



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA 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: Dr Fidelma Donlon

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**Public Redacted Version of “Registrar’s Submissions on Gucati Request for
Temporary Release on Compassionate Grounds”, F00602, dated 9 May 2022**

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I. INTRODUCTION

1. Pursuant to Rule 23(2) of the Rules,¹ the Registrar hereby provides submissions on the Gucati Request for Temporary Release on Compassionate Grounds ('Request').²

II. APPLICABLE LAW

A. Detention Function

2. Pursuant to Article 3(5) of the Law,³ the Registry of the Specialist Chambers administers all necessary and auxiliary functions, including detention facilities.

3. Pursuant to Article 34(12) of the Law, the Registrar is responsible for managing and administering the detention function and facilities of the Specialist Chambers in line with international standards and the Law, and the Specialist Chambers' "correction/detention officers shall have the authority and responsibility to exercise powers given to Kosovo Correction Officers under Kosovo law", in accordance with the modalities established by the Law.

4. Pursuant to Article 41(7) and (8) of the Law, persons subject to a detention order of the Specialist Chambers may be detained in facilities overseen by the Specialist Chambers and managed by the Registry, which shall meet relevant international standards.

5. Pursuant to Rule 56(1) of the Rules, in exceptional circumstances, a person may be held in facilities outside of the Host State or Kosovo pending transfer. The detained person shall at all times remain under the authority of the Specialist Chambers.

¹ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').

² KSC-BC-2020-07, F00599, Gucati Request for Temporary Release on Compassionate Grounds, 9 May 2022, confidential.

³ Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ('Law'), 3 August 2015.

B. Temporary Release

6. Pursuant to Rule 56(3) of the Rules, “[u]pon request by a detained person or *proprio motu*, the Panel may order the temporary release of a detained person, where compelling humanitarian grounds justify such release”.

7. 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.

III. SUBMISSIONS

A. Request

8. The Accused, Mr Hysni Gucati, requests temporary release on compassionate grounds, under such conditions as necessary, to enable him to visit his father and other immediate family members at the hospital [REDACTED] and to visit his mother at her home address [REDACTED] to comfort her while her husband is critically ill.⁴

The Accused notes in his Request that [REDACTED].⁵

B. Feasibility and Operational Requirements

9. At the outset, the Registrar notes that this is an extremely painful situation, potentially justifying humanitarian measures to facilitate the temporary transfer of the Accused for a custodial visit to Kosovo.

10. In terms of the security situation, the Registrar notes that the Trial Panel has reviewed and extended Mr Gucati’s detention at regular intervals, most recently on 21 April 2022.⁶ Specifically, the Trial Panel found that there remains a risk that, if released, the Accused will obstruct the present proceedings and commit offences either in repetition of those charged or which he has previously threatened to commit, and that no alternative measure is sufficient to adequately mitigate the risks.⁷

⁴ Request, paras 8 and 14.

⁵ Request, para. 7.

⁶ F00594, Trial Panel II, Decision on Review of Detention of Hysni Gucati, 21 April 2022, public.

⁷ *Ibid.*, paras 33 and 45.

11. Nevertheless, taking account of the critical condition of the Accused's father, and in light of the unique nature of the Specialist Chambers as a relocated judicial institution and the mandate of the Registrar pursuant to Article 34(12) of the Law, the Registrar considers that a temporary transfer of the Accused to the Specialist Chambers' secure transfer facility in Kosovo for a custodial visit on humanitarian grounds, where the Accused will remain in detention in the custody of the Specialist Chambers, can be organised securely and swiftly under the conditions that are set out below and under any other conditions deemed appropriate by the Panel.

i. Duration and Time to Organise Transfer

12. If the Panel grants the Accused's request, the Registry considers that a temporary transfer of the Accused to the Specialist Chambers' secure transfer facility in Kosovo **for a period of 3 days**, including travel, would be feasible, understanding that the Accused would remain in the custody of the Specialist Chambers at all times.

13. The Security and Safety Unit (SSU) of the Registry is currently supporting ongoing proceedings, including hearings occurring Tuesday through Friday of this week. Nevertheless, given the circumstances presented, and subject to the Panel's decision, the Registrar is prepared to rapidly deploy a transfer team, led by a chief custody officer, to Kosovo for the purpose of facilitating a humanitarian visit.

14. The resources needed to stand up and deploy a transfer team and rapidly arrange for air transport is, in the opinion of the Registrar, only justifiable in these urgent, compelling, and exceptional circumstances, namely the critical condition of the Accused's father.⁸

15. Considering the judicial calendar and notice requirements to external partners, the Registry assesses that it is feasible for the 3-day visit to take place [REDACTED].⁹

⁸ Request, para. 5.

⁹ Unforeseen circumstances may impact upon these timescales.

This 3-day visit would accommodate the necessary travel time and a custodial visit to the hospital where the Accused's father is receiving care and to his mother's residence.

ii. Visit to the Hospital

16. As with visits to external medical practitioners in the Host State, the chief custody officer can arrange for the Accused to be securely transported to and from the hospital [REDACTED] for an in-person custodial visit with his father, if ordered by the Panel. This is on the understanding that the Accused would be escorted by Specialist Chambers' security staff at all times and that the chief custody officer may take any decision regarding the custodial visit on the basis of operational and security concerns, including terminating the visit.

17. For operational security reasons, the Accused should only be permitted to see his father and pre-identified immediate family members at the hospital, with prior approval of the chief custody officer and upon proof of identity.¹⁰

18. If a custodial visit is ordered by the Panel, the Registry requests that the Defence be ordered to submit copies of the identity documents of immediate family members to the Detention Management Unit for prior approval. In addition, pre-approved immediate family members would also need to present photographic identification to the chief custody officer upon the Accused's arrival at the hospital.

19. In the event that the Accused's father is discharged from the hospital prior to or during the Accused's temporary transfer, it is recommended that the chief custody officer be permitted to take any decision regarding relocating the Accused's custodial visit with his father, taking into account the security situation and operational constraints of the mission.

20. The Registry also welcomes any other conditions deemed appropriate by the Panel.

¹⁰ Immediate family members are considered to be first-degree relatives, namely a person's parents, spouse, children and siblings.

iii. Visit to the Mother's Residence

21. The Accused also requests a visit to his mother's residence, which is identified as [REDACTED].¹¹

22. The proposed visit will have a high probability of being public knowledge upon the arrival of the Accused in Kosovo, and there will be little opportunity for a low-profile visit. Nevertheless, the chief custody officer can arrange for the Accused to be securely transported for a single, time-limited visit to his mother's residence in order to comfort her while her husband is critically ill.

23. This is on the understanding that the residence would be vacated by all non-authorized persons, that the Accused would at all times remain in the custody of the Specialist Chambers, and under escort, and that the chief custody officer may take any decision necessary regarding the custodial visit on the basis of operational and security concerns, including terminating the visit.

24. In addition, [REDACTED] would be required, and the Registry will make the necessary arrangements should the Panel decide to approve this single, time-limited visit.

iv. Accommodation

25. As described above, the Accused would be temporarily accommodated in a secure transfer facility [REDACTED]. This facility will be managed by Specialist Chambers' security staff at all times, led by the chief custody officer. Due to the short custodial time in Kosovo, the Registry is satisfied that the secure transfer facility is in line with applicable international standards.

v. Assistance of External Partners

26. In Kosovo, the Registry would require the logistical and security support [REDACTED].

¹¹ Request, paras 8 and 14.

27. The logistics required for arranging security support from external partners can be arranged [REDACTED], allowing for notification to Host State authorities and any logistical requirements. This notification period is factored into the timelines described above.

28. Subject to any order of the Panel, the Registrar will make final operational security planning arrangements [REDACTED] for any custodial visit in Kosovo ordered by the Panel.

29. The Registrar also requests, pursuant to Article 53 of the Law, that all entities and persons in Kosovo be ordered to comply without undue delay with any request for assistance that may be required.

vi. COVID-19 Considerations

30. COVID-19 testing requirements are factored into the logistical planning for the transfer team and the Accused.

31. Depending on the current travel restrictions in place, the Accused may be required to observe any applicable quarantine period in the Host State upon his return to the Detention Facilities in the Host State.

vii. Other Considerations

32. Should the Panel order the temporary transfer of the Accused to the Specialist Chambers' secure transfer facility in Kosovo, the Registrar requests authorisation to notify any authorities deemed necessary for the implementation of the Panel's order.

33. Additionally, the Registrar requests the Panel to order conditions of secrecy regarding the Accused's presence on the territory of Kosovo. Specifically, the Registrar requests the Panel to order the Defence, the Accused, and his family members and associates to refrain from making public statements and maintain secrecy regarding the Accused's presence on the territory of Kosovo prior to and during the entirety of the Accused's stay in Kosovo, together with any other conditions deemed appropriate.

34. Nevertheless, should the Accused's presence on the territory of Kosovo become known, the Registrar requests that the Registry or EULEX Kosovo, as appropriate, be authorised to make any necessary statement in this regard.

IV. CLASSIFICATION

35. This submission is filed as confidential and *ex parte* for distribution to the Specialist Prosecutor and the Defence for Mr Gucati only, to protect the confidentiality of information related to the safe and secure transfer of the Accused.

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Dr Fidelma Donlon
Registrar

Monday, 16 May 2022
At The Hague, the Netherlands