



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

Date: 10 March 2023

Language: English

Classification: Public

**Public Redacted Version of Decision on Gucati Request for Fifth Custodial Visit
on Compassionate Grounds**

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THE SINGLE JUDGE,¹ pursuant to Articles 33(2) and 53 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 56(3) and (5) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

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 3 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*.

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* ("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, 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*, 3 March 2023, confidential, with one Annex, confidential. On the same day, after working hours, Specialist Counsel submitted further information, CR002/F00005, Specialist Counsel,

5. On 3 March 2023, the SPO filed a response to the Haradinaj Request (“SPO Response to Haradinaj Request”).⁷
6. On 3 March 2023, the Single Judge rendered an order instructing the Registrar to file submissions on the Gucati Request and the Haradinaj Request by Monday, 16 March 2023 at 16h00, and ordered Mr Gucati and Mr Haradinaj to file a reply to the SPO Response to Gucati Request, the SPO Response to Haradinaj Request, as well as the Registrar’s submissions, if they so wish, by Tuesday, 7 March 2023, at 12h00. The Single Judge further ordered Mr Gucati to provide any additional information that he might have on the [REDACTED] evolution of his mother’s health by Tuesday, 7 March 2023, at 12h00.⁸
7. On 6 March 2023, upon the Registrar’s request,⁹ the Single Judge extended the time for the Registrar to file her submissions on the Gucati Request by Wednesday, 8 March 2023, at 16h00, and for Mr Gucati’s reply and any additional provision of information by Thursday, 9 March 2023, at 16h00.¹⁰
8. On 6 March 2023, Counsel for Mr Haradinaj submitted a filing withdrawing the Haradinaj Request.¹¹

Urgent Filing Further Submissions on the Haradinaj Defence Request for Temporary Release on Compassionate Grounds, 3 March 2023, confidential, with one Annex, confidential.

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 and CR002/F00005, Single Judge, *Order for Submissions on Temporary Release Request, 3 March 2023, confidential.*

⁹ KSC-CA-2022-01, CR001/F00006, Registrar, *Request for Extension of Time to File the Registrar’s Submissions on the Gucati Request for Temporary Release on Compassionate Grounds, 6 March 2023, confidential.*

¹⁰ KSC-CA-2022-01, CR001/F00008, Single Judge, *Decision on Extension of Time, 6 March 2023, confidential.*

¹¹ KSC-CA-2022-01, CR002/F00008, Specialist Counsel, *Withdrawal of the Haradinaj Defence Request for Temporary Release on Compassionate Grounds, 6 March 2023, confidential.*

9. On 7 March 2023, the Registrar submitted additional information relating to her assessment of the Gucati Request and the Haradinaj Request (“Submission of Additional Information”).¹²

10. On 8 March 2023, the Registrar filed her submissions on the Gucati Request (“Registry Submissions”).¹³

11. On 9 March 2023, Counsel for Mr Gucati filed a reply in relation to the SPO Response to Gucati Request, and provided additional information regarding the [REDACTED] evolution of the health condition of Mr Gucati’s mother (“Gucati Reply”).¹⁴

II. SUBMISSIONS

12. Mr Gucati requests a custodial visit on compassionate grounds to attend to his mother, [REDACTED], [REDACTED], and to meet and comfort immediate members of his family at the same address,¹⁵ [REDACTED].¹⁶ Mr Gucati further avers that [REDACTED].¹⁷ Lastly, Mr Gucati expresses his readiness to comply with any necessary conditions that the Single Judge may impose on such a custodial visit, if granted.¹⁸

13. The SPO submits that the Single Judge should reject the Gucati Request.¹⁹ In particular, the SPO maintains that the frequent nature of a convicted person’s

¹² KSC-CA-2022-01, CR001/F00009, Registrar, *Submission of Additional Information Related to the Registrar’s Assessment of Requests for Temporary Release on Compassionate Grounds*, 7 March 2023, confidential, with Annexes 1-2, confidential.

¹³ KSC-CA-2022-01, CR001/F00010, Registrar, *Registrar’s Submissions on the Gucati Request for Temporary Release on Compassionate Grounds*, 8 March 2023, confidential.

¹⁴ KSC-CA-2022-01, CR001/F00011, Specialist Counsel, *Gucati Reply re Request for Fifth Custodial Visit on Compassionate Grounds*, 9 March 2023, confidential, with one Annex, confidential.

¹⁵ Gucati Request, paras 1, 20, 27-28, 30.

¹⁶ Gucati Request, para. 8.

¹⁷ Gucati Request, paras 19, 27-28. *See also* Annex 1 to Gucati Request.

¹⁸ Gucati Request, para. 29.

¹⁹ SPO Response to Gucati Request, para. 1.

temporary release over a short period of time due either in part, or solely, to the same relative's health condition should weigh heavily in the Single Judge's determination of the Gucati Request.²⁰ The SPO further submits that over the last months, Mr Gucati has visited his mother four times.²¹

14. The SPO likewise avers that the 22 February 2023 Medical Report provided by Mr Gucati in support of the Gucati Request is vague and ambiguous, and does not support the claim that [REDACTED].²² The SPO further submits that, aside from the frequency of Mr Gucati's recent visits to his mother and the lack of relevant detail in the 22 February 2023 Medical Report, another factor that should weigh in the Single Judge's consideration of the Gucati Request is that, since the last occasion on which Mr Gucati was authorised to visit his mother, a Panel of the Court of Appeals has confirmed his conviction of obstructing official persons, intimidating witnesses, and violating the secrecy of proceedings, and that he is presently serving a sentence of four years and three months.²³ Lastly, the SPO avers that, should the Single Judge grant the Gucati Request, conditions identical to those imposed for his most recent visit should be adopted.²⁴

15. The Registrar, in her Submission of Additional Information and the Registry Submissions, draws the Single Judge's attention to [REDACTED] likely impacting the Registrar's feasibility and security assessments.²⁵ In this regard, the Registrar informs the Single Judge that [REDACTED].²⁶ Regarding the impact of [REDACTED] on the Registrar's feasibility and security assessments, she submits

²⁰ SPO Response to Gucati Request, para. 2.

²¹ SPO Response to Gucati Request, para. 3.

²² SPO Response to Gucati Request, para. 5.

²³ SPO Response to Gucati Request, para. 6.

²⁴ SPO Response to Gucati Request, para. 7.

²⁵ Submission of Additional Information, paras 3-5; Registry Submissions, paras 14-17.

²⁶ Registry Submissions, paras 14-15. The Registrar submitted [REDACTED] to the Single Judge, see Annexes 1-2 to Submission of Additional Information.

that [REDACTED].²⁷ The Registrar further avers that, [REDACTED].²⁸ For these reasons, the Registrar recommends that such a custodial visit, if granted, should be of short duration and under conditions of secrecy.²⁹

16. The Registrar further avers that a temporary transfer of Mr Gucati to Kosovo for a one-day period, [REDACTED] would be feasible if justifiable due to urgent, compelling and exceptional circumstances, and with the understanding that he would at all times remain in the custody of the Specialist Chambers (“SC”).³⁰ The Registrar further submits that this one-day visit could take place at the earliest on [REDACTED], subject to planning consultations [REDACTED] and confirmation of the necessary travel arrangements.³¹ This one-day visit, the Registrar considers, would accommodate the necessary travel time and a time-limited custodial visit to [REDACTED], where Mr Gucati can visit his mother and meet pre-identified immediate family members, within the same day.³² In this regard, the Registrar sets out a number of recommendations regarding operational and mission security requirements.³³

17. In the Gucati Reply, Mr Gucati provides additional information, and supporting documentation on the [REDACTED] evolution of his mother’s health (“6 March 2023 Medical Report”). More specifically, Mr Gucati submits that [REDACTED].³⁴ Moreover, Mr Gucati avers that [REDACTED].³⁵ Lastly, Mr Gucati submits that the custodial visit, if granted under the conditions recommended in

²⁷ Registry Submissions, para. 16.

²⁸ Registry Submissions, para. 17.

²⁹ Registry Submissions, para. 17.

³⁰ Registry Submissions, paras 9, 11, 18.

³¹ Registry Submissions, para. 20, footnote 16.

³² Registry Submissions, para. 19.

³³ Registry Submissions, paras 18-28, 33-35.

³⁴ Gucati Reply, para. 2. *See also* Annex 1 to Gucati Reply.

³⁵ Gucati Reply, para. 3. *See also* Annex 1 to Gucati Reply.

the Registry Submissions, would allow Mr Gucati to [REDACTED].³⁶ Furthermore, Mr Gucati again expresses his willingness to adhere by any conditions that the Single Judge deems necessary for the custodial visit, if granted.³⁷

III. APPLICABLE LAW

18. 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.

19. 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.

20. Pursuant to Article 53(1) of the Law, all entities and persons in Kosovo shall co-operate with the SC and shall comply with any request for assistance or an order or decision issued by the SC.

IV. DISCUSSION

A. TEMPORARY RELEASE ON COMPELLING HUMANITARIAN GROUNDS

21. The Single Judge notes that neither this, nor other jurisdictions guarantee an unconditional right to temporary release on compelling humanitarian grounds.³⁸

A number of factors may be relevant in relation to this assessment, such as the stage of proceedings, the nature of the criminal offence, the detained person's character, the gravity of the relative's illness, the degree of kinship, the possibility

³⁶ Gucati Reply, para. 5.

³⁷ Gucati Reply, para. 6.

³⁸ See for example KSC-CA-2022-01, F00043/RED, Court of Appeals, *Public Redacted Version of Decision on Gucati's Fourth Request for Temporary Release on Compassionate Grounds* ("Decision on Gucati's Fourth Request"), 13 September 2022, public, para. 16. See also ECtHR, *Lind v. Russia*, no. 25664/05, 6 December 2007, para. 95, with further case law references.

of escorted leave, and other circumstances informing the alleged humanitarian grounds.³⁹

22. The Single Judge is mindful that visiting a close relative in critical condition has been accepted, under certain conditions, as a compelling humanitarian ground warranting a detained person's temporary release.⁴⁰

23. The Single Judge likewise notes that Mr Gucati's guilt for criminal offences against the public order and the administration of justice has been determined by a final judgment, and that he is currently serving a prison sentence of four years and three months.⁴¹

24. The Single Judge further recalls that Trial Panel II and a Panel of the Court of Appeals have successively concluded that the [REDACTED] qualified as a compelling consideration or compelling humanitarian grounds for granting Mr Gucati's previous custodial visits on four occasions.⁴² In this regard, the Single Judge notes that Mr Gucati last had the opportunity to visit his mother in September 2022. The Single Judge further observes that, at that time, [REDACTED]. Lastly, the Single Judge observes that Mr Gucati complied with all conditions imposed on him on both his last visit⁴³ and on the previous three occasions.⁴⁴

³⁹ Decision on Gucati's Fourth Request, para. 16.

⁴⁰ Decision on Gucati's Fourth Request, para. 18.

⁴¹ Appeal Judgment, para. 442.

⁴² KSC-BC-2020-07, F00604/RED, Trial Panel II, *Public Redacted Version of the Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds*, 9 May 2022, public, paras 15-16; KSC-BC-2020-07, F00618/RED, Trial Panel II, *Public Redacted Version of Decision on Second Gucati Defence Request for Temporary Release on Compassionate Grounds* ("Second Gucati Request"), 27 May 2022, public, paras 19-20; KSC-BC-2022-01, F00020/RED, Court of Appeals, *Public Redacted Version of Decision on Gucati's Third Request for Temporary Release on Compassionate Grounds*, 30 June 2022, public, paras 13, 15; Decision on Gucati's Fourth Request, paras 17-18, 20.

⁴³ KSC-CA-2022-01, F00048/RED, Registrar, *Public Redacted Version of "Report of the Registrar Pursuant to Decision on Gucati's Fourth Request for Temporary Release on Compassionate Grounds"*, Filing f00048, dated 22 September 2022, 14 October 2022, public.

⁴⁴ Decision on Gucati's Fourth Request, para. 19.

25. As regards the present Gucati Request, the Single Judge attaches importance to the fact that the 22 February 2023 Medical Report describes the health condition of [REDACTED].⁴⁵ In this regard, the Single Judge is likewise attentive to Mr Gucati's further submissions in the Gucati Reply and the 6 March 2023 Medical Report, providing that [REDACTED].⁴⁶ Lastly, the Single Judge acknowledges the Registry Submissions, which do not rule out the feasibility of the requested custodial visit despite considerable resources needed to deploy a transfer team and arrange rapidly for air transport, subject to a number of conditions.⁴⁷

26. For these reasons, the Single Judge finds that, on balance and in the present circumstances, [REDACTED] amounts to exceptional circumstances and compelling humanitarian grounds that justify Mr Gucati's temporary release for a custodial visit affording him [REDACTED].

B. CONDITIONS OF CUSTODIAL VISIT

27. The Single Judge now turns to the question of whether and, if so, what conditions must be imposed on Mr Gucati's temporary release, pursuant to Rule 56(5) of the Rules. In this regard, the Single Judge also notes that, in the Registry Submissions, the Registrar has provided a number of logistical measures and security conditions that make such a visit feasible.⁴⁸

28. At the outset, the Single Judge recalls that Mr Gucati has been convicted by a final judgment, and that he is currently serving his prison sentence.⁴⁹ Therefore, the Single Judge considers that strict conditions are necessary for the purpose of the custodial visit on compassionate grounds.

⁴⁵ Annex 1 to Gucati Request.

⁴⁶ Gucati Reply, paras 2-3. *See also* Annex 1 to Gucati Reply.

⁴⁷ Registry Submissions, paras 11, 18-28, 33-35.

⁴⁸ Registry Submissions, paras 18-28, 33-35.

⁴⁹ Appeal Judgment, para. 442.

29. In light of the foregoing, the Single Judge orders the temporary and secure transfer of Mr Gucati to the transfer facility at the [REDACTED] (“Transfer Facility”), where he will remain in the custody of the SC at all times. Bearing in mind the Registry Submissions, the custodial visit shall last one day, [REDACTED], as this would provide adequate time for him to visit his mother and other authorised immediate family members, and is therefore proportionate to the grounds for which the temporary release is sought.⁵⁰ Nevertheless, the Single Judge finds it important to stress that such temporary release is only justifiable in light of the present urgent, compelling and exceptional circumstances, to allow Mr Gucati a last opportunity to attend to his mother.

30. Noting that the conditions imposed on previous occasions were sufficient to ensure that Mr Gucati’s visits be conducted without any reported incident, the Single Judge considers that the custodial visit shall be carried out under the same conditions as imposed previously, namely:⁵¹

- a) Mr Gucati shall, at all times and without exception, remain in the custody of the SC, be escorted by escorting officers, and remain in the sight and within the earshot of escorting officers. The escorting officers may be uniformed, if necessary, and remain in Mr Gucati’s vicinity at all times, as necessary. Mr Gucati shall comply fully with any instructions received from the escorting officers;
- b) Mr Gucati shall only be transported to and from the airport and to and from the Transfer Facility to [REDACTED];
- c) During his visits at the Transfer Facility and [REDACTED], Mr Gucati is not permitted to meet and communicate with any person other than members of his immediate family (mother, spouse, children, grand-

⁵⁰ See also Decision on Gucati’s Fourth Request, para. 20.

⁵¹ Decision on Gucati’s Fourth Request, para. 23.

children and siblings), his Counsel, and members of his Defence team.

All non-authorized persons shall vacate these locations before Mr Gucati's visit;

- d) The presence of any immediate family members at the aforementioned locations shall be subject to prior approval of the chief custody officer upon presentation of photographic identification. Thus, and to the extent that such information has not been previously provided, Mr Gucati is ordered to submit copies of the identity documents of immediate family members to the Detention Management Unit for prior approval;
- e) Mr Gucati is not permitted to be alone with any pre-identified immediate family member at any time, and must always remain within both sight and earshot of the escorting officers;
- f) The chief custody officer may take any decision necessary with regard to the custodial visit of Mr Gucati on the basis of operational and security concerns, including terminating the visits;
- g) Mr Gucati shall furthermore not have access to communication devices or any other means of communication, including pen and paper, other than as facilitated by the SC;
- h) Since Mr Gucati's request for protection of legality before a Panel of the Supreme Court Chamber is forthcoming,⁵² Mr Gucati shall not: (i) have any contact or in any way interfere with any victim or witness or otherwise interfere with the administration of justice; (ii) shall not seek direct access to documents nor destroy evidence; and (iii) shall not discuss about his case with anyone, including the media, other than his Counsel and members of his Defence team;

⁵² Gucati Request, para. 17.

- i) Mr Gucati is not permitted to pass or receive items to or from any person without prior inspection and approval from the escorting officers;
- j) Mr Gucati, his Counsel, members of his Defence team, immediate family members and associates shall refrain from making public statements and shall maintain secrecy regarding the presence of Mr Gucati in Kosovo prior to, and during the entirety of his stay. Should Mr Gucati's presence in Kosovo become known, the SPO, Registry or EULEX, as appropriate, are authorised to make any necessary statement in that regard;
- k) Mr Gucati shall likewise comply with any COVID-19 related measures, if applicable, as specified by the Registry; and
- l) Mr Gucati shall comply strictly with any further order of the Single Judge varying the terms or terminating his custodial visit.

31. Should there be any need to amend any of the above conditions, the Parties or Registry shall seize the Single Judge immediately.

C. IMPLEMENTATION OF CONDITIONS

32. In the implementation of the above conditions, the Single Judge authorises the Registry to make final operational and security arrangements with external partners and to notify any other authorities, including those in the Host State and Kosovo, as necessary for the implementation of this decision.

33. The Single Judge recalls that all entities and persons in Kosovo shall cooperate with the SC and shall comply without undue delay with any decision issued by the SC or any request for assistance.

D. REPORTING OBLIGATIONS

34. Throughout the custodial visit, the Registry shall provide the Single Judge with regular updates via email or telephone calls. Such regular updates shall occur, at the

very least, upon: (i) the transfer of Mr Gucati to Kosovo; (ii) the completion of any custodial visit by Mr Gucati to his mother at [REDACTED]; (iii) any breaches of the afore-stated conditions by Mr Gucati; (iv) any early termination of the scheduled visits and reasons therefor; and (v) the return of Mr Gucati to the detention facilities of the SC in the Host State. Within one week of the completion of the custodial visit, the Registry shall likewise file a report to the Single Judge on the implementation of this decision.

V. CLASSIFICATION OF FILINGS

35. Considering the principle of publicity, the Single Judge directs the Parties and the Registry to file public redacted versions of the following filings within one week from the Registrar's report to the Single Judge:

- the Gucati Request (CR001/F00001, main filing only);
- the SPO Response to Gucati Request (CR001/F00002);
- the Registrar's request for extension of time (CR001/F00006);
- the Submission of Additional Information (CR001/F00009, including Annexes 1-2);
- the Registry Submissions (CR001/F00010); and
- the Gucati Reply (CR001/F00011, main filing only).

VI. DISPOSITION

36. For the above-mentioned reasons, the Single Judge hereby:

- a) **GRANTS** the Gucati Request;
- b) **ORDERS** Mr Gucati to comply with all the conditions specified in paragraph 30 above;
- c) **INSTRUCTS** the Registry to implement Mr Gucati's custodial visit under the conditions specified in paragraph 30 above;

- d) **ORDERS** Mr Gucati to provide the Registry with the information outlined in paragraph 30(d) above, to the extent that such information has not been previously provided;
- e) **INVITES** the Parties and/or the Registry to seize the Single Judge immediately should an amendment to the conditions set forth in paragraph 30 above be required;
- f) **AUTHORISES** the Registry to: (i) make arrangements with external partners for the implementation of this decision; (ii) notify any other authorities deemed necessary for the implementation of this decision;
- g) **REMINDS** the authorities in Kosovo that they shall comply without undue delay with any decision issued by the SC or any request for assistance;
- h) **ORDERS** the Registry to provide updates and submit a report on the implementation of this decision as indicated in paragraph 34 above; and
- i) **ORDERS** the Parties and the Registry to file public redacted versions of their respective filings identified in paragraph 35 above within one week of the Registrar's report to the Single Judge.



Judge Nicolas Guillou

Single Judge

Dated this Friday, 10 March 2023

At The Hague, the Netherlands