



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

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

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Public Redacted Version of
“Registrar’s Submissions on the Fourth Gucati Request for Temporary Release on
Compassionate Grounds”, filing F00041, dated 12 September 2022

Specialist Prosecutor’s Office

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I. INTRODUCTION

1. Pursuant to Rule 23(2) of the Rules,¹ the Registrar hereby provides submissions on the Fourth Gucati Request for Temporary Release on Compassionate Grounds ('Fourth 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-2022-01, F00039, Fourth Gucati Request for Temporary Release on Compassionate Grounds, 10 September 2022, confidential and *ex parte* ('Fourth Request').

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 mother, [REDACTED], whom he states is in a critical medical condition [REDACTED], and to comfort immediate members of his family.⁴ Specifically, Mr Gucati requests the Court of Appeals Panel (‘Panel’) [REDACTED].⁵

B. Feasibility and Operational Requirements

9. In terms of the security situation, the Registrar notes her prior submissions⁶ in relation to Mr Gucati’s previous requests for temporary release on compassionate grounds based on the critical condition of his parents,⁷ and the decisions of Trial Panel II and of the Court of Appeals Panel on Mr Gucati’s previous requests, imposing

⁴ Fourth Request, paras 1, 18, 27.

⁵ [REDACTED].

⁶ KSC-BC-2020-07, F00602, Registrar’s Submissions 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). F00615, Registrar’s Submissions on Second Gucati Request for Temporary Release on Compassionate Grounds, 27 May 2022, confidential and *ex parte*; a public redacted version was issued on 3 June 2022. KSC-CA-2022-01, F00018, Registrar’s Submissions on Third Gucati Request for Temporary Release on Compassionate Grounds, 30 June 2022, confidential and *ex parte*; a public redacted version was issued on 8 July 2022 (F00018/RED).

⁷ Fourth Request, paras 4, 8, 12. *See also* KSC-BC-2020-07, F00599, Gucati Request for Temporary Release on Compassionate Grounds, 9 May 2022, confidential; a public redacted version was issued 17 May 2022 (F00599/RED). F00614, Second Gucati Request for Temporary Release on Compassionate Grounds, 26 May 2022, confidential and *ex parte*; a public redacted version was issued 2 June 2022 (F00614/RED). KSC-CA-2022-01, F0016, Third Gucati Request for Temporary Release on Compassionate Grounds, 29 June 2022, confidential and *ex parte*. A public redacted version was filed on 12 July 2022 (F00016/RED).

certain conditions.⁸ 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.⁹

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

11. In addition, the considerable 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 on short notice 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 supporting ongoing court proceedings this week, from Tuesday to Friday, [REDACTED]. In addition, operational planning consultations with external partners have taken into account available resources and mission security requirements.

⁸ 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). F00618, Decision on Second Gucati Defence Request for Temporary Release on Compassionate Grounds, 27 May 2022, confidential and *ex parte* ('Second Decision'), paras 23-24, 33; a public redacted version was issued on 3 June 2022. KSC-CA-2022-01, F00020, Decision on Gucati's Third Request for Temporary Release on Compassionate Grounds, 30 June 2022, confidential and *ex parte*; a public redacted version was issued on 4 July 2022 (F00020/RED).

⁹ KSC-BC-2020-07, F00611, Trial Judgment, 18 May 2022, confidential; a public redacted version was issued on the same day (F00611/RED).

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 at the earliest on [REDACTED].¹⁰ This 1-day visit would accommodate the necessary travel time, a custodial visit to the hospital where Mr Gucati's mother is receiving care, and a limited number of visits with immediate family members at the Specialist Chambers' secure transfer facility, 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 mother, 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 mother and a maximum of [REDACTED] immediate family members¹¹ at the hospital. [REDACTED].

18. For this visit, [REDACTED] would be required, and the Registry will make the necessary arrangements should the Panel decide to approve this visit.

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

¹⁰ Unforeseen circumstances may impact upon these timescales.

¹¹ Trial Panel II has defined immediate family members as parents, spouse, children, siblings, and grandchildren. Cf. F00602, above fn. 6, at para. 18 and fn. 10 (noting that immediate family members are considered to be first-degree relatives, namely a person's parents, spouse, children and siblings).

iii. Visits with other immediate family members

20. Mr Gucati also requests to meet with immediate members of his family “at the family address” in the alternative to the hospital.¹² The family address is identified as [REDACTED].¹³

21. [REDACTED]. Considering this and the high probability of the visit being public knowledge upon the arrival of Mr Gucati in Kosovo with little opportunity for a low-profile visit, it is submitted that [REDACTED].

22. Considering the time needed for a safe and secure custodial visit to the hospital, it is estimated that there would be approximately [REDACTED] available for visits with immediate family members at the transfer facility. A maximum of [REDACTED] visitors at a time can attend a single visit at the transfer facility. Given that the minimum duration of a single visit is approximately [REDACTED], to accommodate among other things [REDACTED], it would be possible to accommodate up to [REDACTED] visits [REDACTED] with immediate family members at the transfer facility, barring any delay or unforeseen circumstances. This is on the understanding that the chief custody officer may take any decision regarding the visits on the basis of operational and security concerns, including limiting the number of visits and suspending or terminating visits.

23. The transfer facility will be managed by Specialist Chambers’ security staff at all times, led by the chief custody officer. Due to the limited duration of the stay there, the Registrar is satisfied that the secure transfer facility is in line with applicable international standards.

24. If a custodial visit is ordered by the Panel, the Registry requests that the Defence be ordered to submit copies of the identity documents of immediate family members to the Detention Management Unit for prior approval. In addition, pre-approved

¹² Fourth Request, para. 27.

¹³ Fourth Request, para. 8.

immediate family members would also need to present photographic identification to the chief custody officer upon arrival at the transfer facility.

iv. 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

v. COVID-19 Considerations

29. COVID-19 testing requirements are factored into the logistical planning.

30. Mr Gucati may be required to observe any applicable public health requirements in Kosovo or the Host State.

vi. 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 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: 1891



Dr Fidelma Donlon

Registrar

Tuesday, 20 September 2022

At The Hague, the Netherlands