



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: 27 May 2022

Language: English

Classification: Confidential and *Ex Parte*

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

Specialist Prosecutor's Office

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Counsel for Mr Gucati

Jonathan Elystan Rees

I. INTRODUCTION

1. The Trial Panel should reject the Second Request,¹ which, pursuant to Rule 56(3) of the Rules,² seeks an indefinite change in the location of Hysni Gucati's detention to Kosovo in order to allow for multiple visits to family members and from unspecified persons. There are no compelling grounds to authorise such a drastic change to Mr. Gucati's conditions of detention.

2. Just two weeks ago, Mr. Gucati was exceptionally authorised to visit his father on the basis of his critical condition, and his mother on the basis of her ill health.³ Mr. Gucati has since been convicted of obstructing official persons in performing official duties, intimidation during criminal proceedings, and violating the secrecy of proceedings, and sentenced to four and a half years' imprisonment and a fine.⁴

3. While the medical documentation provided in support of the Second Request⁵ is unclear, it appears that Mr. Gucati's father was hospitalised for reasons similar to those which led the Panel to authorise a custodial visit earlier this month. No information is provided to indicate any changes to the health of Mr. Gucati's mother since his visit. Accordingly, Mr. Gucati has already been granted temporary release for essentially the same reasons upon which the Second Request is based. While in no way understating the medical issues Mr. Gucati's parents are experiencing, a situation

¹ Second Gucati Request for Temporary Release on Compassionate Grounds, KSC-BC-2020-07-F00614, 26 May 2022, Confidential and *Ex Parte* ('Second Request').

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

³ Public Redacted Version of the Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds, KSC-BC-2020-07-F00604/RED, 9 May 2022 ('Decision').

⁴ Public Redacted Version of the Trial Judgment, KSC-BC-2020-07-F00611/RED, 18 May 2022 ('Trial Judgment').

⁵ Annex 1 to Second Gucati Request for Temporary Release on Compassionate Grounds, KSC-BC-2020-07-F00614/A01, 26 May 2022, Confidential and *Ex Parte* ('Report').

in which any change to such condition necessitates a further exception to Mr. Gucati's detention regime is unworkable and not in the interests of justice.

II. BACKGROUND

4. On 9 May 2022, the Gucati Defence requested the temporary release of Mr. Gucati pursuant to Rule 56(3).⁶ On the same day, the Specialist Prosecutor's Office ('SPO') noted that it did not oppose this request under certain strict conditions,⁷ and the Panel issued the Decision, authorising the temporary release while imposing several conditions deemed necessary to address the risks associated therewith.

5. Mr. Gucati's custodial visit took place between 12 and 14 May 2022.⁸

6. On 18 May 2022, the Trial Judgment was issued.

7. On 26 May 2022, the Gucati Defence filed the Second Request.

III. SUBMISSIONS

8. Detention, like any other measure depriving a person of his or her liberty, entails inherent limitations on the person's private and family life.⁹ As previously stated by the Panel, there is no unconditional right to temporary release on compelling humanitarian grounds.¹⁰ A decision whether to release a person on such grounds is subject to the discretion of the Panel and must account for all relevant circumstances

⁶ Public Redacted Version of Gucati Request for Temporary Release on Compassionate Grounds, KSC-BC-2020-07-F00599/RED, 9 May 2022 ('First Request').

⁷ Prosecution response to Gucati Request for Temporary Release on Compassionate Grounds, KSC-BC-2020-07-F00601, 9 May 2022 ('Response to First Request').

⁸ Second Request, para.4.

⁹ See ECtHR, *Guimon v. France*, no.48798/14, 11 April 2019 ('*Guimon* Judgement'), para.37; ECtHR, *Khoroshenko v. Russia*, no.41418/04, 30 June 2015, para.106.

¹⁰ Decision, para.11; See also *Guimon* Judgement, para.38.

and factors, including, *inter alia*, the stage of the proceedings and the nature of the criminal offence.¹¹

9. While the SPO did not oppose the First Request,¹² it indicated that it understood that this would be the only request for temporary release related to the ill health of Mr. Gucati's parents.¹³ The Panel's authorisation for temporary release earlier this month was granted 'on balance and in the present circumstances' and on the basis of 'the critical condition of Mr Gucati Senior and the ill health of Mrs Hata Gucati'.¹⁴

10. Hysni Gucati's circumstances have changed significantly since this decision was issued given the verdict and sentence issued on 18 May 2022. With the issuance of the Trial Judgement, the presumption of innocence afforded to Mr. Gucati just over two weeks ago no longer applies. This is a relevant consideration in the circumstances.¹⁵

11. The Report indicates that Mr. Gucati's father is hospitalised for similar reasons advanced in support of the First Request. The fact that the Report was obtained two days after hospitalisation and that it took a further two days for the Gucati Defence to file the Second Request is also relevant to the Panel's consideration of the urgency of the situation. Further, no information whatsoever is provided to indicate any changes to the health of Mr. Gucati's mother since he visited her. Considering that Mr. Gucati was authorised to visit his parents due to their ill health just two weeks ago, the Panel should not grant temporary release in such circumstances.¹⁶

¹¹ Decision, para.11.

¹² Response to First Request, para.3.

¹³ Response to First Request, para.4.

¹⁴ Decision, para.16.

¹⁵ ICTY, *Prosecutor v. Strugar*, IT-01-42-A, Decision on Defence Request Seeking Provisional Release on the Grounds of Compassion, 2 April 2008, para.3.

¹⁶ See also ICTY, *Prosecutor v. Brđanin*, IT-99-36-A, Decision on Radoslav Brđanin's Motion for Provisional Release, 23 February 2007, para.6.

12. The Second Request is also overly broad. The Gucati Defence essentially requests temporary release for an undetermined period of time within which Mr. Gucati would be authorised to receive visits from unspecified and unlimited persons in addition to himself making visits to both parents. The financial and logistical problems which such a detention regime would entail are also relevant considerations.¹⁷

IV. CLASSIFICATION

13. Pursuant to Rule 82(4), this response is filed as confidential and *ex parte*. The SPO would not object to the reclassification of this response to public.

V. RELIEF REQUESTED

14. For the foregoing reasons, the Panel should dismiss the Second Request in its entirety.

Word count: 1006



Jack Smith
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Friday, 27 May 2022

At The Hague, the Netherlands.

¹⁷ See *Guimon* Judgement, para.47.