



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

In: KSC-CA-2022-01
Specialist 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: 16 November 2022

Language: English

Classification: Public

Public Redacted Version of

Prosecution Response to Haradinaj Request for Temporary Release

Specialist Prosecutor's Office

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Toby Cadman

1. The Request¹ is plainly filed without substantiation, and there is no framework to practically accommodate the relief sought.
2. All previous temporary release requests in this case at least presented some supporting documentation, but the Haradinaj Defence acknowledges that it has presented no information establishing the medical condition alleged or its severity.² Alleged urgency cannot be a substitute for justifying the relief sought and, despite promising that a physician would confirm the prognosis within 24 hours of the Request, no supplemental information was notified to the SPO in over a week since filing.³
3. Another clear distinguishing point between this Request and previous visits is that Haradinaj seeks to be released to a country other than Kosovo. The KSC/SPO do not have permission to operate in [REDACTED] as they can in Kosovo because third states are not bound to cooperate in the same way as Kosovo.⁴ There is no indication that the [REDACTED] authorities would accommodate the requested visit under conditions ensuring Haradinaj's continued detention,⁵ and it is simply impracticable to arrange it on an urgent basis.

¹ Urgent Haradinaj Request for Temporary Release on Compassionate Grounds, KSC-CA-2022-01/F00077, 27 October 2022, Confidential and *ex parte* (notified to SPO 28 October 2022) ('Request').

² Request, KSC-CA-2022-01/F00077, para.2.

³ Request, KSC-CA-2022-01/F00077, para.4.

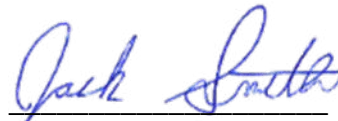
⁴ Compare Article 53 with Article 55 of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015.

⁵ It must be noted in this regard that all previous 'releases' required the Accused to remain in KSC custody. Public Redacted Version of Decision on Gucati's Fourth Request for Temporary Release on Compassionate Grounds, KSC-CA-2022-01/F00043/RED, 13 September 2022 (redacted version notified 22 September 2022) ('Fourth Temporary Release Decision'), para.23(a); Public Redacted Version of Decision on Gucati's Third Request for Temporary Release on Compassionate Grounds, KSC-CA-2022-01/F00020/RED, 30 June 2022 (redacted version notified 4 July 2022), para.18(a); Public Redacted Version of Decision on Second Gucati Defence Request for Temporary Release on Compassionate Grounds, KSC-BC-2020-07/F00618/RED, 27 May 2022 (redacted version notified 3 June 2022), para.24(a); Public Redacted Version of the Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds, KSC-BC-2020-07/F00604/RED, 9 May 2022 (redacted version notified 16 May 2022), para.20(a)-(b).

4. There is no unconditional right to leave prison to visit a sick relative.⁶ Mr Haradinaj has been convicted for obstructing proceedings, violating their secrecy, and intimidating witnesses. He has made it perfectly clear he would repeat his criminal conduct.⁷ There is no reason to expect him to follow any conditions governing temporary release, never mind a release for unsupported reasons to a state with no cooperation obligations.

5. For these reasons, the Request should be rejected.⁸

Word count: 559



Jack Smith
Specialist Prosecutor

Wednesday, 16 November 2022

At The Hague, the Netherlands.

⁶ Fourth Temporary Release Decision, KSC-CA-2022-01/F00043/RED, para.16.

⁷ P00035ET, p.13 ('You think you will scare me with ten years! Even if you sentence me to 300 years, I will still disclose them. I am speaking on my behalf and on the behalf of the whole presidium [...] We are ready to face 300 years [...] We are ready to die'); Testimony of Nasim Haradinaj, T.3021-24 (from 3024: 'If you bring them, I will act the same, because I am convinced that I acted rightly and I did it in the interest of informing the public and for the sake of transparency. I think that, I have that conviction, that it was appropriate').

⁸ The present filing is submitted confidential and *ex parte* pursuant to Rule 82(4) of the Rules.