of the critically ill health of Mr Gucati's father.

2. Temporary release under Rule 56(3) and (5) of the Rules² must be weighed against factors including the gravity of the offences of which the Accused is charged and the risks previously identified by the Trial Panel.³ In this instance, the Trial Panel recently affirmed that the risks presented by Gucati are such as can only be effectively managed through the fully controlled environment that detention can provide, including in particular the communication monitoring framework at the Specialist Chambers ('KSC').⁴ Any modification of that framework, however temporary and exceptional, presents a heightened risk. This is particularly the case in view of the impending trial judgment to be rendered on 18 May 2022.⁵

3. Nonetheless, in the particular circumstances, and to the extent logistically feasible, the SPO would not oppose a fully custodial escorted visit of no longer than three days (including travel) under the following strict conditions:⁶

- a. the Accused remain in the custody of the KSC at all times;
- b. the Accused be detained in Kosovo in detention facilities of the KSC;

¹ Gucati Request for Temporary Release on Compassionate Grounds, 9 May 2022, Confidential (with three annexes).

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').

³ *Prosecutor v. Thaçi et al.*, Public Redacted Version of Third Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds, KSC-BC-2020-06/F00640/RED, 8 January 2022, paras 20-21 (redacted version notified 17 January 2022); *Prosecutor v. Thaçi et al.*, Public Redacted Version of Second Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds, KSC-BC-2020-06/F00386/RED, 8 July 2021 (redacted version notified 16 July 2021), paras 11-12.

⁴ Decision on Review of Detention of Hysni Gucati, KSC-BC-2020-07/F00594, 21 April 2022.

⁵ Scheduling Order for the Pronouncement of the Trial Judgment, KSC-BC-2020-07/F00596, 4 May 2022.

⁶ The SPO is confident that the Registry will ensure that these conditions are implemented in a manner respectful of the circumstances.

- c. the Accused be escorted at all times;
 - d. the Accused not be permitted to be alone with any person at any time, and must remain within both sight and earshot of the escorting officers;
 - e. the Accused not be permitted to meet with or otherwise have contact with any person other than pre-identified immediate family members (and only while accompanied by the escorting officer(s));
 - f. the Accused not have access to communication devices, pen and paper or any other means of communication of any kind other than as facilitated by the KSC;
 - g. the Accused not be permitted to pass or receive items to or from any person; and
 - h. the Accused (his Counsel and/or other relatives or associates) make no public statement and undertake to maintain secrecy with respect to his presence in Kosovo to the maximum extent possible.⁷
4. Finally, the SPO emphasises that due to the risks previously outlined by the Trial Panel, as well as the operational and security risks in a transfer of custody of this nature, such facilitation should be exceptional. This Request is understood to encompass the entirety of Mr Gucati's request in relation to the current circumstances.
5. This filing is submitted as confidential in accordance with Rule 82(4). After the conclusion of the visit, the SPO has no objection to reclassifying this filing as public.

⁷ In the event that the Accused's presence in Kosovo should become known, the SPO requests that the SPO, Registrar and/or EULEX, as appropriate, should to the extent necessitated in the circumstances, be authorised to provide any public clarification or statement which may be needed, including for the purposes of maintaining operational security.

Word count: 636



Jack Smith
Specialist Prosecutor

Monday, 9 May 2022

At The Hague, the Netherlands.