



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

In: KSC-SC-2023-01
Specialist 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 Franssen

Registrar: Dr Fidelma Donlon

Filing Participant: Acting Specialist Prosecutor

Date: 7 July 2023

Language: English

Classification: Public

**Public Redacted Version of Prosecution response to 'Gucati Request for Sixth
Custodial Visit on Compassionate Grounds'**

Specialist Prosecutor's Office

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1. The Supreme Court Panel should reject the Sixth Request.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 determination of a further such request.
3. Over the last year, GUCATI has visited his mother five times: on 12⁴ and 30⁵ May 2022, 3 July 2022,⁶ 16 September 2022,⁷ and 15 March 2023.⁸
4. 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.⁹ The fact that GUCATI's mother was seriously ill was also a

¹ Gucati Request for Sixth Custodial Visit on Compassionate Grounds, KSC-SC-2023-01/F00010, 30 June 2023, Confidential and *Ex Parte* ('Sixth 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; *See also* Decision on Gucati request for Fifth Custodial Visit on Compassionate Grounds, KSC-CA-2022-01/CR001/F00012, 10 March 2023, Confidential and *Ex Parte* ('Decision on Fifth Request') para.21.

³ Decision on Third Request, KSC-CA-2022-01/F00020/RED, 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 '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.

⁸ Report of the Registrar Pursuant to Decision on Gucati Request for Fifth Custodial Visit on Compassionate Grounds, KSC-CA-2022-01/CR001/F00013, 22 March 2023, Confidential and *Ex Parte*, para.5.

⁹ 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.

relevant factor in the Trial Panel's granting GUCATI's second such request.¹⁰ His third request was granted entirely in view of his mother's ill health,¹¹ 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'.¹² The fourth request was similarly granted entirely on the basis of GUCATI's mother's ill health,¹³ with the Court of Appeals Panel also considering [REDACTED].¹⁴ 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.'¹⁵

5. Most recently and significantly, GUCATI's fifth request was granted to provide him with [REDACTED],¹⁶ having noted [REDACTED].¹⁷

6. The circumstances set out in the Sixth Request are not compelling or exceptional. Rather, but for the short passage of time, they are identical to those set out in the Fifth Request.¹⁸ Further, they ignore the Fifth Decision, which clearly and fairly put GUCATI on notice that [REDACTED].¹⁹ In this sixth request, GUCATI seeks to have a repeat of what was granted to him following the fifth request. Given the short amount of time that has passed since the fifth visit, this new request should be

¹⁰ 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.

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

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

¹³ 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.

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

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

¹⁶ Decision on Fifth Request, KSC-CA-2022-01/CR001/F00012, para.26.

¹⁷ Decision on Fifth Request, KSC-CA-2022-01/CR001/F00012, paras 25-26.

¹⁸ *Compare, e.g.*, Re-Filed Gucati Request for Fifth Custodial Visit on Compassionate Grounds, KSC-CA-2022-01/CR001/F00001, 2 March 2023, Confidential and *Ex Parte*, paras 1, 19-20, 27-28 with and Sixth Request, KSC-SC-2023-01/F00010, paras 1, 21-22, 27-28.

¹⁹ Decision on Fifth Request, KSC-CA-2022-01/CR001/F00012, para.26.

denied. Further, the fact that the medical report was obtained a week before the Sixth Request was filed²⁰ also speaks to the lack of urgency of the submissions.

7. The frequency of GUCATI's recent visits to his mother and the lack of any relevant change in circumstances are not the only factors that should be considered in the determination of the Sixth Request. 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.

8. Should the Sixth Request nevertheless be granted, conditions identical to those imposed for GUCATI's most recent visit²¹ should be adopted.²²

9. This filing is submitted as Confidential and *Ex Parte* in accordance with Rule 82(4). Once the Sixth Request is resolved and after the conclusion of any visit, the SPO will file a public redacted version.

Word count: 968



Alex Whiting

Acting Specialist Prosecutor

Friday, 7 July 2023

At The Hague, the Netherlands.

²⁰ See Annex 1 to Sixth Request, KSC-SC-2023-01/F00010/A01, attaching a medical report dated 23 June 2023.

²¹ Decision on Fifth Request, KSC-CA-2022-01/CR001/F00012, para.30. 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.

²² The SPO is confident that the Registry will ensure that these conditions are implemented in a manner respectful of the circumstances.