



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-CA-2022-01/CR001 and CR002

Before: Single Judge Panel

Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 3 March 2023

Language: English

Classification: Confidential

Order for Submissions on Requests for Temporary Release

Acting Specialist Prosecutor

Alex Whiting

Counsel for Hysni Gucati

Jonathan Elystan Rees

Registry

Fidelma Donlon

Counsel for Nasim Haradinaj

Toby Cadman

THE SINGLE JUDGE,¹ pursuant to Article 33(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 9(5)(a), 23(2)(a), 56(3) and 82 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), hereby issues this order.

I. PROCEDURAL BACKGROUND

1. On 2 February 2023, a Panel of the Court of Appeals Chamber rendered the Appeal Judgment wherein it partially affirmed the convictions by Trial Panel II of Hysni Gucati ("Mr Gucati") and Nasim Haradinaj ("Mr Haradinaj"),² and reduced their sentences to four years and three months of imprisonment, with credit for time served, further affirming the additional sentence imposed on each to pay a fine of one hundred Euros (100 EUR).³
2. On 2 March 2023, Counsel for Mr Gucati filed a request for a fifth custodial visit on compassionate grounds ("Gucati Request").⁴
3. On 2 March 2023, the Specialist Prosecutor's Office ("SPO") responded to the Gucati Request ("SPO Response to Gucati Request").⁵
4. On 2 March 2023, Counsel for Mr Haradinaj filed a request for temporary release on compassionate grounds ("Haradinaj Request").⁶

¹ KSC-CA-2022-01, CR001/F00003, President, *Decision Assigning a Single Judge*, 2 March 2023, confidential and *ex parte*; KSC-CA-2022-01, CR002/F00003, President, *Decision Assigning a Single Judge*, 3 March 2023, confidential.

² KSC-BC-2020-07, F00611/RED, Trial Panel II, *Public Redacted Version of the Trial Judgment*, 18 May 2022, public.

³ KSC-CA-2022-01, F00114, Court of Appeals, *Appeal Judgment*, 2 February 2023, public, para. 442.

⁴ KSC-CA-2022-01, CR001/F00001, Specialist Counsel, *Re-Filed Gucati Request for Fifth Custodial Visit on Compassionate Grounds*, 2 March 2023, confidential and *ex parte*, with one Annex, confidential and *ex parte*.

⁵ KSC-CA-2022-01, CR001/F00002, Specialist Prosecutor, *Prosecution Response to Re-Filed Gucati Request for Fifth Custodial Visit on Compassionate Grounds*, 2 March 2023, confidential and *ex parte*.

⁶ KSC-CA-2022-01, CR002/F00001, Specialist Counsel, *Haradinaj Defence Request for Temporary Release on Compassionate Grounds*, 2 March 2023, confidential, with one Annex, confidential.

5. On 3 March 2023, the SPO responded to the Haradinaj Request (“SPO Response to Haradinaj Request”).⁷

6. On 3 March 2023, Counsel for Mr Gucati filed a request for reclassification of the Gucati Request as confidential.⁸

II. APPLICABLE LAW

7. Pursuant to Rule 9(5)(a) of the Rules, the Panel may, *proprio motu* or upon showing of good cause, extend or reduce any time limit prescribed by the Rules or set by the Panel.

8. Pursuant to Rule 23(2)(a) of the Rules, the Registrar, in the execution of his or her functions as set out in the Law, the Rules and the relevant practice directions, may make representations to the President or any Panel on issues arising in the context of a specific case which affects the discharge of his or her functions.

9. Pursuant to Rule 56(3) of the Rules, upon request by a detained person or *proprio motu*, the Panel may order the temporary release of the detained person, where compelling humanitarian grounds justify such release.

III. DISCUSSION

10. Noting that the Registrar may make representations to the Panel on issues affecting her functions, and aiming to facilitate the Single Judge’s assessment of all the circumstances and factors relevant to the Gucati Request and the Haradinaj Request, the Single Judge orders the Registrar to file submissions on both requests (“Registry Submissions”) by no later than Monday, 6 March 2023, at 16h00. In

⁷ KSC-CA-2022-01, CR002/F00003, Specialist Prosecutor, *Prosecution Response to Haradinaj Request for Temporary Release on Compassionate Grounds*, 3 March 2023, confidential.

⁸ KSC-CA-2022-01, CR001/F00004, Specialist Counsel, *Defence Request for Reclassification of Re-Filed Gucati Request for Fifth Custodial Visit on Compassionate Grounds (KSC-CA-2022-01/CR001/F00001)*, 3 March 2023, confidential.

particular, the Single Judge invites the Registrar to provide, among any other submissions that she deems relevant, her views on (i) the feasibility and operational requirements of organizing separate or combined custodial visit(s) for Mr Gucati and Mr Haradinaj; (ii) any other available and adequate alternative means for Mr Gucati to keep in close contact with his ailing mother and immediate members of his family at this time; as well as (iii) any further practical matters concerning the execution, associated costs and foreseen challenges to the organization of any such visits(s).

11. Relatedly, the Single Judge orders that Mr Gucati and Mr Haradinaj may likewise have the opportunity to file a reply to the SPO Response to Gucati Request and the SPO Response to Haradinaj Request, as well as the Registry's Submissions by no later than Tuesday, 7 March 2023, at 12h00. Lastly, the Single Judge further orders Mr Gucati to provide, by no later than Tuesday, 7 March 2023 at 12h00, any additional information that he might have with respect to the imminent evolution of his mother's health situation.

IV. DISPOSITION

1. For the above-mentioned reasons, the Single Judge hereby:
 - a. **ORDERS** the Registrar to file submissions on the Gucati Request and the Haradinaj Request by **Monday, 6 March 2023, at 16h00**;
 - b. **ORDERS** Mr Gucati and Mr Haradinaj to file a reply to the SPO Response to Gucati Request and the SPO Response to Haradinaj Request, as well as the Registry's Submissions, if they so wish, by **Tuesday, 7 March 2023, at 12h00**;
 - c. **ORDERS** Mr Gucati to provide any additional information that he might have with respect to the imminent evolution of his mother's health situation by **Tuesday, 7 March 2023, at 12h00**; and

- d. **INSTRUCTS** the Registrar to remove the *ex parte* marking from the Gucati Request (KSC-CA-2022-01/CR001/F00001).



Judge Nicolas Guillou
Single Judge

Dated this Friday, 3 March 2023
At The Hague, the Netherlands.