

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 Counsel for Hysni Gucati

Date: 17 May 2022

Language: English

Classification: Public

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

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I. INTRODUCTION

1. The Defence for Mr Gucati requests that the Trial Panel orders the temporary release of Mr Gucati, for such period as is practicable, to allow him to (1) attend to his father who is in a critical medical condition in the hospital [REDACTED] and (2) comfort his mother [REDACTED].

II. RELEVANT FACTUAL BACKGROUND

2. On 21 April 2022, the Trial Panel ordered Mr Gucati's continued detention until the pronouncement of the Trial Judgment¹.
3. The pronouncement of the Trial Judgment is scheduled for 10am on 18 May 2022².
4. On 5 May 2022, Mr Gucati's father, [REDACTED] ("Mr Gucati snr"), date of birth [REDACTED], [REDACTED] was admitted to hospital [REDACTED]³.
5. Given Mr Gucati snr's advanced age, current condition and pre-existing health problems set out in the medical report attached to this application, the [REDACTED]. According to the doctors treating him, Mr Gucati snr is in a critical condition [REDACTED]⁴.

¹ *Decision on the Review of Detention of Hysni Gucati*, KSC-BC-2020-07/F00594, Trial Panel II, Public at paragraph 52

² *Scheduling Order for the Pronouncement of the Trial Judgment*, KSC-BC-2020-07/F00596, Trial Panel II, Public at paragraph 6

³ Annex 1, *Medical Report on* [REDACTED]; Annex 2a, [REDACTED] *Statement of* [REDACTED] at paragraph 11 to 12

⁴ Annex 2a, *Statement of* [REDACTED] dated 6 May 2022 at paragraph 12 and Annex 2b, *Statement of* [REDACTED] dated 9 May 2022 at paragraphs 6 and 7

6. [REDACTED] Trial Judgment on 18 May 2022, [REDACTED].
7. Mr Gucati's mother, [REDACTED], [REDACTED]⁵.
8. Accordingly, Mr Gucati seeks urgent permission to visit his father and other close family members [REDACTED].

III. APPLICABLE LAW

9. Rule 56(3) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules") stipulates that "upon request by a detained person...the Panel may order the temporary release of a detained person, where compelling humanitarian grounds justify such release".
10. Pursuant to Rule 56(5) of the Rules, the Trial Panel may impose such conditions upon the release as deemed appropriate to ensure the presence of the detained person.

IV. SUBMISSIONS

11. The Defence submits that it is an essential part of a detainee's right to respect for family life as enshrined in Article 8(1) of the European Convention on Human Rights and Articles 36(1) and 37(3) of the Kosovo Constitution that the relevant authorities enable him and, if need be, assist him in maintaining

⁵ Annex 2, *Statement of [REDACTED] dated 6 May 2022* at paragraphs 2 and 13; Annex 3, *Medical Report on [REDACTED] dated 7 May 2022*

contact with his close family. This principle is even more pronounced in situations where a close family member [REDACTED].

12. Temporary release under Rule 56(3) may properly be ordered to permit a detained person to visit a critically ill family member in hospital and other close family members in such circumstances⁶.
13. There are a range of conditions that have previously been imposed to such an order for temporary release to address any risks of flight, obstruction of the progress of proceedings, or the commission of further offences during the period of temporary release⁷. The Trial Panel is invited to consider the same and, if deemed necessary, impose any such conditions as required. Mr Gucati will comply with the same.
14. Accordingly, the Trial Panel is requested in the circumstances to order temporary release on humanitarian grounds, pursuant to Rule 56(3) of the Rules, under such conditions as necessary, to enable Mr Gucati to:

- a. visit his father and other immediate family members [REDACTED]; and
- b. visit his mother [REDACTED].

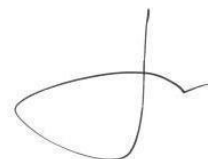
V. CLASSIFICATION

⁶ *Public Redacted Version of Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds*, KSC-BC-2020-06/F00271/RED, Pre-Trial Judge, 30 April 2021, Public at paragraph 20; *Public Redacted Version of Decision on Veseli Defence Request for Modification of Decision KSC-BC-2020-06/F00271*, KSC-BC-2020-06/F00276/RED, Pre-Trial Judge, 4 May 2021, Public at paragraph 12

⁷ *Public Redacted Version of Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds*, KSC-BC-2020-06/F00271/RED, Pre-Trial Judge, 30 April 2021, Public at paragraph 18; *Public Redacted Version of Decision on Veseli Defence Request for Modification of Decision KSC-BC-2020-06/F00271*, KSC-BC-2020-06/F00276/RED, Pre-Trial Judge, 4 May 2021, Public at paragraph 12

15. This filing is classified as confidential as it refers to sensitive medical information concerning Mr Gucati's father.

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