



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

File number: KSC-SC-2023-01

Before: A Panel of the Supreme Court Chamber
Judge Ekaterina Trendafilova, Presiding
Judge Christine van den Wyngaert
Judge Daniel Fransen

Registrar: Fidelma Donlon

Date: 6 July 2023

Language: English

Classification: Public

**Public Redacted Version of the
Decision on Gucati's Sixth Request for a
Custodial Visit on Compassionate Grounds**

Acting Specialist Prosecutor:
Alex Whiting

Counsel for Hysni Gucati:
Jonathan Elystan Rees

THE PANEL OF THE SUPREME COURT CHAMBER of the Kosovo Specialist Chambers (“Supreme Court Panel” or “Panel”), noting Article 33(1)(d) of the Law on Specialist Chambers and Specialist Prosecutor’s Office, Rules 9(5), 56(3) and 82(3),(4) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”) and Article 16(3) of the Practice Direction on Files and Filings before the Kosovo Specialist Chambers, hereby issues this decision on the “Gucati Request for Sixth Custodial Visit on Compassionate Grounds (with Confidential and ex parte Annex)” (“Request”).¹

I. PROCEDURAL BACKGROUND

1. On 18 May 2022, Trial Panel II issued the “Trial Judgment” in the case against Messrs Hysni Gucati and Nasim Haradinaj.² The Trial Panel found both accused guilty of obstructing official persons in performing official duties, intimidation during criminal proceedings and violating the secrecy of proceedings and sentenced them to four and a half years’ imprisonment, with credit for time served, and a fine of 100 EUR each.³

2. On 2 February 2023, a Court of Appeals Panel issued the “Appeal Judgment” in the case against Messrs Gucati and Haradinaj.⁴ The Court of Appeals Panel affirmed the majority of Messrs Gucati’s and Haradinaj’s convictions, reversed their conviction on one count,⁵ and by majority, reduced the original sentence imposed by the Trial Panel to four years and three months of imprisonment, with credit for time served.⁶ The Appeals Panel affirmed the additional sentence to pay a fine of 100 Euros each.⁷

3. On 2 and 3 May 2023, Messrs Haradinaj and Gucati filed requests for protection of legality (“PoL Requests”).⁸

4. On 4 May 2023, a Supreme Court Panel was assigned to adjudicate the PoL Requests.⁹

5. On 30 June 2023, Mr Gucati filed the Request.
6. On 30 June 2023, the Panel issued the “Order for Submissions on Request for Temporary Release” (“Order”).¹⁰
7. On 3 July 2023, the Specialist Prosecutor’s Office (“SPO”) filed its response (“SPO Response”)¹¹ to the Request, and the Registrar submitted a report (“Registry Submissions”)¹² as set forth in the Order.
8. On 4 July 2023, the Panel received the “Gucati Reply re Request for Sixth Custodial Visit on Compassionate Grounds” (“Reply”).¹³

II. SUBMISSIONS

9. Mr Gucati requests that he be granted a custodial visit on compassionate grounds to attend to his mother, who is in a critical medical condition [REDACTED] and to comfort immediate family members.¹⁴ According to Mr Gucati, his mother’s condition remains critical, [REDACTED].¹⁵ [REDACTED].¹⁶
10. Mr Gucati asserts that a custodial visit on compassionate grounds to visit a grievously ill close family member is an essential part of a detainee’s right to respect for family life as set forth in Article 8(1) of the European Convention on Human Rights (“ECHR”) and Articles 36(1) and 37(3) of the Kosovo Constitution.¹⁷ According to Mr Gucati, he has always complied with the conditions imposed on previously

¹⁰ F00011, Order for Submissions on Request for Temporary Release, 30 June 2023 (confidential and *ex parte*).

¹¹ F00012, Prosecution Response to ‘Gucati Request for Sixth Custodial Visit on Compassionate Grounds’, 3 July 2023 (confidential and *ex parte*).

¹² F00013, Registrar’s Submissions on the Gucati Request for Temporary Release on Compassionate Grounds (F00010), 3 July 2023 (confidential and *ex parte*).

¹³ F00015, Gucati Reply re Request for Sixth Custodial Visit on Compassionate Grounds, 4 July 2023 (confidential and *ex parte*).

¹⁴ Request, paras 1, 22, 28.

¹⁵ Request, para. 21.

¹⁶ Request, para. 21.

¹⁷ Request, para. 25.

granted custodial visits and he submits that he will equally comply with any conditions imposed by this Panel.¹⁸

11. The SPO responds that the Supreme Court Panel should reject the Request.¹⁹ The SPO contends that while visiting a close relative in critical condition has, under certain circumstances been accepted as a compelling humanitarian ground, Article 8 of the ECHR does not guarantee a detainee an unconditional right to leave prison to visit a sick relative.²⁰ According to the SPO, Mr Gucati has visited his mother five times since 12 May 2022 on the basis of his mother's poor health.²¹ The SPO argues that the Single Judge granted Mr Gucati's fifth request [REDACTED].²²

12. The SPO submits that Mr Gucati [REDACTED] and that nothing has significantly changed in his mother's circumstances since his last visit.²³ The SPO contends that the fact that his mother's medical report was obtained a week before the Request was filed "speaks to the lack of urgency of the submissions".²⁴ The SPO asserts that there now is a final judgment pursuant to which Mr Gucati has been sentenced to four years and three months, which also weighs significantly against granting the Request.²⁵ Finally, the SPO submits that if the Request is nevertheless granted, conditions identical to those imposed during his fifth visit be adopted.²⁶

13. The Registrar submits that a temporary transfer of Mr Gucati to Kosovo for a period of one day would be feasible, with the understanding that he would remain in

¹⁸ Request, para. 29.

¹⁹ SPO Response, para. 1.

²⁰ SPO Response, para. 2.

²¹ SPO Response, paras 2-4.

²² SPO Response, para. 5, *citing* KSC-CA-2022-01/CR001/F00012, Decision on Gucati's Fifth Request for Custodial Visit on Compassionate Grounds, 10 March 2023 (confidential and *ex parte*), para. 26. A public redacted version of this decision was filed on 24 April 2023. See KSC-CA-2022-01/CR001/F00012/RED, Public Redacted Version of Decision on Gucati's Fifth Request for Custodial Visit on Compassionate Grounds, 24 April 2023 ("Decision on Gucati's Fifth Request").

²³ SPO Response, paras 6-7.

²⁴ SPO Response, para. 6.

²⁵ SPO Response, para. 7.

²⁶ SPO Response, para. 8.

the custody of the Specialist Chambers at all times.²⁷ To that end, the Registrar underscores that “[t]he 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.”²⁸ The Registrar contends that this one-day visit could take place within one to two working days following an order of the Panel granting the Request, subject to planning consultations with the European Union Rule of Law Mission in Kosovo.²⁹

14. According to the Registrar, this one-day visit 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.³⁰ To this end, the Registrar submits that any such visit take place under the same or similar conditions to those ordered for previous custodial visits [REDACTED].³¹ Finally, the Registrar submits that alternative means of communication to stay in touch with Mr Gucati’s family exist in the form of 10 visiting days, whether video or in-person visits at the Detention Facilities, and daily phone calls.³²

15. In his Reply, Mr Gucati states that he has no further submissions in relation to the SPO Response nor the Registry Submissions and has no updated information in relation to his mother’s medical condition.³³

III. DISCUSSION

A. Timing of the Reply

²⁷ Registry Submissions, paras 10-12, 18.

²⁸ Registry Submissions, para. 10.

²⁹ Registry Submissions, para. 20. See also Registry Submissions, paras 25-26, 29.

³⁰ Registry Submissions, paras 21-22.

³¹ Registry Submissions, para. 23. See also Registry Submissions, paras 27, 30-32.

³² Registry Submissions, paras 33-38.

³³ Reply, para. 1.

16. The Panel notes at the outset that it had ordered Mr Gucati to file his reply, if any, by no later than Tuesday, 4 July 2023, at 12:00.³⁴ The Panel observes that the Reply was filed on 4 July 2023, at 14:25. Mr Gucati neither requested in advance a variation of the time limit specified in the Order nor showed good cause to persuade the Panel to recognise as valid the Reply after the expiry of the deadline.³⁵ The Panel notes that Mr Gucati's Counsel has been warned on previous occasions by other panels that he should comply with their orders and the relevant rules and regulations of the Specialist Chambers.³⁶

17. Accordingly, and in view of the fact that the Reply does not contain any further information that would be of assistance to the Panel in its determination, other than the fact that the condition of Mr Gucati's mother does not appear to have changed in the past weeks, the Panel will disregard the Reply.

B. Temporary Release on Compelling Humanitarian Grounds

18. The Panel notes Rule 56(3) of the Rules, pursuant to which the Panel may order the temporary release of the detained person upon request by a detained person or *proprio motu*, where compelling humanitarian grounds justify such release. The Panel 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.³⁷

19. The Panel further recalls that the poor health condition of Mr Gucati's mother has been qualified as a compelling consideration or compelling humanitarian grounds by Trial Panel II, a Panel of the Court of Appeals and a Single Judge, which have

³⁴ Order, para. 8(b).

³⁵ See generally Reply.

³⁶ See, e.g., KSC-CA-2022-01/F00063, Decision on Defence Requests for Variation of Word Limit of Briefs in Reply, 12 October 2022, para. 9 and citations therein.

³⁷ Decision on Gucati's Fourth Request, para. 18; Decision on Gucati's Fifth Request, para. 22.

successively granted Mr Gucati custodial visits on five occasions.³⁸ The Panel notes that Mr Gucati last had the opportunity to visit his mother in March 2023.³⁹

20. More importantly, the Panel recalls that Mr Gucati is a convicted person pursuant to a final judgment by the Court of Appeals Panel and is currently serving a prison sentence of four years and three months.⁴⁰ The Panel observes that there is no inherent right to a custodial visit on the basis of compelling humanitarian grounds,⁴¹ particularly where a person has been convicted through final judgment, which has consequences, most notably the loss of liberty. The Panel notes that, notwithstanding, Mr Gucati was granted another visit, his fifth, after the issuance of the Appeal Judgment.

21. The Panel recalls that, throughout the five custodial visits, Mr Gucati's mother has been very ill⁴² and that her medical condition has not changed since Mr Gucati's last visit in March 2023.⁴³

22. The Panel further notes that the most recent report submitted by Mr Gucati on his mother's medical condition was one week old when filed with the Request,⁴⁴ that the report does not contain new information compared to Mr Gucati's last visit in March 2023⁴⁵ and that he provided no further updated information in relation to his

³⁸ KSC-BC-2020-07/F00604/RED, Public Redacted Version of the Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds, 9 May 2022, paras 15-16; KSC-BC-2020-07/F00618/RED, Public Redacted Version of Decision on Second Gucati Defence Request for Temporary Release on Compassionate Grounds, 3 June 2022, paras 19-20; KSC-BC-2022-01/F00020/RED, Public Redacted Version of Decision on Gucati's Third Request for Temporary Release on Compassionate Grounds, 4 July 2022, paras 13, 15; Decision on Gucati's Fourth Request, paras 17-18, 20; Decision on Gucati's Fifth Request, paras 25-26.

³⁹ Decision on Gucati's Fifth Request, para. 29.

⁴⁰ Appeal Judgment, para. 442.

⁴¹ See Decision on Gucati's Fifth Request, para. 21 and citations therein.

⁴² See Decision on Gucati's Fifth Request, para. 24.

⁴³ See Annex to the Request.

⁴⁴ See Annex to the Request.

⁴⁵ Cf. Decision on Gucati's Fifth Request, para. 25 (wherein the Single Judge noted that the health of Mr Gucati's mother [REDACTED]).

mother when given the opportunity.

23. The Panel recalls in this respect that, when presented with very similar circumstances, the Single Judge stressed that Mr Gucati's fifth request for a custodial visit was only justified [REDACTED]⁴⁶ and was thus granted [REDACTED].⁴⁷ Accordingly, Mr Gucati was already informed by the Single Judge that the custodial visit in March 2023 to attend to his mother in view of her deteriorating medical condition [REDACTED].

24. Finally, the Panel notes that there are alternative means available for Mr Gucati to communicate with his family at the Specialist Chambers' Detention Facilities, including 10 video-calls per month.⁴⁸ To that end, the Panel notes the Registrar's submission that, should there be a need, she may issue instructions "to accommodate an additional visiting day to facilitate emergency video visit(s) due to serious illness, serious injury or death of a Close Relative".⁴⁹ Given the [REDACTED] nature of the health condition of Mr Gucati's mother, the Panel requests the Registrar to grant Mr Gucati additional video-calls with his mother, as needed.

25. In light of the above, the Panel finds that Mr Gucati has not demonstrated that urgent, exceptional and compelling new circumstances exist that would justify overriding the Single Judge's determination that his visit in March 2023 [REDACTED]. The Panel therefore rejects the Request.

II. CLASSIFICATION OF FILINGS

26. The Panel notes that the Request, the Response, the Registry Submissions and the Reply were filed confidentially and *ex parte*, as they contain sensitive personal and medical information regarding Mr Gucati and his mother. The Panel recalls that that

⁴⁶ Decision on Gucati's Fifth Request, para. 29.

⁴⁷ Decision on Gucati's Fifth Request, para. 29. See also Decision on Gucati's Fifth Request, para. 25.

⁴⁸ Registry Submissions, paras 33-38.

⁴⁹ Registry Submissions, para. 38.

submissions filed before the Specialist Chambers shall be public unless there are exceptional reasons for keeping them confidential, and that Parties shall file public redacted versions of all non-public submissions filed. Accordingly, the Panel directs the Parties and the Registry to file a public redacted version of the Request (F00010), the SPO Response (F00012), the Registry Submissions (F00013) and the Reply (F00015) within one week from the filing of this Decision.

III. DISPOSITION

27. For the foregoing reasons, the Supreme Court Panel hereby

REJECTS the Request;

REQUESTS the Registrar to grant Mr Gucati additional video-calls per month to communicate with his mother; and

ORDERS the Parties and the Registry to file public redacted versions of their respective filings identified in paragraph 26 within one week from the filing of this Decision.



**Judge Ekaterina Trendafilova,
Presiding Judge**

Dated this, Thursday, 6 July 2023
At The Hague,
The Netherlands