



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: Trial Panel II

Judge Charles L. Smith, III, Presiding Judge

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 9 May 2022

Language: English

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**Public Redacted Version of the Decision on Gucati Defence Request for
Temporary Release on Compassionate Grounds**

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TRIAL PANEL II (“Panel”), pursuant to Articles 41 and 53 of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 56(3) and (5) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. Mr Hysni Gucati (“Mr Gucati”) has been in detention since his arrest on 25 September 2020.¹

2. On 9 May 2022, the Defence for Mr Gucati (“Gucati Defence”) filed a request for the temporary release of Mr Gucati on compassionate grounds (“Request”).²

¹ F00012/A01/RED, Single Judge, *Public Redacted Version of Arrest Warrant for Hysni Gucati*, 24 September 2020; F00015, Registrar, *Notification of Arrest Pursuant to Rule 55(4)*, 25 September 2020; F00012/A02/RED, Single Judge, *Public Redacted Version of Order for Transfer to Detention Facilities of the Specialist Chambers*, 24 September 2020; F00018, Registrar, *Notification of the Reception of Hysni Gucati in the Detention Facilities of the Specialist Chambers*, 25 September 2020, with Annex 1, confidential; F00059, Single Judge, *Decision on Application for Bail*, 27 October 2020; IA001/F00005, Court of Appeals Panel, *Decision on Hysni Gucati’s Appeal on Matters Related to the Arrest and Detention*, 9 December 2020, para. 78; F00093, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati*, 24 December 2020; F00143, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati*, 24 February 2021; F00188, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati*, 23 April 2021; F00245, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati*, 23 June 2021; F00279, Panel, *Decision on Review of Detention of Hysni Gucati*, 23 August 2021; F00390, Panel, *Decision on Review of Detention of Hysni Gucati*; F00506/RED, Panel, *Public Redacted Version of Decision on Review of Detention of Hysni Gucati*, 21 December 2021; F00562, Panel, *Decision on Review of Detention of Hysni Gucati*, 21 February 2022; F00594, Panel, *Decision on Review of Detention of Hysni Gucati* (“Tenth Detention Review Decision”), 21 April 2022.

² F00599, Gucati Defence, *Gucati Request for Temporary Release on Compassionate Grounds* (“Request”), 9 May 2022, confidential, with four confidential annexes; F00600, Gucati Defence, *English Translations of Annex 1 and Annex 3 to Filing F00599 “Gucati Request for Temporary Release on Compassionate Grounds”*, 9 May 2022, confidential, with two confidential annexes; F00603, Gucati Defence, *Updated Annex I to filing F00599 “Gucati Request for Temporary Release on Compassionate Grounds”* (“F603”), 9 May 2022, confidential, with one confidential annex.

3. On the same day, upon direction from the Panel,³ the SPO responded (“SPO Response”),⁴ and the Registrar filed submissions on the Request (“Registry Submissions”).⁵

II. SUBMISSIONS

4. The Gucati Defence requests that Mr Gucati be authorised to visit his father (“Mr Gucati Senior”) and other close family members in hospital [REDACTED], and to visit his mother at her home address [REDACTED], to comfort her at a time when her husband is critically ill.⁶ The Gucati Defence submits five annexes with the Request, namely: (i) a medical report on Mr Gucati Senior dated 7 May 2022 (Annex 1); (ii) a statement from [REDACTED], the son of Mr Gucati dated 6 May 2022 (Annex 2A); (iii) a statement from [REDACTED], the son of Mr Gucati dated 9 May 2022 (Annex 2B); (iv) a medical report on the health condition of [REDACTED], Mr Gucati’s mother (Annex 3);⁷ and (v) an updated medical report on Mr Gucati Senior dated 9 May 2022 (Updated Annex 1).⁸

5. The Gucati Defence submits that Mr Gucati’s father [REDACTED] was admitted to hospital [REDACTED].⁹ According to the doctors treating him, Mr Gucati Senior is in a critical condition [REDACTED].¹⁰ The Gucati Defence further submits that [REDACTED] is [REDACTED] due to her own ill-health.¹¹

³ 20220509-CRSPD100, Email from the Panel to the SPO and to the Registrar, 7 May 2022, confidential.

⁴ F00601, Specialist Prosecutor, *Prosecution Response to Gucati Request for Temporary Release on Compassionate Grounds* (“SPO Response”), 9 May 2022, confidential.

⁵ F00602, Registrar, *Registrar’s Submissions on Gucati Request for Temporary Release on Compassionate Grounds* (“Registry Submissions”), 9 May 2022, confidential and *ex parte*.

⁶ Request, para. 8.

⁷ Annexes 1, 2A, 2B and 3 are part of the Request.

⁸ Updated Annex 1 was submitted with F603.

⁹ Request, para. 4; Annex 1; Annex 2A, paras 6-11; Updated Annex 1.

¹⁰ Request, para. 5; Annex 2B; Updated Annex 1.

¹¹ Request, para. 7; Annex 2A, para. 13.

6. The Gucati Defence also submits that Mr Gucati would comply with the range of conditions imposed to previous custodial visits in other cases of the SC.¹²

7. The SPO does not oppose a strictly supervised, fully custodial visit of three days (including travel), provided that a number of conditions outlined in its response are implemented.¹³ The SPO also submits that any modification of the communication monitoring framework at the SC detention facilities presents a heightened risk, and that this is particularly the case in view of the impending trial judgment.¹⁴

8. The Registrar submits that a temporary transfer of Mr Gucati to the Specialist Chambers' secure transfer facility in Kosovo for a period of three days, including travel, would be feasible, with the understanding that the Accused would remain in the custody of the Specialist Chambers at all times.¹⁵ The Registrar submits that this visit could take place on [REDACTED].¹⁶ The Registrar sets out a number of recommendations in relation to Mr Gucati's requested visits to the hospital and his mother's residence.¹⁷

III. APPLICABLE LAW

9. Pursuant to Rule 56(3) of the Rules, upon request by a detained person, the Panel may order the temporary release of a detained person, where compelling humanitarian grounds justify such release. Pursuant to Rule 56(5) of the Rules, the Panel may impose such conditions upon the release as deemed appropriate to ensure the presence of the detained person.

¹² Request, para. 13.

¹³ SPO Response, paras 1, 3.

¹⁴ SPO Response, para. 2.

¹⁵ Registry Submissions, para. 12.

¹⁶ Registry Submissions, para. 15.

¹⁷ Registry Submissions, paras 16-25.

10. Pursuant to Article 53(1) of the Law, all entities and persons in Kosovo shall co-operate with the SC and shall comply without undue delay with any request for assistance or an order or decision issued by the SC.

IV. DISCUSSION

A. TEMPORARY RELEASE ON COMPELLING HUMANITARIAN GROUNDS

11. The Panel notes that there is no unconditional right to temporary release on compelling humanitarian grounds.¹⁸ A decision whether to release a person on such grounds is subject to the discretion of the Panel, but must account for all relevant circumstances and factors and include a reasoned opinion thereon.¹⁹ What these factors are, as well as the weight to be accorded to them depends upon the particular circumstances of the case. Accordingly, the stage of the proceedings, the nature of the criminal offence, the Accused's character, the gravity of the relative's illness, the degree of kinship, the possibility of escorted leave and other circumstances informing the alleged "humanitarian" grounds can all be factors relevant for consideration.²⁰

12. The Panel further notes that visiting a close relative in critical condition has been accepted, under certain conditions, by this and other jurisdictions, as a compelling humanitarian ground warranting temporary release.²¹

¹⁸ See ECtHR, *Lind v. Russia*, no. 25664/05, 6 December 2007, para. 94.

¹⁹ See ICTY, *Prosecutor v. Popović et al.*, IT-05-88-AR65.4, IT-05-88-AR65.5 and IT-05-88-AR65.6, Appeals Chamber, [Decision on Consolidated Appeal Against Decision on Borovčanin's Motion for a Custodial Visit and Decisions on Gvero's and Miletić's Motions for Provisional Release During the Break in the Proceedings](#), 15 May 2008, para. 6.

²⁰ See ECtHR, *Lind v. Russia*, no. 25664/05, 6 December 2007, para. 95. See also KSC-BC-2020-6, F00640/RED, Pre-Trial Judge, *Public Redacted Version of Third Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds*, 8 January 2022, para. 20.

²¹ KSC-BC-2020-06, F00276/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Veseli Defence Request for Modification of Decision KSC-BC-2020-06/F00271*, 11 May 2021. Similarly, ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Trial Chamber, [Decision on Pandurević's Motion for Provisional Release](#), 21 July 2008; *Prosecutor v. Strugar*, IT-01-42-A, Appeals Chamber, [Decision on the Renewed Defence Request Seeking Provisional Release on Compassionate Grounds](#), 15 April 2008; *Prosecutor v. Sainović et al.*, IT-05-87-A,

13. Mr Gucati is charged with criminal offences against public order and the administration of justice,²² and his continued detention has been found to be necessary.²³ Panel further notes the very advanced stage of the proceedings and that the Trial Judgment is scheduled to be pronounced in a matter of days, on 18 May 2022.

14. That being said, the Panel notes that the SPO does not oppose a strictly supervised, fully custodial visit and that the Registry sets out a number of logistical measures and security conditions that make such a visit feasible.²⁴

15. Moreover, the Panel considers that the critical condition of Mr Gucati Senior, [REDACTED], and the poor health situation of [REDACTED] are compelling considerations when deciding on the Request.

16. For these reasons, the Panel finds that, on balance and in the present circumstances, the critical condition of Mr Gucati Senior and the ill health of [REDACTED] amount to compelling humanitarian grounds justifying Mr Gucati's temporary release for a custodial visit.

B. CONDITIONS OF CUSTODIAL VISIT

17. The Panel will now turn to the question of whether and if so, what conditions must be imposed on Mr Gucati's custodial visit.

18. The Panel recalls his previous findings: (i) that there is a risk that Mr Gucati may obstruct the progress of proceedings and commit offences either in repetition of those charged, or offences which he has previously threatened to commit, and (ii) that imposing conditions in relation to Mr Gucati's release would insufficiently mitigate these risks.²⁵ The Panel also recalls Mr Gucati's past statements vowing

Appeals Chamber, [Public Redacted Version of the Decision on Sreten Lukić's Second Motion for Provisional Release on Compassionate Grounds](#), 14 July 2010.

²² F00291/A01, Specialist Prosecutor, *Indictment*, 5 July 2021. See also F00291/A02 (Redacted Indictment).

²³ See *supra* fn. 1.

²⁴ SPO Response, para. 1; Registry Submissions, paras 16-29.

²⁵ Tenth Detention Review Decision, paras 33, 46.

to continue disclosing material related to the SC/SPO.²⁶ In that light, the Panel considers that conditions falling short of implementing a custodial visit in Kosovo would not sufficiently address the risks associated with the temporary release of Mr Gucati.

19. Therefore, in order to address the risks associated with his temporary release, the Panel orders Mr Gucati's secure and temporary transfer to a facility in Kosovo, where he will remain in detention in the custody of the SC.

20. The custodial visit shall last three days, including travel, and shall end, at the latest, on [REDACTED]. The custodial visit shall be carried out under the following conditions:

- a) Mr Gucati shall be transferred to a secure detention facility in Kosovo where he will remain in the custody of the SC at all times;
- b) Mr Gucati shall, at all times and without exception, remain in the custody of the SC, be escorted by escorting officers, and remain in the sight and within earshot of escorting officers. The escorting officers may be uniformed, if necessary, and remain in the vicinity of Mr Gucati at all times, as necessary. Mr Gucati is ordered to comply fully with any instructions received from the escorting officers;
- c) Mr Gucati shall only be transported from the secure detention facility to:
(i) the hospital in [REDACTED] to visit his father; and (ii) to the address [REDACTED], to visit his mother. If Mr Gucati Senior is meanwhile discharged from the hospital, Mr Gucati shall be transported to the new location of his father, taking into account the security situation and operational constraints of the mission;
- d) During his visits at the aforementioned locations, Mr Gucati is not permitted to communicate with any person other than his immediate family

²⁶ Tenth Detention Review Decision, paras 26-27, 32.

members (parents, spouse, children, grand-children, siblings), his Counsel and members of the Gucati Defence team. All non-authorized persons shall vacate these locations before Mr Gucati's visits;

e) The presence of immediate family members at the aforementioned locations shall be subject to prior approval of the chief custody officer upon presentation of photographic identification. To this end, Mr Gucati and/or his Defence team are ordered to submit copies of identity documents of immediate family members to the Detention Management Unit for prior approval;

f) Mr Gucati is not permitted to be alone with any pre-identified immediate family member at any time, and must remain within both sight and earshot of the escorting officers;

g) Mr Gucati's visit at the hospital in [REDACTED] should take into consideration, if practicable, the general regulations and visiting hours of the hospital. Mr Gucati may not communicate with medical personnel. Such personnel can, however, have access to Mr Gucati Senior during Mr Gucati's visit, if necessary for medical intervention or treatment;

h) The chief custody officer may take any decision necessary regarding the custodial visit on the basis of operational and security concerns, including relocating the custodial visit to any new location of Mr Gucati Senior, if discharged from the hospital, or terminating any of the above visits;

i) Mr Gucati shall not have access to communication devices or any other means of communication, including pen and paper, other than as facilitated by the SC;

j) Mr Gucati is not permitted to pass or receive items to or from any person without prior inspection and approval of the escorting officer(s);

- k) Mr Gucati shall not have any contact whatsoever or in any way interfere with any victim or potential witness or otherwise interfere in any way with the proceedings or the administration of justice;
- l) Mr Gucati shall not seek direct access to documents nor destroy evidence;
- m) Mr Gucati shall not discuss his case with anyone, including the media, other than with his Counsel and members of his Defence team;
- n) Mr Gucati, his Counsel, members of his Defence team, immediate family members and associates shall refrain from making public statements and shall maintain secrecy regarding Mr Gucati's presence on the territory of Kosovo prior to and during the entirety of his stay. Should Mr Gucati's presence become known, the SPO, Registry or EULEX, as appropriate, are authorised to make any necessary statement in that regard;
- o) Mr Gucati shall comply strictly with any further order of the Panel varying the terms or terminating his custodial visit; and
- p) Mr Gucati shall comply with any Covid-19 related measures as specified by the Registry.

21. The Panel considers that, given the urgent nature of the request and the present circumstances, the strict custodial conditions outlined above are necessary to outweigh any risks that Mr Gucati may obstruct the progress of proceedings or commit further crimes.

22. The Panel is further satisfied that, under the present circumstances, a period of three days, including travel, enables adequate time for Mr Gucati to visit his father and mother, and is thus proportional to the grounds for which the temporary release is sought.

23. Should there be a need to amend any of the above conditions, the Parties or Registry shall seize the Panel immediately.

C. EXECUTION OF CONDITIONS

24. In the implementation of the above conditions, the Panel authorises the Registry to make final operational and security arrangements with external partners and to notify any other authorities, including those in the Host State and Kosovo, as necessary for the implementation of this order.

25. The Panel recalls that all entities and persons in Kosovo shall cooperate with the SC and shall comply without undue delay with any decision issued by the SC or any request for assistance.

D. REPORTING OBLIGATIONS


26. Throughout the custodial visit, the Registry shall provide the Panel with regular updates via email or telephone calls. Such regular updates shall occur, at the very least, upon: (i) the transfer of Mr Gucati to Kosovo; (ii) completion of any custodial visit to his father's and mother's locations; (iii) any breaches of the aforementioned conditions by Mr Gucati or others; (iv) any early termination of the visits and reasons therefor; and (v) Mr Gucati's return to the detention unit of the SC in the Host State. The Registry shall file a report to the Panel on the implementation of this decision before **18 May 2022**.

V. DISPOSITION

27. For the above-mentioned reasons, the Panel hereby:

- a) **GRANTS** the Request, and **ORDERS** Mr Gucati to comply with all conditions specified in paragraph 20 above;
- b) **INSTRUCTS** the Registry to implement Mr Gucati's custodial visit under the conditions specified in paragraph 20 above;
- c) **INVITES** the Parties and/or the Registry to seize the Panel immediately should an amendment to the conditions in paragraph 20 be required;

- d) **AUTHORISES** the Registry to make arrangements with external partners for the implementation of this decision;
- e) **AUTHORISES** the Registry to notify any other authorities deemed necessary for the implementation of this decision;
- f) **REMINDS** authorities in Kosovo that they shall comply without undue delay with any decision issued by the SC or any request for assistance;
- g) **ORDERS** the Registry to provide updates and file a report as indicated in paragraph 26 above; and
- h) **ORDERS** the Gucati Defence, the SPO and the Registry to file public redacted versions of the Request, SPO Response and Registry Submissions, respectively, by **16 May 2022**, unless otherwise ordered.



Judge Charles L. Smith, III
Presiding Judge

Dated this Monday, 9 May 2022
At The Hague, the Netherlands.