



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

**In:** **KSC-CA-2022-01**

**Before:** **A Panel of the Court of Appeals Chamber**  
Judge Michèle Picard  
Judge Kai Ambos  
Judge Nina Jørgensen

**Registrar:** Fidelma Donlon

**Date:** 30 June 2022

**Original language:** English

**Classification:** **Public**

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**Public Redacted Version of Decision on Gucati's Third Request for Temporary  
Release on Compassionate Grounds**

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Jack Smith

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Jonathan Elystan Rees

**Counsel for Nasim Haradinaj:**  
Toby Cadman

**THE PANEL OF THE COURT OF APPEALS CHAMBER** of the Kosovo Specialist Chambers (“Court of Appeals Panel” or “Panel” and “Specialist Chambers”, respectively),<sup>1</sup> acting pursuant to Article 33(1)(c) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 172 of the Rules of Procedure and Evidence (“Rules”), is seised of a request filed on 29 June 2022 by Hysni Gucati (“Gucati”).<sup>2</sup>

## I. BACKGROUND

1. On 25 September 2020, Gucati was arrested in Kosovo pursuant to an arrest warrant issued by a Single Judge.<sup>3</sup> He was transferred to the detention facilities of the Specialist Chambers in The Hague on the same day.<sup>4</sup>
2. On 9 May 2022, the trial panel hearing the case against Gucati and his co-accused, Nasim Haradinaj, (“Trial Panel”) issued a decision granting Gucati temporary release on compassionate grounds.<sup>5</sup>

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<sup>1</sup> F00011, Decision Assigning a Court of Appeals Panel, 21 June 2022.

<sup>2</sup> F00016, Third Gucati Request for Temporary Release on Compassionate Grounds, 29 June 2022 (“Request”).

<sup>3</sup> KSC-BC-2018-01, F00015, Notification of Arrest Pursuant to Rule 55(4), 25 September 2020 (strictly confidential and *ex parte*, reclassified as public on 15 October 2020); KSC-BC-2020-07, F00012/A01/RED, Public Redacted Version of Arrest Warrant for Hysni Gucati, 25 September 2020. See also KSC-BC-2018-01, F00012, Decision on Request for Arrest Warrants and Transfer Orders, 24 September 2020 (strictly confidential and *ex parte*, reclassified as public on 9 October 2020).

<sup>4</sup> KSC-BC-2018-01, F00018, Notification of the Reception of Hysni Gucati in the Detention Facilities of the Specialist Chambers, 25 September 2020 (strictly confidential and *ex parte*, reclassified as public on 15 October 2020). See also KSC-BC-2018-01, F00012/A02/RED, Public Redacted Version of Order for Transfer to Detention Facilities of the Specialist Chambers, 24 September 2020.

<sup>5</sup> KSC-BC-2020-07, F00604/RED, Public Redacted Version of Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds, 16 May 2022 (confidential and *ex parte* version filed on 9 May 2022) (“First Temporary Release Decision”). See KSC-BC-2020-07, F00599/RED, Public Redacted Version of Gucati Request for Temporary Release on Compassionate Grounds, 17 May 2022 (confidential and *ex parte* version filed on 9 May 2022).

3. On 18 May 2022, the Trial Panel issued a judgment finding Gucati guilty of five of the six counts charged and sentencing him to four and a half years of imprisonment, with credit for the time served, and to a fine of one hundred euros.<sup>6</sup>
4. On 27 May 2022, the Trial Panel issued a second decision granting Gucati temporary release on compassionate grounds.<sup>7</sup>
5. On 29 June 2022, Gucati filed a third request for temporary release on compassionate grounds.<sup>8</sup>
6. On 30 June 2022, pursuant to correspondence from the Panel,<sup>9</sup> the Specialist Prosecutor's Office ("SPO") responded ("SPO Response")<sup>10</sup> and the Registrar filed submissions on the Request ("Registry Submissions").<sup>11</sup> On the same day, Gucati replied ("Reply").<sup>12</sup>

## II. DISCUSSION

### A. SUBMISSIONS OF THE PARTIES

7. Gucati requests authorisation for a custodial visit to attend to his mother who is in a critical medical condition at the [REDACTED] and to comfort immediate

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<sup>6</sup> KSC-BC-2020-07, F00611/RED, Public Redacted Version the Trial Judgment, 18 May 2022 (confidential version filed on 18 May 2022) ("Trial Judgment"), paras 1012-1014.

<sup>7</sup> KSC-BC-2020-07, F00618/RED, Public Redacted Version of Decision on Second Gucati Defence Request for Temporary Release on Compassionate Grounds, 3 June 2022 (confidential and *ex parte* version filed on 27 May 2022) ("Second Temporary Release Decision"). See KSC-BC-2020-07, F00614/RED, Public Redacted Version of Second Gucati Request for Temporary Release on Compassionate Grounds, 2 June 2022 (confidential and *ex parte* version filed on 26 May 2022).

<sup>8</sup> See above fn. 2.

<sup>9</sup> See CRSPD2, Email from CMU to CA Panel re filing instructions related to F00016, 29 June 2022.

<sup>10</sup> F00017, Prosecution response to Third Gucati Request for Temporary Release on Compassionate Grounds, 30 June 2022 (confidential and *ex parte*) ("SPO Response").

<sup>11</sup> F00018, Registrar's Submissions on Third Gucati Request for Temporary Release on Compassionate Grounds, 30 June 2022 (confidential and *ex parte*) ("Registry Submissions").

<sup>12</sup> F00019, Consolidated Reply to Prosecution Response to, and Registrar's Submissions on, Third Gucati Request for Temporary Release on Compassionate Grounds, 30 June 2022 (confidential and *ex parte*) ("Reply").

members of his family at the hospital or at the family address.<sup>13</sup> He argues that being enabled to maintain contact with his close family, particularly where a close family member is grievously ill, is an essential part of a detainee's right to family life as enshrined by the Constitution of Kosovo and the European Convention on Human Rights ("ECHR").<sup>14</sup> Gucati submits that his mother's poor health has deteriorated rapidly due to an "extremely serious condition" and there is a real risk, in the circumstances, that she may pass away imminently.<sup>15</sup> Gucati also submits that he would comply with the same conditions as those imposed in relation to previous custodial visits in this and other cases before the Specialist Chambers.<sup>16</sup>

8. The SPO responds that any temporary release must be a fully custodial escorted visit of strictly limited duration under certain conditions.<sup>17</sup> According to the SPO, the fact of Gucati's conviction should be a significant factor in the evaluation of the Request, as the modification of the fully controlled detention environment presents a heightened risk.<sup>18</sup> The SPO also submits that while the Medical Certificate does not provide details substantiating the acute health status of Gucati's mother, it defers to the Appeal's Panel discretion on the sufficiency of the information provided.<sup>19</sup> The SPO, finally, submits that any such facilitation should be exceptional and that it understands that the Request encompasses the entirety of Gucati's request in relation to the current circumstances.<sup>20</sup>

9. The Registrar submits that a temporary transfer of Gucati to Kosovo for a period of one day, him departing and returning on the same day, would be feasible, with the understanding that he would remain in the custody of the Specialist

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<sup>13</sup> Request, paras 1, 13, 19, 21.

<sup>14</sup> Request, para. 16. See also Request, para. 17.

<sup>15</sup> Request, paras 11, 18-19. See also F00016/A01, Annex 1 to Third Gucati Request for Temporary Release, 29 June 2022 (confidential and *ex parte*) ("Medical Certificate").

<sup>16</sup> Request, para. 20.

<sup>17</sup> SPO Response, para. 4.

<sup>18</sup> SPO Response, para. 2.

<sup>19</sup> SPO Response, para. 3.

<sup>20</sup> SPO Response, para. 5.

Chambers at all times and under the condition that it is justifiable due to urgent, compelling and exceptional circumstances.<sup>21</sup> The Registrar submits that this visit could take place on 3 July 2022 and include a custodial visit to the hospital where Gucati's mother is receiving care and a limited number of visits under certain restrictions with immediate family members at the Specialist Chambers' secure transfer facility at the [REDACTED] ("[REDACTED]" "transfer facility").<sup>22</sup> The Registrar sets out a number of recommendations regarding operational and mission security requirements.<sup>23</sup>

10. Gucati replies that the Medical Certificate confirms that the condition of [REDACTED] ("[REDACTED]") is both acute and critical and there is no basis upon which to understate her medical issues.<sup>24</sup> Further, Gucati asks that the Request be granted on the conditions set out in the Registry Submissions.<sup>25</sup>

#### B. ASSESSMENT OF THE COURT OF APPEALS PANEL

11. The Panel recalls that pursuant to Rule 56(3) of the Rules,<sup>26</sup> upon 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. Article 8 of the ECHR does not guarantee an unconditional right to leave prison to visit a sick relative and there are cases where the rights of a detainee by the very nature of his or her situation must be subjected to various limitations.<sup>27</sup> However, every such limitation must be justifiable as being necessary in a democratic society.<sup>28</sup> Among the factors to

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<sup>21</sup> Registry Submissions, paras 10-13.

<sup>22</sup> Registry Submissions, paras 14-15.

<sup>23</sup> Registry Submissions, paras 16-33.

<sup>24</sup> Reply, paras 1-2.

<sup>25</sup> Reply, para. 3, referring to Registry Submissions, paras 17, 21-22.

<sup>26</sup> Rule 56(3) of the Rules applies *mutatis mutandis* in respect of a person pending appeal pursuant to Rule 174 of the Rules.

<sup>27</sup> See ECtHR, *Ulemek v. Croatia*, no. 21613/16, Judgment, 31 October 2019, para. 152; ECtHR, *Feldman v. Ukraine*, no. 42921/09, Judgment, 12 January 2012 ("*Feldman v. Ukraine* Judgment"), para. 34; ECtHR, *Lind v. Russia*, no. 25664/05, Judgment, 6 December 2007 ("*Lind v. Russia* Judgment"), para. 94. See also Second Temporary Release Decision, para. 16; First Temporary Release Decision, para. 11.

<sup>28</sup> See *Feldman v. Ukraine* Judgment, para. 34; *Lind v. Russia* Judgment, para. 94.

be considered in this assessment are the stage of the proceedings, the nature of the criminal offence, the accused'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.<sup>29</sup>

12. The Panel is mindful of the fact that Gucati had the opportunity to visit his mother, who already at that time was in a very serious condition due to different health problems, just a month ago. Moreover, the Panel observes that although the Medical Certificate describes the health condition of [REDACTED] as "extremely serious – critical", it does not provide further details about her diagnosis and/or prognosis.<sup>30</sup>

13. Nonetheless, the Panel notes that visiting a close relative in critical condition has been accepted, under certain conditions, by this and other jurisdictions, as a compelling humanitarian ground warranting temporary release.<sup>31</sup> In particular, the Trial Panel found that the poor health situation of the Accused's mother, [REDACTED], qualified as a compelling consideration when deciding in favour of granting Gucati custodial visits on two previous occasions.<sup>32</sup> The Panel observes that [REDACTED] was at that time at her home residence, whereas she has now been hospitalised since [REDACTED].<sup>33</sup> The Panel is also attentive to Gucati's argument that [REDACTED]'s deterioration into her present, extremely serious condition has

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<sup>29</sup> See Second Temporary Release Decision, para. 16 and authorities cited therein.

<sup>30</sup> See ICTY, *Prosecutor v. Strugar*, IT-01-42-A, Decision on Defence Request Seeking Provisional Release on the Grounds of Compassion, 2 April 2008, paras 12-13.

<sup>31</sup> See Second Temporary Release Decision, para. 17, referring *inter alia* to First Temporary Release Decision, para. 12; KSC-BC-2020-06, F00276/RED, Public Redacted Version of Decision on Veseli Defence Request for Modification of Decision KSC-BC-2020-06/F00271, 11 May 2021 (confidential and *ex parte* version filed on 4 May 2021); KSC-BC-2020-06, F00640/RED, Public Redacted Version of Third Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds, 17 January 2022 (confidential and *ex parte* version filed on 8 January 2022).

<sup>32</sup> See Second Temporary Release Decision, paras 19-20; First Temporary Release Decision, paras 15-16.

<sup>33</sup> Request, para. 11.

been rapid and follows the recent and very distressing events of the death of Gucati's father.<sup>34</sup>

14. Further, the Panel notes that Gucati has been convicted by the Trial Panel for offences against the administration of justice<sup>35</sup> and that the Registrar confirmed that Gucati abided by all conditions imposed during his previous two custodial visits to Kosovo.<sup>36</sup>

15. In light of the above, the Panel finds that, on balance and in the present circumstances, the ill health of the Accused's mother amounts to compelling humanitarian grounds justifying his limited temporary release. The Panel finds it appropriate that the temporary release shall last one day, Gucati departing and returning on the same day, on Sunday, 3 July 2022, as this would provide adequate time for him to visit his mother and other authorised immediate family members, and is thus proportional to the grounds for which the temporary release is sought.

16. Recalling that 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, the Panel will turn next to the question of whether and if so, what conditions must be imposed on Gucati's temporary release. The Panel notes in this regard that the Registrar has provided a number of logistical measures and security conditions that make such a visit feasible.<sup>37</sup>

17. The Panel recalls that Gucati, with the exception of the two earlier instances where he was temporarily released on compassionate grounds, has been in detention

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<sup>34</sup> Request, para. 18.

<sup>35</sup> Trial Judgment, para. 1012.

<sup>36</sup> KSC-BC-2020-07, F00612/RED, Public Redacted Version of "Report of the Registrar pursuant to Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds", Filing F00612, dated 17 May 2022, 3 June 2022 (confidential and *ex parte* version filed on 17 May 2022), para. 11; KSC-BC-2020-07, F00619, Report of the Registrar Pursuant to Decision on Second Gucati Defence Request for Temporary Release on Compassionate Grounds, 2 June 2022 (confidential and *ex parte* version), para. 9.

<sup>37</sup> Registry Submissions, paras 16-33.

since 25 September 2020, on the basis that: (i) there is a risk that he may obstruct the progress of proceedings and commit offences either in repetition of those charged, or offences which he has previously threatened to commit; and (ii) imposing conditions in relation to his release would insufficiently mitigate these risks.<sup>38</sup> Moreover, pursuant to Article 46(8) of the Law, unless the Trial or Court of Appeals Panel orders otherwise, a convicted person shall remain in custody pending an appeal. The Panel, therefore, considers that strict conditions are necessary for the purpose of a custodial visit on compassionate grounds to outweigh the risks associated with Gucati's temporary release.

18. Noting that the previously imposed conditions were sufficient to ensure that Gucati's custodial visits be conducted without any reported incident, the Panel considers that the custodial visit shall be carried out under the same conditions as imposed previously, namely:

- a) Gucati shall, at all times and without exception, remain in the custody of the Specialist Chambers, be escorted by escorting officers, and remain in the sight and within earshot of escorting officers. The escorting officers may be uniformed, if necessary, and remain in his vicinity at all times, as necessary. Gucati shall comply fully with any instructions received from the escorting officers;

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<sup>38</sup> KSC-BC-2020-07, F00594, Decision on Review of Detention of Hysni Gucati, 21 April 2022, paras 29, 33; KSC-BC-2020-07, F00562, Decision on Review of Detention of Hysni Gucati, 21 February 2022, paras 39, 43; KSC-BC-2020-07, F00506/RED, Public Redacted Version of Decision on Review of Detention of Hysni Gucati, 21 December 2021 (confidential version filed on the same day), paras 79-80; KSC-BC-2020-07, F00390, Decision on Review of Detention of Hysni Gucati, 22 October 2021, paras 24-25; KSC-BC-2020-07, F00279, Decision on Review of Detention of Hysni Gucati, 23 August 2021, paras 22-23; KSC-BC-2020-07, F00245, Decision on Review of Detention of Hysni Gucati, 23 June 2021, paras 19-20; KSC-BC-2020-07, F00188, Decision on Review of Detention of Hysni Gucati, 23 April 2021, paras 20-21; KSC-BC-2020-07, F00143, Decision on Review of Detention of Hysni Gucati, 24 February 2021, paras 31-32; KSC-BC-2020-07, F00093, Decision on review of Detention of Hysni Gucati, 24 December 2020, paras 36-37; KSC-BC-2020-07, F00059, Decision on Application for Bail, 27 October 2020, paras 18, 20. See also KSC-BC-2020-07, IA001/F00005, Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, 9 December 2020, paras 65-67.

- b) Gucati shall only be transported to and from the airport and to and from the transfer facility and the [REDACTED]. If his mother is meanwhile discharged from the hospital, Gucati shall be transported to the new location, taking into account the security situation and operational constraints of the mission;
- c) During his visits at the aforementioned locations, Gucati is not permitted to communicate with any person other than his immediate family members (mother, spouse, children, grand-children, siblings), his Counsel and members of his Defence team. All non-authorised persons shall vacate these locations before Gucati's visit;
- d) The presence of immediate family members at the aforementioned locations<sup>39</sup> shall be subject to prior approval of the chief custody officer upon presentation of photographic identification. To this end, Gucati and/or his Defence team are ordered to submit copies of identity documents of immediate family members to the Detention Management Unit for prior approval;
- e) Gucati is not permitted to be alone with any pre-identified immediate family member at any time, and must remain within both sight and earshot of the escorting officers;
- f) The chief custody officer may take any decision necessary regarding the custodial visit on the basis of operational and security concerns, including terminating any of the above visits;
- g) Gucati's visit at the hospital in [REDACTED] should take into consideration, if practicable, the general regulations and visiting hours of the hospital. Gucati may not communicate with medical personnel. Such personnel can, however,

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<sup>39</sup> See Registry Submissions, paras 15, 17, 21-22 (regarding the specific parameters of such visits).

have access to [REDACTED] during his visit, if necessary for medical intervention or treatment;

- h) Gucati shall not have access to communication devices or any other means of communication, including pen and paper, other than as facilitated by the Specialist Chambers;
- i) Gucati is not permitted to pass or receive items to or from any person without prior inspection and approval of the escorting officer(s);
- j) Gucati shall not have any contact whatsoever or in any way interfere with any victim or witness or otherwise interfere in any way with the proceedings or the administration of justice;
- k) Gucati shall not seek direct access to documents nor destroy evidence;
- l) Gucati shall not discuss his case with anyone, including the media, other than with his Counsel and members of his Defence team;
- m) Gucati, his Counsel, members of his Defence team, immediate family members and associates shall refrain from making public statements and shall maintain secrecy regarding his presence on the territory of Kosovo prior to and during the entirety of his stay. Should his presence become known, the SPO, the Registry or EULEX, as appropriate, are authorised to make any necessary statement in that regard;
- n) Gucati shall comply strictly with any further order of the Panel varying the terms or terminating his custodial visit; and
- o) Gucati shall comply with any COVID-19 related measures, if applicable, as specified by the Registry.

19. Should there be a need to amend any of the above conditions, the Parties or the Registry shall seize the Panel immediately.

20. In the implementation of the above conditions, the Panel authorises the Registry to make final operational and security arrangements with external partners and to notify any other authorities, including those in the Host State and Kosovo, as necessary for the implementation of this Decision. In this regard, the Panel recalls that, pursuant to Article 53(1) of the Law, all entities and persons in Kosovo shall co-operate with the Specialist Chambers and shall comply without undue delay with any decision issued by the Specialist Chambers or any request for assistance. Throughout the custodial visit, the Registry shall provide the Panel with regular updates via email or telephone calls. Such regular updates shall occur, at the very least, upon: (i) Gucati's transfer to Kosovo; (ii) the completion of any custodial visit to his mother's location; (iii) any breaches of the aforementioned conditions by Gucati or others; (iv) any early termination of the visits and the reasons therefor; and (v) Gucati's return to the detention unit of the Specialist Chambers in the Host State. The Registry shall file a report to the Panel on the implementation of this Decision by Thursday, 7 July 2022.

### III. CLASSIFICATION OF FILINGS

21. The Panel notes that the Request, the SPO Response, the Registry Submissions and the Reply were filed confidentially and *ex parte*, as they contain sensitive personal and medical information regarding [REDACTED]. Considering that all submissions filed before the Specialist Chambers shall be public unless there are exceptional reasons for keeping them confidential, and that Parties shall file public redacted versions of all non-public submissions filed,<sup>40</sup> the Panel: (i) directs the Parties and the Registry to respectively file a public redacted version of the Request (F00016), the Registry Submissions (F00018) and the Reply (F00019) after the conclusion of Gucati's

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<sup>40</sup> See e.g. KSC-BC-2020-07, F00007, Decision on the Defence Appeals Against Decision on Preliminary Motions, 23 June 2021, para. 13.

custodial visit to Kosovo; and (ii) instructs the Registry to reclassify the SPO Response (F00017) as public at that time.<sup>41</sup>

#### IV. DISPOSITION

22. For these reasons, the Court of Appeals Panel:

**GRANTS** the Request;

**ORDERS** Gucati to comply with all conditions specified in paragraph 18 of the present Decision;

**INSTRUCTS** the Registry to implement Gucati's custodial visit under the conditions specified in paragraph 18 of the present Decision;

**INVITES** the Parties and/or the Registry to seize the Panel immediately should an amendment to the conditions in paragraph 18 of the present Decision be required;

**AUTHORISES** the Registry to: (i) make arrangements with external partners for the implementation of this Decision; and (ii) notify any other authorities deemed necessary for the implementation of this Decision;

**REMINDS** authorities in Kosovo that they shall comply without undue delay with any decision issued by the Specialist Chambers or any request for assistance;

**ORDERS** the Registry to provide updates and file a report as indicated in paragraph 20 of the present Decision;

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<sup>41</sup> See SPO Response, para. 6.

**ORDERS** Gucati and the Registry to file public redacted versions of their respective filings identified in paragraph 21 of the present Decision after the conclusion of Gucati's custodial visit to Kosovo; and

**INSTRUCTS** the Registry to reclassify the SPO Response (F00017) as public after the conclusion of Gucati's custodial visit to Kosovo.



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**Judge Michèle Picard,  
Presiding Judge**

Dated this Thursday, 30 June 2022

At The Hague, the Netherlands