



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-CA-2022-01
The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: Court of Appeals Panel
Judge Michèle Picard, Presiding Judge
Judge Kai Ambos
Judge Nina Jørgensen

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

Date: 30 June 2022

Language: English

Classification: Confidential and *ex parte*

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

Specialist Prosecutor's Office
Jack Smith

Counsel for Mr Gucati
Jonathan Elystan Rees

1. The Specialist Prosecutor's Office ('SPO') hereby responds to the Third Temporary Release Request.¹

2. There is no unconditional right to temporary release on compelling humanitarian grounds.² Temporary release under Rule 56(3) and (5) of the Rules³ must be weighed against factors including the stage of the proceedings, the nature of the criminal offence, the convicted person's character, the gravity of the relative's illness, the degree of kinship, the possibility of escorted leave, and other circumstances informing the alleged 'humanitarian' grounds.⁴ In this instance, the Trial Panel has convicted Mr Gucati of obstructing official persons, intimidating witnesses, and violating the secrecy of proceedings. He is now serving a 4.5-year sentence pending his appeal, and the fact of Mr Gucati's conviction should be a significant factor in the Appeal Panel's evaluation of the Third Temporary Release Request. That the risks presented by Gucati can only be effectively managed through the fully controlled environment that detention can provide is truer now more than ever.⁵ Any modification of this framework, however temporary and exceptional, presents a heightened risk.

3. A convicted person seeking temporary release for a critically ill family member must be able to present clear substantiation of that family member's acute health status.⁶ The doctor's note annexed to the Third Temporary Release Request provides

¹ Third Gucati Request for Temporary Release on Compassionate Grounds, KSC-CA-2022-01/F00016, 29 June 2022, Confidential and *ex parte* (with annex) ('Third Temporary Release Request').

² ECtHR, *Lind v. Russia*, 25664/05, 6 December 2007, para.94.

³ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').

⁴ Decision on Second Gucati Defence Request for Temporary Release on Compassionate Grounds, KSC-BC-2020-07/F00618, 27 May 2022, Confidential and *ex parte*, para.16.

⁵ Decision on Review of Detention of Hysni Gucati, KSC-BC-2020-07/F00594, 21 April 2022.

⁶ In this regard, *see* ICTY, Decision on Radoslav Brđanin's Motion for Provisional Release, IT-99-36-A, 23 February 2007 (convicted person denied provisional release pending appeal for failing to establish the severity of the family members' health situation; from para.6, citations removed: 'where a convicted person simply "wishes to spend time with his family" or seeks to visit a close relative in poor health, the Appeals Chamber has not found special circumstances. Such is the situation in this instance. Even

no details as to why the poor health diagnosed is a 'critical' condition,⁷ but the SPO defers to the Appeals Panel's discretion on the sufficiency of the information provided.

4. Should the Appeals Panel accept the Gucati Defence submissions, any temporary release must be a fully custodial escorted visit of strictly limited duration under at least the following conditions:⁸

- a. the Convicted Person remains in the custody of the KSC at all times;
- b. the Convicted Person is detained in Kosovo in detention facilities of the KSC;
- c. the Convicted Person is escorted at all times;
- d. the Convicted Person is not permitted to be alone with any person at any time, and must remain within both sight and earshot of the escorting officers;
- e. the Convicted Person is not permitted to meet with or otherwise have contact with any person other than pre-identified immediate family members (and only while accompanied by the escorting officer(s));
- f. the Convicted Person is not to have access to communication devices, pen and paper or any other means of communication of any kind other than as facilitated by the KSC;

assuming that some of Brđanin's siblings are in very poor health conditions – an assertion which he offers no evidence to substantiate – there is no suggestion of an acute crisis').

⁷ Annex 1 of the Third Temporary Release Request, KSC-CA-2022-01/F00016/A01, p.3.

⁸ The SPO is confident that the Registry will ensure that these conditions are implemented in a manner respectful of the circumstances.

- g. the Convicted Person is not permitted to pass or receive items to or from any person; and
- h. the Convicted Person (his Counsel and/or other relatives or associates) makes no public statement and undertakes to maintain secrecy with respect to his presence in Kosovo to the maximum extent possible.⁹

5. Finally, the SPO emphasises that due to the risks previously outlined by the Trial Panel, as well as the operational and security risks in a transfer of custody of this nature, any such facilitation should be exceptional. The Third Temporary Release Request is understood to encompass the entirety of Mr Gucati's request in relation to the current circumstances.

6. This filing is submitted as confidential and *ex parte* in accordance with Rule 82(4). Once the Third Temporary Release Request is resolved and after the conclusion of any visit, the SPO has no objection to reclassifying this filing as public.

Word count: 820



Jack Smith
Specialist Prosecutor

Thursday, 30 June 2022

At The Hague, the Netherlands.

⁹ In the event that the Convicted Person's presence in Kosovo should become known, the SPO requests that the SPO, Registrar and/or EULEX, as appropriate, should to the extent necessitated in the circumstances, be authorised to provide any public clarification or statement which may be needed, including for the purposes of maintaining operational security.