



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-CA-2022-01
Specialist Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: **Court of Appeals Panel**
Judge Michèle Picard, Presiding Judge
Judge Kai Ambos
Judge Nina Jørgensen

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

Date: 20 September 2022

Language: English

Classification: Public

Public Redacted Version of

**Prosecution response to Fourth Gucati Request for Temporary Release on
Compassionate Grounds**

Specialist Prosecutor's Office

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1. The Appeals Panel should reject GUCATI's fourth request for temporary release.¹

2. Article 8 of the ECHR does not guarantee an unconditional right to leave prison to visit a sick relative.² While visiting a close relative in critical condition has been accepted, under certain conditions, as a compelling humanitarian ground warranting temporary release,³ the frequent nature of a convicted person's 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 Appeal Panel's determination of a further such request.

3. Over the last four months, GUCATI has visited his mother three times: on 12⁴ and 30 May,⁵ and 3 July 2022.⁶ The poor health situation of GUCATI's mother was one of the 'compelling considerations' which led the Trial Panel to grant GUCATI's first request for temporary release.⁷ The fact that GUCATI's mother was seriously ill and her poor health situation was also a relevant factor in the Trial Panel's granting GUCATI's second such request.⁸ His third request was granted entirely in view of his

¹ Fourth Gucati Request for Temporary Release on Compassionate Grounds, KSC-CA-2022-01/F00039, 10 September 2022, Confidential and *Ex Parte* ('Fourth Request').

² Public Redacted Version of Decision on Gucati's Third Request for Temporary Release on Compassionate Grounds, KSC-CA-2022-01/F00020/RED, 30 June 2022 ('Decision on Third Request'), para.11.

³ Decision on Third Request, para.13.

⁴ Public Redacted Version of 'Report of the Registrar pursuant to Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds [...]', KSC-BC-2020-07/F00612/RED, 3 June 2022, paras 6-9.

⁵ Public Redacted Version of 'Report of the Registrar pursuant to Decision on Second Gucati Defence Request for Temporary Release on Compassionate Grounds [...]', KSC-BC-2020-07/F00619/RED, 4 July 2022, paras 6-7.

⁶ Public Redacted Version of 'Report of the Registrar pursuant to Decision on Gucati's Third Request for Temporary Release on Compassionate Grounds [...]', KSC-CA-2022-01/F00027/RED, 8 July 2022, para.6.

⁷ Public Redacted Version of the Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds, KSC-BC-2020-07/F00604/RED, 9 May 2022, paras 15-16.

⁸ Decision on Second Gucati Defence Request for Temporary Release on Compassionate Grounds, KSC-BC-2020-07/F00618, 27 May 2022, Confidential and *Ex Parte*, paras 18-20.

mother's ill health,⁹ with the Appeals Panel noting it was attentive to the argument that GUCATI's mother's 'deterioration into her present, extremely serious condition has been rapid'.¹⁰

4. The 29 June 2022 medical certificate provided in support of GUCATI's third request noted GUCATI's mother [REDACTED].¹¹ While it granted the third request, the Appeals Panel noted that although this certificate described the health condition of GUCATI's mother, it did not provide further details about her diagnosis and/or prognosis.¹² The same failing is present in the 9 September 2022 certificate attached to the Fourth Request, which is quasi-identical, the only relevant difference being [REDACTED].¹³ The diagnosis and assessment of her condition are indistinguishable. The prognosis is once again entirely absent.

5. The 24 August medical certificate¹⁴ and the medical certificate referring to 1 and 3 September 2022¹⁵ do not seem to advance GUCATI's argument further.¹⁶ Had they contained any information suggesting a further deterioration or urgency, it is to be assumed the Defence would have filed the application at an earlier date.

6. The assertion that GUCATI's mother [REDACTED]¹⁷ does not seem to be supported by any of the medical documentation provided.

7. The frequency of GUCATI's recent visits to his mother and the lack of relevant detail in the medical documentation provided are not the only factors the Appeals

⁹ Decision on Third Request, para.15.

¹⁰ Decision on Third Request, para.13.

¹¹ Annex 1 to Third Gucati Request for Temporary Release, KSC-CA-2022-01/F00016/A01, 29 June 2022, Confidential and *Ex Parte*.

¹² Decision on Third Request, para.12.

¹³ Annex 1 to Fourth Gucati Request for Temporary Release, KSC-CA-2022-01/F00039/A01, 10 September 2021, Confidential and *Ex Parte* ('Annex 1'), p.3/11.

¹⁴ Annex 1, p.5/11.

¹⁵ Annex 1, p.7/11.

¹⁶ *See also* Fourth Request, para.16.

¹⁷ Fourth Request, para.25.


Panel should consider in its determination of the Fourth Request. It remains the case that the Trial Panel convicted GUCATI of obstructing official persons, intimidating witnesses, and violating the secrecy of proceedings. He is now serving a 4.5-year sentence pending his appeal. This is another highly significant factor.

8. Finally, [REDACTED] is irrelevant,¹⁸ [REDACTED].¹⁹

9. Should the Appeals Panel nevertheless grant the Fourth Request, conditions identical to those imposed for his most recent visit²⁰ should be adopted.²¹

10. This filing is submitted as Confidential and *Ex Parte* in accordance with Rule 82(4). Once the Fourth Request is resolved and after the conclusion of any visit, the SPO has no objection to reclassifying this filing as public.

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Tuesday, 20 September 2022

At The Hague, the Netherlands.

¹⁸ *Contra* Fourth Request, para.17.

¹⁹ Annex 1, p.8/11.

²⁰ Decision on Third Request, para.18. In the event that GUCATI's presence in Kosovo should become known, the SPO requests that the SPO, Registrar and/or EULEX, as appropriate, should to the extent necessitated in the circumstances, be authorised to provide any public clarification or statement which may be needed, including for the purposes of maintaining operational security.

²¹ The SPO is confident that the Registry will ensure that these conditions are implemented in a manner respectful of the circumstances.