

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: 2 June 2022

Language: English

Classification: Public

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

Specialist Prosecutor

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I. INTRODUCTION

1. The Defence for Mr Gucati requests that the Trial Panel orders the temporary release of Mr Gucati on compassionate grounds, to allow him to attend to his father who is in a critical medical condition in the hospital [REDACTED]. Furthermore, the Defence requests that Mr Gucati is detained in Kosovo until confirmation that his father's condition has stabilised or otherwise, in the event [REDACTED], [REDACTED]. The defence requests that Mr Gucati be allowed to visit his mother at [REDACTED] and receive other identified visitors at his place of detention in Kosovo

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. On 5 May 2022, Mr Gucati's father, [REDACTED] ("Mr Gucati snr"), [REDACTED], had [REDACTED] and was admitted to hospital [REDACTED]².
4. On 9 May 2022, the Trial Panel granted³ a request from the Gucati Defence for Temporary Release of Mr Gucati on Compassionate Grounds (the "Original Request").⁴ Between 12 and 14 May 2022, Mr Gucati was transferred to Kosovo for a custodial visit.

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

² *Gucati Request for Temporary Release on Compassionate Grounds*, KSC-BC-2020-07/F00599/A01 and A02, Annex 1, *Medical Report on [REDACTED] Gucati dated 8 May 2022*; Annex 2a, *Statement of Musli Gucati dated 6 May 2022* at paragraph 11 to 12

³ *Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds*, KSC-BC-2020-07/F00604, Trial Panel II, Confidential & Ex Parte (the "Original Decision")

⁴ *Gucati Request for Temporary Release on Compassionate Grounds*, KSC-BC-2020-07/F00599, Confidential

5. On 17 May 2022, the Registry filed a Report at the request of the Trial Panel which detailed the implementation of the custodial visit.⁵ The Report stated in particular that “Mr Gucati abided by the instructions of the chief custody officer and the escorting officers during the custodial visits” and that “cooperation with external partners was highly effective and ensured a successful operation”.⁶
6. The pronouncement of the Trial Judgment took place on at 10am on 18 May 2022.⁷ Mr Gucati was convicted of five of the six counts on the indictment and was sentenced to a term of imprisonment of four and a half years (less time served) and a €100.00 fine.⁸
7. The Defence intend to appeal both conviction and sentence.
8. On 22 May 2022, Mr Gucati Snr [REDACTED]. The hospital Medical Report issued on [REDACTED]”.⁹
9. According to the doctors treating Mr Gucati Snr at the time of the Original Request, Mr Gucati snr was in a critical condition and [REDACTED]”.¹⁰ Mr Gucati has [REDACTED]. There is a [REDACTED]. Without temporary release, Mr Gucati will not be able to be with his close family [REDACTED].

⁵ *Report of the Registrar pursuant to Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds*, KSC-BC-2020-07/F00612, Confidential and Ex Parte

⁶ *Ibid* at paragraphs 11 and 12

⁷ *Scheduling Order for the Pronouncement of the Trial Judgment*, KSC-BC-2020-07/F00596, Trial Panel II, Public at paragraph 6

⁸ *Trial Judgment*, KSC-BC-2020-07/F00611, Confidential

⁹ Annex 1

¹⁰ *The Original Request*, Annex 2a, *Statement of Musli Gucati dated 6 May 2022* at paragraph 12 and Annex 2b, *Statement of Musli Gucati dated 9 May 2022* at paragraphs 6 and 7

10. Mr Gucati's mother, [REDACTED], [REDACTED]¹¹.

11. Accordingly, Mr Gucati seeks urgent permission :

- (i) to visit his father and other close family members [REDACTED],
- (ii) to visit his mother at [REDACTED];

Furthermore Mr Gucati requests:

- (iii) for his place of detention to be Kosovo rather than the Netherlands so that he can visit his father on a regular basis while he is in a critical condition;
- (iv) to receive visitors at his place of detention in Kosovo;
- (v) in the event Mr Gucati snr [REDACTED], [REDACTED].

III. APPLICABLE LAW

12. Rule 174 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules") states that "Rule 56... shall apply *mutatis mutandis* in respect of a person pending appeal."

¹¹ *The Original Request, Annex 2a, Statement of Musli Gucati dated 6 May 2022 at paragraphs 2 and 13; Annex 3, Medical Report on [REDACTED] dated 7 May 2022*

13. Rule 56(3) of the 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”.
14. The Registry has confirmed this request is properly addressed to the Trial Panel, in the current circumstances.
15. 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

16. 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 contact with his close family. This principle is even more pronounced in situations where a close family member is grievously ill.
17. 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 circumstances¹².

¹² *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

18. 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 release¹³. 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 as he has done previously.

19. Accordingly, the Trial Panel is requested in the circumstances to direct that the place of detention be transferred to Kosovo while Mr Gucati snr remains critically ill, pursuant to Rule 56(3) of the Rules, under such conditions as necessary, to

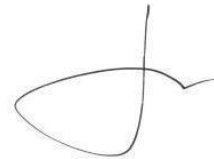
- a. enable Mr Gucati to visit his father and other immediate family members at [REDACTED] on a daily basis, while his father remains critically ill;
- b. visit his mother [REDACTED];
- c. receive visitors at the place of detention in Kosovo;
- d. in the [REDACTED].

CLASSIFICATION

¹³ *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 ; *The Original Decision* at paragraph 20

20. This filing is classified as confidential and ex parte as it refers to sensitive medical information concerning Mr Gucati's father.

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