



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: **KSC-CA-2022-01/CR001**

Before: **Single Judge**

Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filed by: Dr Fidelma Donlon

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Public Redacted Version of "Registrar's Submissions on the Gucati Request for Temporary Release on Compassionate Grounds", filing CR001/F00010, dated 8 March 2023

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I. INTRODUCTION

1. Pursuant to Rule 23(2) of the Rules,¹ and the Orders of the Single Judge Panel ('Single Judge'),² the Registrar hereby provides submissions on Mr Hysni Gucati's request for a fifth custodial visit on compassionate grounds ('Fifth Request').³

II. APPLICABLE LAW

A. Detention Function

2. Pursuant to Article 3(5) of the Law,⁴ 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-CA-2022-01, CR001/F00005, Single Judge, Order for Submissions on Requests for Temporary Release, 3 March 2023, confidential ('Order'), paras 10 and sect. IV(1)(a); CR001/F00008, Single Judge, Decision on Extension of Time, confidential, para. 14(a).

³ KSC-BC-2022-01, CR001/F00001, Re-Filed Gucati Request for Fifth Custodial Visit on Compassionate Grounds, 2 March 2023, confidential and *ex parte* ('Fifth Request') (reclassified as confidential on 6 March 2023).

⁴ 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. On 2 March 2023, Mr Gucati submitted a request for a custodial visit on compassionate grounds to allow him to visit [REDACTED], whom he states is [REDACTED], and to meet and comfort other members of his immediate family at that address.⁵ Specifically, Mr Gucati requests the Single Judge [REDACTED].⁶ The family address is identified as [REDACTED].⁷

B. Feasibility and Operational Requirements

9. The considerable resources needed to stand up and deploy a transfer team and rapidly arrange for air transport are, in the opinion of the Registrar, only justifiable in urgent, compelling, and exceptional circumstances.

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

11. Should the Single Judge 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.

⁵ Fifth Request, paras 1, 11, 19-20, 30.

⁶ Fifth Request, para. 30.

⁷ Fifth Request, para. 8.

i. Mission Security Requirements, Location, and Duration

12. The Registrar notes that on 2 February 2023, the Court of Appeals Panel pronounced the Appeal Judgment in which it partially affirmed Mr Gucati's convictions and reduced his sentence to four years and three months' imprisonment, with credit for time served.⁸

13. The Registrar also notes her prior submissions⁹ in relation to Mr Gucati's previous requests for temporary release on compassionate grounds based on the critical condition of his parents,¹⁰ and the decisions of Trial Panel II and of the Court of Appeals Panel on Mr Gucati's previous requests, imposing certain conditions.¹¹

⁸ KSC-CA-2022-01, F00114, Court of Appeals, Appeal Judgment, 2 February 2023, public, para. 442.

⁹ KSC-BC-2020-07, F00602, Registrar's Submissions on Gucati Request for Temporary Release on Compassionate Grounds, 9 May 2022, confidential and *ex parte* (see also F00602/RED, 16 May 2022); F00615, Registrar's Submissions on Second Gucati Request for Temporary Release on Compassionate Grounds, 27 May 2022, confidential and *ex parte* (see also F00615/RED, 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* (see also F00018/RED, 8 July 2022); F00041, Registrar's Submissions on Fourth Gucati Request for Temporary Release on Compassionate Grounds, 12 September 2022, confidential and *ex parte* (see also F00041/RED, 20 September 2022).

¹⁰ KSC-BC-2020-07, F00599, Gucati Request for Temporary Release on Compassionate Grounds, 9 May 2022, confidential (see also F00599/RED, 17 May 2022); F00614, Second Gucati Request for Temporary Release on Compassionate Grounds, 26 May 2022, confidential and *ex parte* (see also F00614/RED, 2 June 2022); KSC-CA-2022-01, F0016, Third Gucati Request for Temporary Release on Compassionate Grounds, 29 June 2022, confidential and *ex parte* (see also F00016/RED, 12 July 2022); F00039, Fourth Gucati Request for Temporary Release on Compassionate Grounds, 10 September 2022, confidential and *ex parte* (see also F00039/RED, 21 September 2022).

¹¹ KSC-BC-2020-07, F00604, Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds, 9 May 2022, confidential and *ex parte*, paras 17-23 (see also F00604/RED, 16 May 2022); F00618, Decision on Second Gucati Defence Request for Temporary Release on Compassionate Grounds, 27 May 2022, confidential and *ex parte*, paras 23-24, 33 (see also F00618/RED, 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* (see also F00020/RED, 4 July 2022); F00043, Decision on Gucati's Fourth Request for Temporary Release on Compassionate Grounds, 13 September 2022, confidential and *ex parte* (F00043/RED, 22 September 2022).

14. In terms of recent events, the Registrar notes that Mr Nasim Haradinaj also recently filed and then withdrew a request for temporary release on compassionate grounds [REDACTED].¹² [REDACTED].¹³ [REDACTED]. [REDACTED].¹⁴

15. [REDACTED].¹⁵ [REDACTED].

16. The Security and Safety Unit ('SSU') of the Registry, together with external partners, has assessed the impact of the above information on the Registrar's feasibility and security assessments. In terms of the location of the family address, the Registrar notes that [REDACTED].

17. [REDACTED], at this time, it is assessed that the risks can be appropriately mitigated by the transfer team, together with external partners, in the same way as previous custodial visits at this location, if the visit is of **short duration** and under conditions of **secrecy**. The Registrar further notes that this assessment is based on currently available information, but if the security picture changes, the Single Judge will be immediately informed.

18. Therefore, if the Single Judge grants Mr Gucati's request for a custodial visit, the Registrar considers 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.

19. This 1-day visit would accommodate the necessary travel time and a time-limited custodial visit to the family address, where Mr Gucati can visit with [REDACTED] and pre-identified immediate family members, within the same day.

20. Considering transportation requirements, [REDACTED], and notice requirements to external partners, the Registry assesses that it is feasible to arrange for a 1-day custodial visit to take place approximately [REDACTED] working days

¹² KSC-BC-2022-01, CR002/F00001, Haradinaj Defence Request for Temporary Release on Compassionate Grounds, confidential; CR002/F00008, Withdrawal of the Haradinaj Defence Request for Temporary Release on Compassionate Grounds, 7 March 2023, confidential.

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

following an order of the Single Judge granting the request. The exact date is subject to final planning consultations [REDACTED] and confirmation of the necessary travel arrangements.¹⁶ Unforeseen circumstances may also impact this timescale.

ii. Visit to the Family Address

21. As noted above, the chief custody officer can arrange for Mr Gucati to be securely transported to and from the family address for an in-person custodial visit with [REDACTED] and pre-identified immediate family members.¹⁷ [REDACTED].

22. This visit is feasible on the understanding that the residence would be vacated by all non-authorised persons, that Mr Gucati would at all times remain in the custody of the Specialist Chambers and under escort, and that the chief custody officer may take any decision necessary regarding the custodial visit on the basis of operational and security concerns, including terminating the visit.

23. This is also on the understanding that the visit would take place under the same or similar conditions to those ordered by Trial Panel II for a previous custodial visit to the family address.¹⁸

24. The Registry also welcomes any other conditions deemed appropriate by the Single Judge.

¹⁶ Considering the submissions timeline and the expected date of an order by the Single Judge on the request, external partners have been consulted, and they have notified that the earliest feasible date for the mission is [REDACTED]. Confirmation of the necessary travel arrangements and date of travel would take place following any order of the Single Judge granting the request.

¹⁷ See KSC-BC-2020-07, F00618, Trial Panel II, Decision on Second Gucati Defence Request for Temporary Release on Compassionate Grounds, 27 May 2022, confidential and *ex parte*, para. 24(c) (defining immediate family members as “mother, spouse, children, grandchildren, siblings”) (see also F00618/RED, 3 June 2022).

¹⁸ *Ibid.*, at para. 24(a)-(o).

iii. Assistance of External Partners

25. In Kosovo, robust and overt security arrangements [REDACTED] would be required for any visit ordered by the Single Judge. The Registry would require the logistical and security support of [REDACTED].¹⁹

26. As noted above, the logistics required for arranging security support from external partners can be arranged in approximately [REDACTED] working days, allowing for notification to Host State authorities and any logistical requirements, including transport arrangements.

27. The Registrar 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.

28. Should the Single Judge decide to approve this custodial visit, the Registrar will make final operational security planning arrangements with external partners.

iv. Feasibility and Operational Requirements for Organizing Separate or Combined Custodial Visit(s)

29. The Registrar notes that the Single Judge invited the Registrar to provide views on “the feasibility and operational requirements of organizing separate or combined custodial visit(s) for Mr Gucati and Mr Haradinaj”.²⁰

30. Given the withdrawal of Mr Haradinaj’s request for a custodial visit,²¹ the Registrar does not make further submissions on this point.

¹⁹ Due to the 1-day anticipated timeframe, it is not expected that Mr Gucati would be accommodated at the Specialist Chambers’ secure transfer facility. Nevertheless, the transfer facility may be used in the event of delay or unforeseen circumstances. In such case, the transfer facility would be managed by Specialist Chambers’ security staff at all times, led by the chief custody officer. Due to the limited duration of any possible stay there, the Registrar is satisfied that the secure transfer facility is in line with applicable international standards.

²⁰ Order, para. 10.

²¹ CR002/F00008, at fn. 12 above.

v. Other Considerations and Practical Matters

31. The Single Judge further invited the Registrar to provide views on “any further practical matters concerning the execution, associated costs and foreseen challenges to the organization of any such visits(s)”.²²

32. In terms of other practical matters, as noted above, considerable financial and human resources are required to deploy a several-person transfer team and arrange for [REDACTED] and secure air transport on extremely short notice.

33. In addition, as noted above, the secrecy of any custodial visit is paramount. Should the Single Judge order the temporary transfer of Mr Gucati for a custodial visit to Kosovo, the Registrar requests the Single Judge to order conditions of secrecy regarding Mr Gucati’s presence on the territory of Kosovo. Specifically, the Registrar requests the Single Judge 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. The Registrar also requests that the Single Judge order Mr Haradinaj and his Defence Team to abide by the same conditions of secrecy.

34. 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.

35. The Registrar also requests authorisation to notify any authorities deemed necessary for the implementation of the Single Judge’s order.

²² Order, para. 10.

vi. Any Other Available and Adequate Alternatives

36. Lastly, the Single Judge invited the Registrar to provide views on “any other available and adequate alternative means for Mr Gucati to keep in close contact with [REDACTED] and immediate members of his family at this time”.²³

37. All Detainees are provided with reasonable means of maintaining personal relationships with family members and other persons through visits, telephone calls, and correspondence.²⁴

38. In terms of visits, the Registrar notes that in addition to in-person visits with family members and other personal visitors, Mr Gucati is also permitted to have video visits with Close Relatives.²⁵ Close Relatives are defined in the Rules of Detention as a spouse or partner, parent, child, grandchild, brother, sister (including half- or step-brothers and sisters), or grandparent.²⁶ Sons- and daughters-in-law are also included within this definition for the purpose of visits with Close Relatives.²⁷

39. Detainees have ten (10) visiting days per month in total, which applies to both video visits and in-person visits, including any combination thereof.²⁸ [REDACTED] the Chief Detention Officer may limit the timing, quantity, and duration of video visits, based on the daily schedule of the Detention Facilities and the availability of staff and facilities or equipment.²⁹

40. Telephone calls are also readily available to Mr Gucati.³⁰ [REDACTED] the Chief Detention Officer may place reasonable limits on the timing, quantity, and duration

²³ Order, para. 10.

²⁴ Practice Direction on Visits and Communications, KSC-BD-09-Rev1, 23 September 2020 (‘PD on Visits and Communications’), art. 4(1).

²⁵ Registry Instruction on Video Visits, KSC-BD-34-Rev1, 6 September 2021, sect. 4(1)(a); *see also* PD on Visits and Communications, ch. II.

²⁶ Rules of Detention, KSC-BD-08-Rev1, 23 September 2020, Detention Rule 2(2) (unless otherwise indicated, all references to ‘Detention Rules’ are to the Rules of Detention).

²⁷ *Ibid.*

²⁸ DMU Instruction on Visiting Procedures for Family Members and Other Personal Visitors, KSC-BD-33, 23 September 2020, sects 11.

²⁹ *Ibid.*, at sect. 10 (2); *see also* PD on Visits and Communications, sect. 6(2).

³⁰ PD on Visits and Communications, sect. 16(1).

of non-privileged telephone calls based on the daily schedule of the Detention Facilities and the availability of telephone facilities.³¹

41. [REDACTED].³²

IV. CLASSIFICATION

42. This submission is filed as confidential pursuant to Rule 82(4) of the Rules and to protect the confidentiality of information related to any custodial visit.

Word count: 2475



Dr Fidelma Donlon

Registrar

Wednesday, 29 March 2023

At The Hague, the Netherlands

³¹ Ibid., at sect. 16(3).

³² [REDACTED].