



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

**In:** KSC-BC-2020-07

**The Prosecutor v. Hysni Gucati and Nasim Haradinaj**

**Before:** Trial Panel II

Judge Charles L. Smith, III, Presiding Judge

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

**Registrar:** Fidelma Donlon

**Date:** 27 May 2022

**Language:** English

**Classification:** Public

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**Public Redacted Version of  
Decision on Second Gucati Defence Request for Temporary Release  
on Compassionate Grounds**

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**TRIAL PANEL II** (“Panel”), pursuant to Articles 41 and 53 of the Law 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. Mr Hysni Gucati (“Mr Gucati”) has been in detention since his arrest on 25 September 2020.<sup>1</sup>

2. On 9 May 2022, the Defence for Mr Gucati (“Gucati Defence”) requested the temporary release of Mr Gucati on compassionate grounds (“First Request”).<sup>2</sup> On the same day, 9 May 2022, the Panel granted the First Request (“First Temporary Release Decision”).<sup>3</sup>

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<sup>1</sup> F00012/A01/RED, Single Judge, *Public Redacted Version of Arrest Warrant for Hysni Gucati*, 24 September 2020; F00012/A02/RED, Single Judge, *Public Redacted Version of Order for Transfer to Detention Facilities of the Specialist Chambers*, 24 September 2020; F00015, Registrar, *Notification of Arrest Pursuant to Rule 55(4)*, 25 September 2020; F00018, Registrar, *Notification of the Reception of Hysni Gucati in the Detention Facilities of the Specialist Chambers*, 25 September 2020, with Annex 1, confidential; F00059, Single Judge, *Decision on Application for Bail*, 27 October 2020; IA001/F00005, Court of Appeals Panel, *Decision on Hysni Gucati’s Appeal on Matters Related to the Arrest and Detention*, 9 December 2020, para. 78; F00093, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati*, 24 December 2020; F00143, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati*, 24 February 2021; F00188, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati*, 23 April 2021; F00245, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati*, 23 June 2021; F00279, Panel, *Decision on Review of Detention of Hysni Gucati*, 23 August 2021; F00390, Panel, *Decision on Review of Detention of Hysni Gucati*, 22 October 2021; F00506/RED, Panel, *Public Redacted Version of Decision on Review of Detention of Hysni Gucati*, 21 December 2021; F00562, Panel, *Decision on Review of Detention of Hysni Gucati*, 21 February 2022; F00594, Panel, *Decision on Review of Detention of Hysni Gucati* (“Tenth Detention Review Decision”), 21 April 2022.

<sup>2</sup> F00599, Gucati Defence, *Gucati Request for Temporary Release on Compassionate Grounds* (“First Request”), 9 May 2022, confidential, with four confidential annexes. *See also* F00600, Gucati Defence, *English Translations of Annex 1 and Annex 3 to Filing F00599 “Gucati Request for Temporary Release on Compassionate Grounds”*, 9 May 2022, confidential, with two confidential annexes; F00603, Gucati Defence, *Updated Annex I to filing F00599 “Gucati Request for Temporary Release on Compassionate Grounds” with accompanying English Translation*, 9 May 2022, confidential, with one confidential annex.

<sup>3</sup> F00604, Panel, *Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds* (“First Temporary Release Decision”), 9 May 2022, confidential and *ex parte*. A public redacted version was filed on 16 May 2022, F00604/RED.

3. Between 12 and 14 May 2022, the temporary transfer of Mr Gucati to Kosovo for the purpose of the custodial visit took place.<sup>4</sup>
4. On 18 May 2022, the Panel rendered the trial judgment in the case against Mr Gucati (“Judgment”).<sup>5</sup> Mr Gucati was found guilty of five of the six counts charged and was sentenced, *inter alia*, to four and a half (4,5) years of imprisonment, with credit for time served.<sup>6</sup>
5. On 26 May 2022, the Gucati Defence filed a second request for the temporary release of Mr Gucati on compassionate grounds (“Second Request”).<sup>7</sup>
6. On 27 May 2022, the Specialist Prosecutor’s Office (“SPO”) responded (“SPO Response”),<sup>8</sup> and the Registrar filed submissions on the Second Request (“Registry Submissions”).<sup>9</sup>
7. On 27 May 2022, the Gucati Defence replied to the SPO Response and Registry Submissions (“Reply”).<sup>10</sup> On the same day, the Gucati Defence informed the Panel that Mr Gucati’s father (“Mr Gucati Senior”) passed away.<sup>11</sup>

## II. SUBMISSIONS

8. The Gucati Defence requests that the place of detention of Mr Gucati be transferred to Mr Gucati Senior remains critically ill or, in the event

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<sup>4</sup> F00612, Registrar, *Report of the Registrar Pursuant to Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds* (“First Registry Report”), 17 May 2022, confidential and *ex parte*.

<sup>5</sup> F00611, Panel, *Trial Judgment* (“Judgment”), 18 May 2022, confidential. A public redacted version as filed the same day, F00611/RED.

<sup>6</sup> Judgment, paras 1012-1014.

<sup>7</sup> F00614, Gucati Defence, *Second Gucati Request for Temporary Release on Compassionate Grounds* (“Second Request”), 26 May 2022, confidential and *ex parte*, with one annex (“Annex 1”), confidential and *ex parte*.

<sup>8</sup> F00616, Specialist Prosecutor, *Prosecution Response to Second Gucati Request for Temporary Release on Compassionate Grounds* (“SPO Response”), 27 May 2022, confidential and *ex parte*.

<sup>9</sup> F00615, Registrar, *Registrar’s Submissions on Second Gucati Request for Temporary Release on Compassionate Grounds* (“Registry Submissions”), 27 May 2022, confidential and *ex parte*.

<sup>10</sup> F00617, Gucati Defence, *Consolidated Reply to SPO and Registrar’s Submissions on Second Gucati Request or [sic] Temporary Release on Compassionate Grounds* (“Reply”), 27 May 2022, confidential and *ex parte*.

<sup>11</sup> Email from the Gucati Defence to the Senior Legal Officer dated 27 May 2022, at 1:41pm.

Mr Gucati Senior passes away, until after his funeral.<sup>12</sup> The Gucati Defence further requests that Mr Gucati be authorised to: (i) visit Mr Gucati Senior and other immediate family members at the hospital [REDACTED] on a daily basis while Mr Gucati Senior remains critically ill; (ii) visit his mother at her home address [REDACTED]; (iii) receive visitors at the place of detention in Kosovo; and (iv) in the event Mr Gucati Senior passes away, attend the funeral.<sup>13</sup>

9. The Gucati Defence submits that Mr Gucati would comply with the range of conditions imposed to previous custodial visits in other cases of the Specialist Chambers (“SC”).<sup>14</sup>

10. The Gucati Defence recalls that, at the time of the First Request, Mr Gucati Senior was in a critical condition [REDACTED].<sup>15</sup> The Gucati Defence submits that, [REDACTED] Mr Gucati Senior [REDACTED] there is a real risk that he passes away.<sup>16</sup> In support, the Gucati Defence provides a medical report indicating, *inter alia*, that Mr Gucati Senior was admitted to the hospital [REDACTED] and that his condition is deteriorating.<sup>17</sup> The Gucati Defence also reiterates that his mother, [REDACTED].<sup>18</sup>

11. The SPO submits that the Second Request should be rejected in its entirety as the Gucati Defence seeks to change indefinitely the location of Mr Gucati’s detention to Kosovo in order to allow for multiple visits, including from unspecified persons.<sup>19</sup> In the view of the SPO, the medical documentation provided in support of the Second Request is unclear and does not justify a further

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<sup>12</sup> Second Request, para. 19.

<sup>13</sup> Second Request, paras 1, 10-11, 19.

<sup>14</sup> Second Request, para. 18.

<sup>15</sup> Second Request, para. 9; First Request, Annex 2A, para. 12; Annex 2B, *Statement of Musli Gucati dated 9 May 2022*, paras 6-7.

<sup>16</sup> Second Request, paras 8-9.

<sup>17</sup> Second Request, para. 8; Annex 1.

<sup>18</sup> Second Request, para. 10; First Request, Annex 2A, para. 13 ; First Request, Annex 3.

<sup>19</sup> SPO Response, paras 1, 14.

exception to Mr Gucati's detention regime.<sup>20</sup> The SPO argues that it did not oppose the First Request because it understood this would be the only request for temporary release related to the ill health of Mr Gucati's parents.<sup>21</sup> It therefore opposes the Second Request because: (i) following his conviction, the presumption of innocence afforded to Mr Gucati for the First Request no longer applies;<sup>22</sup> (ii) Mr Gucati Senior is hospitalised for similar reasons advanced in the First Request and no information is provided to indicate changes to the health of Mr Gucati's mother;<sup>23</sup> and (iii) the Second Request is overly broad.<sup>24</sup>

12. The Registrar submits that a temporary transfer of Mr Gucati to Kosovo for a period of one day, him departing and returning on the same day, would be feasible, with the understanding that Mr Gucati would remain in the custody of the Specialist Chambers at all times.<sup>25</sup> The Registrar submits that this visit could take place on 30 May 2022.<sup>26</sup> The Registrar sets out a number of recommendations in relation to Mr Gucati's requested visits to the hospital and his mother's residence.<sup>27</sup>

13. The Gucati Defence replies that the SPO understates the medical issues involving Mr Gucati Senior as his health condition is deteriorating.<sup>28</sup> It argues that, far from requesting an indefinite change of conditions of Mr Gucati's detention, the Request is made mindful of the real likelihood of Mr Gucati Senior passing away in a short time.<sup>29</sup> In relation to visitors, the Gucati Defence contends that, upon identification, a limited number of persons may be permitted to meet

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<sup>20</sup> SPO Response, para. 3.

<sup>21</sup> SPO Response, para. 9.

<sup>22</sup> SPO Response, para. 10.

<sup>23</sup> SPO Response, para. 11.

<sup>24</sup> SPO Response, para, 12.

<sup>25</sup> Registry Submissions, para. 13.

<sup>26</sup> Registry Submissions, para. 15.

<sup>27</sup> Registry Submissions, paras 16-22.

<sup>28</sup> Reply, paras 2-6.

<sup>29</sup> Reply, para. 4.

Mr Gucati at the hospital and the home address, as was previously authorised.<sup>30</sup> The Gucati Defence replies to the conditions set forth in the Registry Submissions and reiterates its Second Request.<sup>31</sup> Upon notification of Mr Gucati Senior's death, the Gucati Defence requested for Mr Gucati to be able to attend the funeral held on 28 May 2022, at 4pm.<sup>32</sup>

### III. APPLICABLE LAW

14. Pursuant to Rule 56(3) of the Rules, upon request by a detained person, the Panel may order the temporary release of a detained person, where compelling humanitarian grounds justify such release. 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.

15. Pursuant to Article 53(1) of the Law, all entities and persons in Kosovo shall co-operate with the SC and shall comply without undue delay with any request for assistance or an order or decision issued by the SC.

### IV. DISCUSSION

#### A. TEMPORARY RELEASE ON COMPELLING HUMANITARIAN GROUNDS

16. The Panel recalls that there is no unconditional right to temporary release on compelling humanitarian grounds.<sup>33</sup> A decision whether to release a person on such grounds is subject to the discretion of the Panel, but must account for all relevant circumstances and factors and include a reasoned opinion thereon.<sup>34</sup>

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<sup>30</sup> Reply, paras 8-9.

<sup>31</sup> Reply, paras 10-16.

<sup>32</sup> Email from the Gucati Defence to the Senior Legal Officer dated 27 May 2022, at 2:10pm.

<sup>33</sup> First Temporary Release Decision, para. 11. ECtHR, *Lind v. Russia*, no. 25664/05, 6 December 2007, para. 94.

<sup>34</sup> First Temporary Release Decision, para. 11. See also ICTY, *Prosecutor v. Popović et al.*, IT-05-88-AR65.4, IT-05-88-AR65.5 and IT-05-88-AR65.6, Appeals Chamber, [Decision on Consolidated Appeal Against](#)

What these factors are, as well as the weight to be accorded to them depends upon the particular circumstances of the case. Accordingly, 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 can all be factors relevant for consideration.<sup>35</sup>

17. The Panel further recalls that temporary release for the funeral of a close relative and visiting a close relative in critical condition has been accepted, under certain conditions, by this and other jurisdictions, as a compelling humanitarian ground warranting temporary release.<sup>36</sup>

18. The Panel recalls that Mr Gucati has been convicted for criminal offences against the public order and the administration of justice and sentenced to 4,5 years imprisonment. At the same time, the Panel notes that Mr Gucati Senior has passed away and [REDACTED]. In this context, the Panel considers that the passing of Mr Gucati Senior and the importance of the mourning ritual are decisive factors when deciding on the Second Request. The Panel further notes the Registry Submission, setting out a number of logistical measures and security conditions, similar to those proposed in the context of

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[Decision on Borovčanin's Motion for a Custodial Visit and Decisions on Gvero's and Miletić's Motions for Provisional Release During the Break in the Proceedings](#), 15 May 2008, para. 6.

<sup>35</sup> First Temporary Release Decision, para. 11. See also ECtHR, [Lind v. Russia](#), no. 25664/05, 6 December 2007, para. 95; KSC-BC-2020-6, F00640/RED, Pre-Trial Judge, *Public Redacted Version of Third Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds*, 8 January 2022, para. 20.

<sup>36</sup> First Temporary Release Decision, para. 12. See also KSC-BC-2020-06, F00276/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Veseli Defence Request for Modification of Decision KSC-BC-2020-06/F00271*, 4 May 2021; KSC-BC-2020-06, F00640/RED, Pre-Trial Judge, *Public Redacted Version of Third Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds*, 8 January 2022. Similarly, ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Trial Chamber, [Decision on Pandurević's Motion for Provisional Release](#), 21 July 2008; *Prosecutor v. Strugar*, IT-01-42-A, Appeals Chamber, [Decision on the Renewed Defence Request Seeking Provisional Release on Compassionate Grounds](#), 15 April 2008; *Prosecutor v. Sainović et al.*, IT-05-87-A, Appeals Chamber, [Public Redacted Version of the Decision on Sreten Lukić's Second Motion for Provisional Release on Compassionate Grounds](#), 14 July 2010.

the First Request, that make such a visit feasible.<sup>37</sup> Lastly, the Panel notes that the Registrar confirmed Mr Gucati abided by all conditions imposed during his last custodial visit to Kosovo.<sup>38</sup>

19. In light of the recent developments concerning Mr Gucati Senior, the SPO Response is moot in part. As regards the SPO Response concerning [REDACTED] condition, the Panel considers that in these present circumstances, it is appropriate for Mr Gucati to visit his mother, [REDACTED] as a compelling consideration. That being said, the Panel is not persuaded that this would justify temporary release for an undetermined period of time.

20. For these reasons, the Panel finds that, on balance and in the present circumstances, the death of Mr Gucati Senior and [REDACTED] amount to compelling humanitarian grounds justifying Mr Gucati's limited temporary release for a custodial visit.

## B. CONDITIONS OF CUSTODIAL VISIT

21. The Panel now turns to the question of whether and if so, what conditions must be imposed on Mr Gucati's custodial visit.

22. At the outset, the Panel recalls that Mr Gucati was found guilty of five criminal offences against public order and the administration of justice and was sentenced to four and a half (4,5) years of imprisonment, with credit for time served.<sup>39</sup> The Panel further recalls that, prior to the pronouncement of the Judgment, it found that: (i) there is a risk that Mr Gucati may obstruct the progress of proceedings and commit offences either in repetition of those charged or offences which he has previously threatened to commit, and (ii) imposing conditions in relation to Mr Gucati's release would insufficiently

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<sup>37</sup> Registry Submissions, paras 16-28.

<sup>38</sup> First Registry Report, para. 11.

<sup>39</sup> Judgment, paras 1012, 1014.



mitigate these risks.<sup>40</sup> Lastly, the Panel recalls Mr Gucati's past statements vowing to continue disclosing material related to the SC/SPO.<sup>41</sup> In light of the foregoing, the Panel considers that conditions falling short of implementing a custodial visit in Kosovo would not sufficiently address the risks associated with the temporary release of Mr Gucati.

23. Therefore, in order to address the risks associated with his temporary release, the Panel orders Mr Gucati's secure and temporary transfer to Kosovo, where he will remain in the custody of the SC at all times.

24. The Panel understands that it is impossible for the Registry to make the logistical and security arrangements to allow Mr Gucati to attend his father's funeral on 28 May 2022 at 4pm, at such short notice. For that reason, the custodial visit shall last one day, him departing and returning on the same day, on 30 May 2022. The custodial visit shall be carried out under the following conditions:

- 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 earshot of escorting officers. The escorting officers may be uniformed, if necessary, and remain in the vicinity of Mr Gucati at all times, as necessary. Mr Gucati is ordered to comply fully with any instructions received from the escorting officers;
- b) Mr Gucati shall only be transported to: (i) the address [REDACTED], to visit his mother and (ii) the grave of Mr Gucati Senior;
- c) During his visits at the aforementioned locations, Mr Gucati is not permitted to meet and communicate with any person other than his immediate family (mother, spouse, children, grand-children, siblings), his

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<sup>40</sup> Tenth Detention Review Decision, paras 33, 46.

<sup>41</sup> Tenth Detention Review Decision, paras 26-27, 32.

Counsel and members of the Gucati Defence team. All non-authorized persons shall vacate these locations before Mr Gucati's visits;

- d) The presence of Mr Gucati's immediate family shall be secured only at the the address [REDACTED] and shall be subject to security considerations and prior approval of the chief custody officer upon presentation of photographic identification. To this end, Mr Gucati and/or his Defence team are ordered to submit, if not already provided during the last authorized custodial visit, copies of identity documents of immediate family members to the Detention Management Unit for prior approval;
- e) Mr Gucati is not permitted to be alone with his immediate family (mother, spouse, children, grand-children, siblings) at any time, and must remain within both sight and earshot of the escorting officers;
- f) The chief custody officer may take any decision necessary regarding the custodial visit on the basis of operational and security concerns, including terminating any of the above visits;
- g) In the event of delay or unforeseen circumstances, Mr Gucati shall be transported to the SC's secure transfer facility in Kosovo where he will remain in SC custody at all times;
- h) Mr Gucati shall not have access to communication devices or any other means of communication, including pen and paper, other than as facilitated by the SC;
- i) Mr Gucati is not permitted to pass or receive items to or from any person without prior inspection and approval of the escorting officer(s);
- j) Mr Gucati shall not have any contact whatsoever or in any way interfere with any victim or (potential) witness or otherwise interfere in any way with the proceedings or the administration of justice;
- k) Mr Gucati shall not seek direct access to documents nor destroy evidence;

- l) Mr Gucati shall not discuss his case with anyone, including the media, other than with his Counsel and members of his Defence team;
  - m) Mr Gucati, his Counsel, members of his Defence team, immediate family members (mother, spouse, children, grand-children, siblings) and associates shall refrain from making public statements and shall maintain secrecy regarding Mr Gucati's presence on the territory of Kosovo prior to and during the entirety of his stay. Should Mr Gucati's presence become known, the SPO, Registry or EULEX, as appropriate, are authorised to make any necessary statement in that regard;
  - n) Mr Gucati shall comply strictly with any further order of the Panel varying the terms or terminating his custodial visit; and
  - o) Mr Gucati shall comply with any Covid-19 related measures as specified by the Registry.
25. The Panel considers that, given the urgent nature of the Second Request and the present circumstances, the strict custodial conditions outlined above are necessary to outweigh any risks that Mr Gucati may obstruct the progress of proceedings or commit further crimes.
26. The Panel is further satisfied that, under the present circumstances, in particular the existing organisational constraints, a period of one day, him departing and returning on the same day, enables adequate time for Mr Gucati to visit his father's grave, his mother and other authorised immediate family members, and is thus proportional to the grounds for which the temporary release is sought.
27. Should there be a need to amend any of the above conditions, the Parties or Registry shall seize the Panel immediately.

### C. EXECUTION OF CONDITIONS

28. In the implementation of the above conditions, the Panel 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.

29. The Panel 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

30. Throughout the custodial visit, the Registry shall provide the Panel 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) completion of any custodial visit to his father's grave and mother's residence; (iii) any breaches of the aforementioned conditions by Mr Gucati or others; (iv) any early termination of the visits and reasons therefor; and (v) Mr Gucati's return to the detention unit of the SC in the Host State. The Registry shall file a report to the Panel on the implementation of this decision before 3 **June 2022**.

### V. CLASSIFICATION

31. The Panel observes that the Second Request (F00614), the SPO Response (F00616), the Registry Submissions (F00615) and the Reply (F00617) were filed confidentially as they contain sensitive personal and medical information regarding Mr Gucati Senior and [REDACTED].<sup>42</sup>

32. The Panel directs the Parties and the Registry to respectively file a public redacted version of the Second Request (F00614), the SPO Response (F00616),

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<sup>42</sup> Second Request, para. 20; SPO Response, para. 13; Registry Submission, para. 34.

the Registry Submissions (F00615) and the Reply (F00617) after the conclusion of Mr Gucati's custodial visit to Kosovo.

## VI. DISPOSITION

33. For the above-mentioned reasons, the Panel hereby:

- a) **GRANTS** in part the Second Request, and **ORDERS** Mr Gucati to comply with all conditions specified in paragraph 24 above;
- b) **INSTRUCTS** the Registry to implement Mr Gucati's custodial visit under the conditions specified in paragraph 24 above;
- c) **INVITES** the Parties and/or the Registry to seize the Panel immediately should an amendment to the conditions in paragraph 24 be required;
- d) **AUTHORISES** the Registry to make arrangements with external partners for the implementation of this decision;
- e) **AUTHORISES** the Registry to notify any other authorities deemed necessary for the implementation of this decision;
- f) **REMINDS** authorities in Kosovo that they shall comply without undue delay with any decision issued by the SC or any request for assistance;
- g) **ORDERS** the Registry to provide updates and file a report as indicated in paragraph 30 above; and
- h) **ORDERS** the Gucati Defence, the SPO and the Registry to file public redacted versions of the Second Request (F00614), SPO Response (F00616), Registry Submissions (F00615) and Reply (F00617), respectively, after the conclusion of Mr Gucati's custodial visit to Kosovo, unless otherwise ordered.



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**Judge Charles L. Smith, III**

**Presiding Judge**

Dated this Friday, 27 May 2022

At The Hague, the Netherlands.