

In: KSC-CA-2022-01

The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: Judge Ekaterina Trendafilova, President

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hysni Gucati

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**Public Redacted Version of Re-Filed Gucati Request for Fifth Custodial Visit on
Compassionate Grounds**

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I. INTRODUCTION

1. The Defence for Mr Gucati requests that the Court of Appeals Panel orders that a custodial visit takes place on compassionate grounds, to allow Mr Gucati 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. [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

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 ("*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

custody officer and the escorting officers during the custodial visits” and that “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. [REDACTED].
8. On 27 May 2022, [REDACTED] the Trial Panel authorised Mr Gucati’s secure and temporary transfer to Kosovo on 30 May 2022 to [REDACTED]⁸. The Trial Panel also permitted Mr Gucati to [REDACTED].
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

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

custody officer and the escorting officers during the custodial visit” and that “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. [REDACTED].

12. On 30 June 2022, the Appeals Panel issued a third decision granting Mr Gucati a third custodial visit to Kosovo for a period of one day, remaining in the custody of the Specialist Chambers at all times (“third custodial visit”)¹³.

13. On 7 July 2022, the Registrar reported on the implementation of the third custodial visit¹⁴. The report confirmed that again “Mr Gucati abided by the instructions of the chief custody officer and the escorting officers during the custodial visit” and that “cooperation with external partners was highly effective and ensured a successful operation”.

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

¹² Annex 1

¹³ *Decision on Gucati’s Third Request for Temporary Release on Compassionate Grounds*, KSC-CA-2022-01/F00020, Court of Appeals Panel, 30 June 2022, confidential and ex parte (“*Decision on Third Custodial Visit*”)

¹⁴ *Report of the Registrar Pursuant to Decision on Gucati’s Third Request for Temporary Release on Compassionate Grounds*, KSC-CA-2022-01/F00027, Registrar, 7 July 2022, confidential and ex parte

14. On 13 September 2022, the Court of Appeals Panel granted a further custodial visit (“fourth custodial visit”) permitting Mr Gucati to visit [REDACTED] Kosovo on 16 September 2022, returning on the same day, and remaining in the custody of the Specialist Chambers at all times and without exception¹⁵.
15. The report of the Registrar in relation to the fourth custodial visit confirmed that Mr Gucati again “abided by the instructions of the chief custody officer and the escorting officers during the custodial visit” and that “cooperation with external partners was highly effective and ensured a successful operation”¹⁶.
16. On 2 February 2023, the Court of Appeals Panel pronounced the Appeal Judgment, affirming the convictions on counts 1, 3, 5 and 6, reversing the conviction on count 2, and reducing the sentence to four years and three months of imprisonment, with credit for time served (i.e. the time during which the Accused was detained in accordance with Chapter 4 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”) is to be deducted from the sentence of four years and three months’ imprisonment, in accordance with Rule 163(6)).
17. A request is forthcoming to the Specialist Chambers Supreme Court for protection of legality, requesting that the Trial and Appeal Judgments are modified to reverse the convictions and/or annulled in whole or in part, and/or modified to further reduce the sentence, pursuant to Articles 48(6), (7) and (8) of the Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor’s

¹⁵ *Decision on Gucati’s Fourth Request for Temporary Release on Compassionate Grounds*, KSC-CA-2022-01/F00043, Court of Appeals Panel, 13 September 2022, confidential and ex parte (“*Decision on Fourth Custodial Visit*”)

¹⁶ *Report of the Registrar Pursuant to Decision on Gucati’s Fourth Request for Temporary Release on Compassionate Grounds*, KSC-CA-2022-01/F00048, Court of Appeals Panel, 22 September 2022, confidential and ex parte, paragraphs 10-11

Office (“Law”) and Rules 193 and 194 of the Rules. Pursuant to Rule 193(1), the request is to be filed with the President within 90 days of the Appeal Judgment.

18. Mr Gucati remains in the custody of the Specialist Chambers, and the Court of Appeals Panel remains seized of matters relating to detention¹⁷.

19. In relation to [REDACTED].

20. Mr Gucati seeks authorisation for a custodial visit to [REDACTED].

III. APPLICABLE LAW

21. 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”.

22. Rule 56(3) expressly applies in respect of a person in the custody of the Specialist Chambers pending appeal to the Court of Appeals Panel or to the Supreme Court under Chapter 10 of the Rules¹⁹, and - in accordance with the

¹⁷ As communicated to the Defence by the CMU on 28/02/2023, with the request that the application be addressed to the Court of Appeals Panel (as submitted and approved on 01/03/2023; subsequently, on 02/03/2023 the Defence were requested by the CMU to re-file the application addressed to the President of the KSC

¹⁸ Annex 1

¹⁹ Rule 174 and Rule 186 of the Rules

rights guaranteed by Article 8 of the European Convention on Human Rights and Articles 36(1) and 37(3) of the Kosovo Constitution - by implication in respect of a person in the custody of the Specialist Chambers pending an application for protection of legality to the Supreme Court under Chapter 11²⁰.

23. Although the grounds for protection of legality under Chapter 11 are narrower than under the *general* avenue of appeal provided for by Chapter 10²¹, the powers of the Supreme Court under Chapter 10 and under Chapter 11 are equivalent²².

24. Such conditions as are deemed appropriate may be imposed.

IV. SUBMISSIONS

25. The Applicant 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.

²⁰ *Decision on Gucati's Fourth Request for Temporary Release on Compassionate Grounds*, KSC-CA-2022-01/F00043, Court of Appeals Panel, 13 September 2022, confidential and ex parte t paragraph 16: "Article 8 of the ECHR does not guarantee an unconditional right to leave prison to visit a sick relative and there are cases where the rights of a detainee, by the very nature of his or her situation, must be subjected to various limitations. However, every such limitation must be justifiable as being necessary in a democratic society. Among the factors to be considered in this assessment are the stage of the proceedings, the nature of the criminal offence, the accused's character, the gravity of the relative's illness, the degree of kinship, the possibility of escorted leave and other circumstances informing the alleged 'humanitarian' grounds".

²¹ *Decision on Kadri Veseli's Request for Protection of Legality*, KSC-BC-2020-06/PL001/F00008, Panel of the Supreme Court Chamber, 15 August 2022, public at paragraph 21, 26 and 27

²² See Rule 182(3), Rule 186(3) and Rule 194(1)

26. Temporary release under Rule 56(3) (or alternatively a custodial visit, where the detained person remains in the custody of the Specialist Chambers and is not, in fact, released at any time) 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 circumstances²³.
27. As the Trial Panel and the Court of Appeals Panel has previously acknowledged²⁴, [REDACTED].
28. There continues to be a real risk, in the circumstances, that [REDACTED].
29. 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 release²⁵. The Court of Appeals Panel is invited to consider

²³ *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; *Decision on Third Custodial Visit* at paragraph

²⁴ *Decision on First Custodial Visit*, paragraphs 15-16; *Decision on Second Custodial Visit*, paragraphs 18-20; *Decision on Third Custodial Visit*, paragraphs 12-13; *Decision on Fourth Custodial Visit*, paragraphs 17-18

²⁵ *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; *Third Custodial Visit*, at paragraph 18; *Decision on Fourth Custodial Visit*, at paragraph 23

the same and, if deemed necessary, impose any such conditions as required.

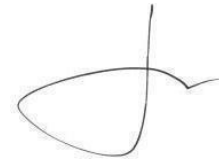
Mr Gucati will comply with the same as he has done previously.

30. Accordingly, the Court of Appeals Panel is requested in the circumstances to direct that the place of detention be transferred to Kosovo on a temporary basis pursuant to Rule 56(3) of the Rules and/or the discretion of the Court to order a custodial visit, under such conditions as are necessary, to enable Mr Gucati to [REDACTED].

CLASSIFICATION

31. This filing is [REDACTED].

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