

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 Consolidated Reply to SPO and Registrar's
Submissions on Second Gucati Request or Temporary Release on Compassionate
Grounds**

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I. INTRODUCTION

1. The Defence for Mr Gucati makes the following consolidated reply to the Prosecution Response ('Prosecution Response')¹ and Registrar's Submissions² ('Registrar's Submissions') on the Second Gucati Request for Temporary Release on Compassionate Grounds ('Request')³.

II. SUBMISSIONS

Prosecution Response

2. Contrary to the Prosecution's explicitly stated position at paragraph 3 of its response, the Prosecution understates the medical issues facing Mr Gucati snr.
3. Mr Gucati is an [REDACTED], [REDACTED]. [REDACTED]. The medical report at Annex 1 of the Request confirms that Mr Gucati snr's condition [REDACTED].
4. The Request does not seek an *indefinite* change in the conditions of Mr Gucati's detention, as asserted in paragraph 1 of the Prosecution Response. On the contrary, the Request is made with [REDACTED]. The agenda proposed in the Request has been drafted only with a view to encompassing [REDACTED], whilst recognising the impossibility of [REDACTED].

¹ KSC-BC-2020-07/F00616, *Prosecution Response to Second Gucati Request for Temporary Release on Compassionate Grounds*, Specialist Prosecutor, 27 May 2022, Confidential and ex parte

² KSC-BC-2020-07/F00615, *Registrar's Submissions on Second Gucati Request for Temporary Release on Compassionate Grounds*, Registrar, 27 May 2022, Confidential and ex parte

³ KSC-BC-2020-07/F00614, *Second Gucati Request for Temporary Release on Compassionate Grounds*, Gucati, 26 May 2022, Confidential and ex parte

5. The humane decision by the Prosecution not to oppose the First Request⁴ was not made on the understanding that it 'would be the only request for temporary release related to the ill health of Mr Gucati's parents', as asserted in paragraph 9 of the Prosecution Response. Instead, it was stated that the First Request was 'understood to encompass the entirety of Mr Gucati's request in relation to the *current* circumstances'⁵.
6. The circumstances have since changed, with Mr Gucati snr [REDACTED]. [REDACTED].
7. In relation to Mrs Gucati, the Request is not made on the basis that her medical condition has altered. The Request seeks permission to allow Mr Gucati to comfort his mother at a time [REDACTED].
8. In relation to visitors, the Defence does not seek visits from 'unspecified and unlimited persons' as asserted in paragraph 12 of the Prosecution Response. On the contrary, the Defence acknowledges the conditions that were imposed on the previous custodial visit requiring the prior identification of a limited number of persons and the Request invites the Trial Panel to consider similar conditions. Permitting contact with others under such conditions at (i) [REDACTED] and (ii) [REDACTED] is not unfeasible, as the previous custodial visit successfully demonstrated.
9. Moreover, it is understood that allowing visitors at a place of detention in Kosovo has previously been permitted in relation to another detainee on a

⁴ KSC-BC-2020-07/F00599, *Gucati Request for Temporary Release on Compassionate Grounds*, Gucati, 9 May 2022, Confidential

⁵ KSC-BC-2020-07/F00601, *Prosecution Response to Gucati Request for Temporary Release on Compassionate Grounds*, Specialist Prosecutor, 9 May 2022, Confidential at paragraph 4

custodial visit from the Kosovo Specialist Chambers (Mr Kadri Veseli), again demonstrating that such a request is not unfeasible (see below).

Registrar's Submissions

10. The Defence are grateful to the Registrar for confirming that a custodial visit can be arranged for Mr Gucati to attend upon his father [REDACTED] and to visit his mother [REDACTED].
11. The Defence note that in similar circumstances, namely, where the Security and Safety Unit of the Registry was currently supporting ongoing proceedings including hearings occurring Tuesday through to Friday of the relevant week, the Registry confirmed that a temporary transfer of Mr Gucati to the Specialist Chambers' secure transfer facility in Kosovo for a period of more than 1 day (3 days including travel) was feasible⁶.
12. The Defence further note that there was no issue, logistical or otherwise, with accommodating other visitors at (i) [REDACTED] and (ii) the [REDACTED] during the previous custodial visit⁷.
13. The Defence are grateful to the Registrar for confirming, again, that the secure transfer facility in Kosovo may be used to accommodate Mr Gucati in custody, as it was for the previous custodial visits of Mr Gucati (and indeed another)⁸.

⁶ KSC-BC-2020-07/F00602, *Registrar's Submissions on Gucati Request for Temporary Release on Compassionate Grounds*, Registrar, 9 May 2022, Confidential and ex parte at paragraph 12

⁷ KSC-BC-2020-07/F00612, *Report of the Registrar pursuant to Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds*, Registrar, 17 May 2022, Confidential and ex parte at paragraphs 2 to 12

⁸ Registrar's Submissions at paragraph 24; KSC-BC-2020-06/F00386, *Public Redacted Version of Second Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds*, Pre-Trial Judge, 8 July 2021, Public at paragraph 12

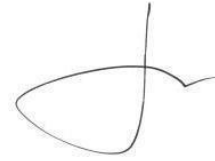
14. The Registrar has previously confirmed that in-person visits with immediate family members at the SC's secure transfer facility in Kosovo can also be facilitated, and the same has been permitted by the Specialist Chambers for another detainee during the course of a custodial visit⁹.
15. Whilst it is acknowledged that the Registrar envisages a custodial visit of shorter duration and more limited in scope in the Registrar's Submissions of 27 May 2022, the Defence nevertheless maintains the Request as set out, with such conditions imposed as the Trial Panel deems necessary, in the above circumstances.
16. Further, given that a custodial visit as envisaged in the Registrar's Submissions does not encompass attendance at any location other than REDACTED] and the secure transfer facility, the Trial Panel is asked to specifically permit the request for Mr Gucati, [REDACTED], to [REDACTED] Mr Gucati snr (whether during a single custodial visit, or via a further custodial visit [REDACTED]).

III. CLASSIFICATION

17. This filing is classified as confidential and ex parte as it concerns sensitive medical information about Mr Gucati snr and to protect the confidentiality of information relating to the transfer of Mr Gucati to and from Kosovo.

Word count: 1087 words

⁹ KSC-BC-2020-06/F00386, *Public Redacted Version of Second Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds*, Pre-Trial Judge, 8 July 2021, Public at paragraphs 12 and 15(f)



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2 June 2022

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