

In: KSC-SC-2023-01

The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: A Panel of the Supreme Court Chamber

Judge Ekaterina Trendafilova, Presiding

Judge Christine van den Wyngaert

Judge Daniel Fransen

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hysni Gucati

Date: 28 June 2023

Language: English

Classification: Public

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

Specialist Prosecutor

Alex Whiting

Matt Halling

James Pace

Counsel for Hysni Gucati

Jonathan Elystan Rees KC

Huw Bowden

Eleanor Stephenson

I. INTRODUCTION

1. The Defence for Mr Gucati requests that the Panel of the Supreme Court Chamber orders that a custodial visit takes place on compassionate grounds, to allow Mr Gucati 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. On 5 May 2022, [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 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

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

⁵ *Ibid* at paragraphs 11 and 12

6. The pronouncement of the Trial Judgment took place on at 10am on 18 May 2022.⁶⁶ 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.⁷⁷
7. On 22 May 2022, [REDACTED].
8. On 27 May 2022, [REDACTED] the Trial Panel authorised Mr Gucati's secure and temporary transfer to Kosovo on 30 May 2022 [REDACTED] ("second custodial visit")⁸⁸. 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.⁹⁹ The Report stated in particular that "Mr Gucati abided by the instructions of the chief

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. On 28 June 2022, [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”)¹².

13. On 7 July 2022, the Registrar reported on the implementation of the third custodial visit¹³¹⁴. 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”.

14. On 13 September 2022, the Court of Appeals Panel granted a further custodial visit (“fourth custodial visit”) permitting Mr Gucati to [REDACTED] Kosovo on 16 September 2022, returning on the same day, and remaining in

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 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”)

¹³ 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

the custody of the Specialist Chambers at all times and without exception¹⁴.

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”¹⁵.
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. On 10 March 2023, the Single Judge granted a further custodial visit (“fifth custodial visit”) permitting Mr Gucati to visit [REDACTED] Kosovo on or about 15 March 2023, returning on the same day, and remaining in the custody of the Specialist Chambers at all times and without exception¹⁶.
18. The report of the Registrar in relation to the fifth 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

¹⁴ *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*”)

¹⁵ *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

¹⁶ KSC-CA-2022-01/CR001, *Decision on Gucati Request for Fifth Custodial Visit on Compassionate Grounds*, Single Judge, 10 March 2023, Confidential and ex parte

external partners was highly effective and ensured a successful operation”¹⁷.

19. A request to the Supreme Court Chamber for protection of legality, requesting that the Trial and Appeal Judgments are modified to reverse the convictions, and/or annul them in whole or in part, and/or 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 Office (“Law”) and Rules 193 and 194 of the Rules was filed on 3 May 2023¹⁸.

20. Mr Gucati remains in the custody of the Specialist Chambers.

21. In relation to [REDACTED].

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

III. APPLICABLE LAW

23. 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”.

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

IV. SUBMISSIONS

¹⁷ *Report of the Registrar Pursuant to Decision on Gucati Request for Fifth Custodial Visit on Compassionate Grounds*, KSC-CA-2022-01/CR001/F00013, Registrar, 22 March 2023, Confidential and ex parte, paragraphs 9-10

¹⁸ KSC-SC-2023-01/F00002, *Gucati Request for Protection of Legality pursuant to Article 48(6) to (8) of the Law and Rule 193 of the Rules*, Gucati, 3 May 2023, Confidential with annex

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.
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 circumstances¹⁹.
27. As the Trial Panel, the Court of Appeals Panel and the Single Judge has previously acknowledged²⁰, [REDACTED].
28. [REDACTED] It is requested that a custodial visit be granted on compassionate grounds so that Mr Gucati can [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 release²¹. The Panel of the Supreme Court Chamber is

¹⁹ *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 at paragraph 18; *Decision on Fourth Custodial Visit*, at paragraph 23; *Decision on Fifth Custodial Visit*,

²⁰ *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; *Decision on Fifth Custodial Visit*, paragraphs 24-26

²¹ *Decision on Fifth Custodial Visit*, paragraph 30

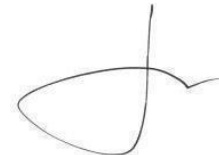
invited to consider the same and, if deemed necessary, impose any such conditions as required. Mr Gucati will comply with the same as he has done previously.

30. Accordingly, the Panel of the Supreme Court Chamber 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, under such conditions as are necessary, to enable Mr Gucati to [REDACTED].

CLASSIFICATION

31. This filing is classified as confidential and ex parte as it refers to [REDACTED].

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JONATHAN ELYSTAN REES KC

Specialist Counsel for Mr Gucati

HUW BOWDEN

Specialist Co-Counsel for Mr Gucati

ELEANOR STEPHENSON

Specialist Co-Counsel for Mr Gucati

28 June 2023

Cardiff, UK