

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 Counsel for Hysni Gucati

Date: 29 June 2022

Language: English

Classification: Public

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

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I. INTRODUCTION

1. The Defence for Mr Gucati requests that the Appeals Panel orders the temporary release of Mr Gucati on compassionate grounds, to allow him to attend to [REDACTED].

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, [REDACTED].
4. On 9 May 2022, the Trial Panel granted² a request from the Gucati Defence for Temporary Release of Mr Gucati on Compassionate Grounds (the "Original Request").³ Between 12 and 14 May 2022, Mr Gucati was transferred to Kosovo for a custodial visit ("first custodial visit").
5. On 17 May 2022, the Registry filed a Report at the request of the Trial Panel which detailed the implementation of the first custodial visit.⁴ 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

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

² *Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds*, KSC-BC-2020-07/F00604, Trial Panel II, Confidential & Ex Parte (the "Decision on First Custodial Visit")

³ *Gucati Request for Temporary Release on Compassionate Grounds*, KSC-BC-2020-07/F00599, Confidential

⁴ *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

“cooperation with external partners was highly effective and ensured a successful operation”.⁵

6. The pronouncement of the Trial Judgment took place on at 10am on 18 May 2022.⁶ 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.⁷
7. On 22 May 2022, [REDACTED].
8. On 27 May 2022, [REDACTED] and the Trial Panel authorised Mr Gucati’s secure and temporary transfer to Kosovo on 30 May 2022 to attend [REDACTED]⁸. The Trial Panel also permitted Mr Gucati to meet and communicate with members of his immediate family (mother, spouse, children, grand-children, siblings), his Counsel and members of the Gucati Defence team at [REDACTED] (“family address”).
9. On 2 June 2022, the Registry filed a Report at the request of the Trial Panel which detailed the implementation of the second custodial visit.⁹ The Report stated in particular that “Mr Gucati abided by the instructions of the chief custody officer and the escorting officers during the custodial visit” and that

⁵ Ibid at paragraphs 11 and 12

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

⁷ *Trial Judgment*, KSC-BC-2020-07/F00611, Confidential

⁸ *Decision on Second Gucati Defence Request for Temporary Release on Compassionate Grounds*, KSC-BC-2020-07/F00618, Trial Panel II, Confidential and ex parte (“Decision on Second Custodial Visit”)

⁹ *Report of the Registrar pursuant to Decision on Second Gucati Defence Request for Temporary Release on Compassionate Grounds*, KSC-BC-2020-07/F00619, Registrar, Confidential and Ex Parte

“cooperation with external partners was highly effective and ensured a successful operation”.¹⁰

10. On 20 June 2022, Notice of Appeal was filed on behalf of Mr Gucati in relation to both conviction and sentence¹¹.

11. On 28 June 2022, [REDACTED].

12. Mr Gucati seeks authorisation for a custodial visit to attend upon [REDACTED].

III. APPLICABLE LAW

13. 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.”

14. 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”.

¹⁰ Report of the Registrar pursuant to Decision on Second Gucati Defence Request for Temporary Release on Compassionate Grounds, KSC-BC-2020-07/F00619, Registrar, Confidential and Ex Parte at paragraphs 9 and 10

¹¹ Gucati Notice of Appeal re Trial Judgment KSC-BC-2020-07/F00611, KSC-CA-2022-01/F00009, Gucati, Confidential

15. Pursuant to Rule 56(5) of the Rules, the Trial Panel may impose such conditions upon the release as is 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.

18. As the Trial Panel has previously acknowledged¹³, [REDACTED].

19. There is a real risk, in the circumstances, that [REDACTED]. It is requested that a custodial visit be granted on compassionate grounds so that Mr Gucati can [REDACTED].

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; *Decision on First Custodial Visit*, at paragraph 12; *Decision on Second Custodial Visit*, at paragraph 17

¹³ *Decision on First Custodial Visit*, paragraphs 15-16; *Decision on Second Custodial Visit*, paragraphs 18-20

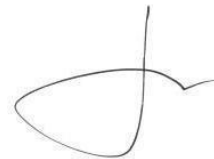
20. There are a range of conditions that have previously been imposed to such an order for temporary release to address any risks of flight, obstruction of the progress of proceedings, or the commission of further offences during the period of temporary release¹⁴. The Appeals Panel is invited to consider the same and, if deemed necessary, impose any such conditions as required. Mr Gucati will comply with the same as he has done previously.

21. Accordingly, the Appeals Panel is requested in the circumstances to direct that the place of detention be transferred to Kosovo pursuant to Rule 56(3) of the Rules, under such conditions as necessary, to enable Mr Gucati to [REDACTED].

CLASSIFICATION

22. This filing is classified as confidential and ex parte as it refers to sensitive medical information concerning [REDACTED].

Word count: 1354 words



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¹⁴ *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; *Decision on First Custodial Visit*, at paragraph 20; *Decision on Second Custodial Visit*, at paragraph 24

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