



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

**In:** KSC-CA-2022-01/CR001  
**Specialist Prosecutor v. Hysni Gucati and Nasim Haradinaj**

**Before:** The President of the Specialist Chambers  
Judge Ekaterina Trendafilova

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Acting Specialist Prosecutor

**Date:** 4 April 2023

**Language:** English

**Classification:** Public

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**Public Redacted Version of Prosecution response to Re-Filed Gucati Request for  
Fifth Custodial Visit on Compassionate Grounds**

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**Specialist Prosecutor's Office**  
Alex Whiting

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Jonathan Elystan Rees

**Counsel for Mr Haradinaj**  
Toby Cadman

1. The competent Panel,<sup>1</sup> once assigned, should reject the Fifth Request.<sup>2</sup>
2. Article 8 of the ECHR does not guarantee an unconditional right to leave prison to visit a sick relative.<sup>3</sup> While visiting a close relative in critical condition has been accepted, under certain conditions, as a compelling humanitarian ground warranting temporary release,<sup>4</sup> 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 determination of a further such request.
3. Over the last months, GUCATI has visited his mother four times: on 12<sup>5</sup> and 30<sup>6</sup> May 2022, 3 July 2022,<sup>7</sup> and 16 September 2022.<sup>8</sup> 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.<sup>9</sup> The fact that GUCATI's mother was seriously ill and her poor health situation was also a relevant factor in the

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<sup>1</sup> The Court of Appeals Panel is not competent to rule on GUCATI's fifth request for temporary release. See Article 33(1)(c) of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015; Decision Assigning a Court of Appeals Panel, KSC-CA-2022-01/F00011, 21 June 2022, para.3.

<sup>2</sup> Re-Filed Gucati Request for Fifth Custodial Visit on Compassionate Grounds, KSC-CA-2022-01/CR001/F00001, 2 March 2023, Confidential and *Ex Parte* ('Fifth Request').

<sup>3</sup> 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.

<sup>4</sup> Decision on Third Request, KSC-CA-2022-01/F00020/RED, para.13.

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> Public Redacted Version of 'Report of the Registrar Pursuant to Decision on Gucati's Fourth Request for Temporary Release on Compassionate Grounds [...]', KSC-CA-2022-01/F00048/RED, 14 October 2022, paras 5-6.

<sup>9</sup> 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.

Trial Panel's granting GUCATI's second such request.<sup>10</sup> His third request was granted entirely in view of his mother's ill health,<sup>11</sup> 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'.<sup>12</sup> The fourth request was similarly granted entirely on the basis of GUCATI's mother's ill health,<sup>13</sup> with the Court of Appeals Panel also considering [REDACTED].<sup>14</sup> In this decision, the Court of Appeals Panel also stressed that 'such temporary release is only justifiable in light of the present urgent, compelling and exceptional circumstances.'<sup>15</sup>

4. The circumstances set out in the Fifth Request are not urgent, compelling or exceptional.

5. The Fifth Request asserts that GUCATI's mother is in [REDACTED].<sup>16</sup> The Medical Report,<sup>17</sup> consisting of a few vague and ambiguous lines, does not support this claim. It refers to her medical condition as [REDACTED] and fails to provide any basis whatsoever for the assertion that '[REDACTED]'. The Medical Report also states GUCATI's mother is [REDACTED]. Had the 22 February 2023 Medical Report contained any information suggesting real urgency, it is to be assumed the Defence would have filed the application at an earlier date.

6. The frequency of GUCATI's recent visits to his mother and the lack of relevant detail in the Medical Report are not the only factors that should be considered in the determination of the Fifth Request. Since the last occasion on which GUCATI was

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<sup>10</sup> 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.

<sup>11</sup> Decision on Third Request, KSC-CA-2022-01/F00020/RED, para.15.

<sup>12</sup> Decision on Third Request, KSC-CA-2022-01/F00020/RED, para.13.

<sup>13</sup> Decision on Gucati's Fourth Request for Temporary Release on Compassionate Grounds, KSC-CA-2022-01/F00043, 13 September 2022, Confidential and *Ex Parte* ('Decision on Fourth Request'), para.18.

<sup>14</sup> Decision on Fourth Request, KSC-CA-2022-01/F00043, para.18.

<sup>15</sup> Decision on Fourth Request, KSC-CA-2022-01/F00043, para.20.

<sup>16</sup> Fifth Request, KSC-CA-2022-01/CR001/F00001, para.1.

<sup>17</sup> Annex 1 to Gucati Request for Fifth Custodial Visit, KSC-CA-2022-01/CR001/F00001/A01, Confidential and *Ex Parte*, 2 March 2023 ('Medical Report').

authorised to visit his mother, a Court of Appeals Panel has confirmed convictions of obstructing official persons, intimidating witnesses, and violating the secrecy of proceedings. GUCATI is now serving a sentence of 4 years and 3 months. This is another highly significant factor.

7. Should the Fifth Request nevertheless be granted, conditions identical to those imposed for his most recent visit<sup>18</sup> should be adopted.<sup>19</sup>

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

**Word count: 904**



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**Alex Whiting**  
**Acting Specialist Prosecutor**

Tuesday, 4 April 2023

At The Hague, the Netherlands.

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<sup>18</sup> Decision on Fourth Request, KSC-CA-2022-01/F00043, para.23. 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.

<sup>19</sup> The SPO is confident that the Registry will ensure that these conditions are implemented in a manner respectful of the circumstances.