



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 Second Gucati Request for Temporary Release on
Compassionate Grounds”, Filing F00615, dated 27 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 Second Gucati Request for Temporary Release on Compassionate Grounds ('Second 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, F00614, Second Gucati Request for Temporary Release on Compassionate Grounds, 26 May 2022, confidential & *ex parte*.

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

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. Mr Hysni Gucati requests temporary release on compassionate grounds to allow him to attend to his father, Mr Gucati Senior, who is in a critical medical condition at the hospital [REDACTED].⁴ Specifically, Mr Gucati requests the Trial Panel “to direct that the place of detention be transferred to Kosovo”, under such conditions as necessary to: (a) enable him to visit his father and other immediate family members at the hospital in [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) [REDACTED].⁵ Mr Gucati notes in his Second Request that his mother [REDACTED].⁶

B. Feasibility and Operational Requirements

9. In terms of the security situation, the Registrar notes her prior submissions⁷ in relation to Mr Gucati’s previous request for temporary release on compassionate grounds based on the critical condition of his father⁸ and the decision of the Panel on

⁴ Second Request, para. 1.

⁵ Second Request, paras 9, 11, 19.

⁶ Second Request, para. 10.

⁷ F00602, Registrar’s Submission on Gucati Request for Temporary Release on Compassionate Grounds, 9 May 2022, confidential and *ex parte*. A public redacted version was issued on 16 May 2022 (F00602/RED).

⁸ Second Request, paras 3, 9.

Mr Gucati's previous request, imposing certain conditions.⁹ The Registrar also notes that on 18 May 2020, Mr Gucati was found guilty of five of the six counts in the indictment and sentenced to a single sentence of four and a half (4.5) years of imprisonment, with credit for time served, and to a fine of one hundred euros.¹⁰

10. In terms of feasibility, as preliminary matter, [REDACTED]. [REDACTED]. [REDACTED].

11. In addition, 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 urgent, compelling, and exceptional circumstances.

12. Should the Panel consider that the present circumstances justify a custodial visit, the temporary transfer of Mr Gucati to Kosovo can be organised securely and swiftly, subject to certain operational and mission security requirements, as set forth below.

i. Duration and Time to Organise Transfer

13. If the Panel grants Mr Gucati's request, the Registrar considers that a temporary transfer of Mr Gucati to Kosovo **for one (1) day**, [REDACTED], would be feasible, understanding that Mr Gucati would remain in the custody of the Specialist Chambers at all times.

14. The Security and Safety Unit (SSU) of the Registry is currently supporting ongoing trial proceedings, including multiple hearings occurring in the course of next week. In addition, operational planning consultations with external partners have taken into account available resources and mission security requirements.

15. Considering the judicial calendar and notice requirements to external partners, the Registry assesses that it is feasible for the **1-day** visit to take place [REDACTED].¹¹

⁹ F00604, Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds, 9 May 2022, confidential and *ex parte* ('First Decision'), paras 17-23. A public redacted version was issued on 16 May 2022 (F00604/RED).

¹⁰ F00611, Trial Judgment, 18 May 2022, confidential. A public redacted version was issued on the same day (F00611/RED).

¹¹ Unforeseen circumstances may impact upon these timescales.

This 1-day visit would accommodate the necessary travel time, as well as a custodial visit to the hospital [REDACTED] and to his mother's [REDACTED], within the same day.

ii. Visit to the Hospital

16. The chief custody officer can arrange for Mr Gucati 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 Mr Gucati 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 and security reasons, Mr Gucati should only be permitted to visit with his father at the hospital. [REDACTED].

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

iii. Visit to the Mother's [REDACTED]

19. Mr Gucati also requests a visit to his mother's [REDACTED].¹²

20. The proposed visit will have a high probability of being public knowledge upon the arrival of Mr Gucati in Kosovo, and there will be little opportunity for a low-profile visit. Nevertheless, the chief custody officer can arrange for Mr Gucati to be securely transported for a time-limited visit to his mother's [REDACTED]. [REDACTED]. [REDACTED].

21. This visit is feasible on the understanding that the [REDACTED] would be vacated by all non-authorised persons, that Mr Gucati 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.

¹² Second Request, para. 11(ii).

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

iv. Transfer Facility

23. Due to Mr Gucati's short stay in Kosovo, it is not expected that he would be accommodated at the Specialist Chambers' secure transfer facility [REDACTED].

24. Nevertheless, this secure transfer facility may be used in the event of delay or unforeseen circumstances. In such case, the secure transfer facility will be managed by Specialist Chambers' security staff at all times, led by the chief custody officer. In the event of delay or emergency, the small team could manage until departure. Due to the limited duration of any temporary transfer, the Registrar is satisfied that the secure transfer facility is in line with applicable international standards.

v. Assistance of External Partners

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

26. 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.

27. 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.

28. 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

29. COVID-19 testing requirements are factored into the logistical planning.
30. Depending on the current travel restrictions in place, Mr Gucati 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

31. Should the Panel order the temporary transfer of Mr Gucati for a custodial visit to Kosovo, the Registrar requests authorisation to notify any authorities deemed necessary for the implementation of the Panel's order.
32. Additionally, the Registrar requests the Panel to order conditions of secrecy regarding Mr Gucati's presence on the territory of Kosovo. Specifically, the Registrar requests the Panel to order the Defence, Mr Gucati, and his family members and associates to refrain from making public statements and to maintain secrecy regarding his presence on the territory of Kosovo prior to and during the entirety of his stay in Kosovo, together with any other conditions deemed appropriate.
33. Should Mr Gucati'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

34. 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 Mr Gucati.

Word count: 1619



Dr Fidelma Donlon

Registrar

Friday, 3 June 2022

At The Hague, the Netherlands