



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

File number: KSC-SC-2023-01/CS001

Before: The President of the Specialist Chambers
Judge Ekaterina Trendafilova

Registrar: Fidelma Donlon

Date: 12 October 2023

Language: English

Classification: Confidential

**Decision on Commutation, Modification or Alteration of Sentence
with Confidential and *Ex Parte* Annexes**

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Counsel for Hysni Gucati:
Jonathan Elystan Rees

THE PRESIDENT of the Specialist Chambers (“President”), noting Article 51(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”), Rules 196 and 197 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”) and Articles 3, 6 and 9-11 of the Practice Direction on Commutation of Sentences (“Practice Direction”), having consulted with the Judges of the sentencing Panels, hereby issues this decision on the commutation , modification or alteration of Mr Hysni Gucati’s sentence.

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*.¹ 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 of imprisonment, with credit for the time served, and a fine of 100 Euros each.²

2. On 2 February 2023, a Court of Appeals Panel rendered the “Appeal Judgment”, wherein it partially affirmed Mr Gucati’s and Mr Haradinaj’s convictions and, by majority, reduced their sentences to four years and three months of imprisonment, with credit for time served.³ The Appeals Panel further affirmed the additional sentence to pay a fine of 100 Euros each.⁴

3. On 5 July 2023, the Registrar notified the President, pursuant to Article 3(3) of the Practice Direction, that Mr Gucati will become eligible for commutation of his

¹ KSC-BC-2020-07, F00611/RED, Public Redacted Version of the Trial Judgment, 18 May 2022.

² Trial Judgment, paras 1012-1017.

³ KSC-CA-2022-01, F00114, Appeal Judgment, 2 February 2023, para. 442.

⁴ Appeal Judgment, para. 442.

sentence on 25 July 2023, after having served two-thirds of his sentence.⁵

4. On 26 July 2023, the President requested the Registrar to collect and convey the information set forth in Rule 196(3) of the Rules and to take the steps prescribed in Article 4 of the Practice Direction.⁶

5. On 14 August 2023, the Registrar conveyed to the President the information collected pursuant to Rule 196(3) of the Rules and Article 5(1) of the Practice Direction.⁷ Specifically, the Registrar included: (i) a report from the Detention Management Unit (“DMU” and “DMU Report”); (ii) a report from the Specialist Prosecutor’s Office (“SPO” and “SPO Report”); and (iii) the Registrar’s own submissions (“Registrar’s Submissions”).

6. On 28 August 2023, Mr Gucati conveyed his observations to the Registrar’s Submissions and related reports through the Court Management Unit (“Gucati’s Submissions”).⁸

7. On 30 August 2023, the President provided all the information received to the Judges of the sentencing Panels in accordance with Article 51(2) of the Law, Rule 196(1) of the Rules and Article 6 of the Practice Direction and sought their views on Mr Gucati’s commutation of sentence.

8. On 28 September 2023, the President convened an oral hearing, during which she heard Mr Gucati’s views on the commutation, modification or alteration of his sentence and the responses to questions she addressed to him.

⁵ KSC/REG/IOR/6207, Notification of Eligibility for Commutation of Sentence, 5 July 2023 (confidential).

⁶ KSC/CHA/PRE/0818, Notice of Commutation of Sentences Messrs Gucati and Haradinaj, File No. KSC-SC-2023-01/CS001, 26 July 2023 (confidential).

⁷ KSC/REG/IOR/6296, Requested Information Related to Article 5 of the Practice Direction on Commutation of Sentence Concerning Mr Hysni Gucati, 14 August 2023 (confidential).

⁸ Gucati Written Submissions on Commutation pursuant to Article 5(3) of the Practice Direction on Commutation of Sentences KSC-BD-48, 28 August 2023 (confidential).

II. ANALYSIS

9. The President emphasises at the outset that persons convicted by the Specialist Chambers become eligible for *consideration* of commutation of sentence upon having served two-thirds of their sentence.⁹ Eligibility denotes consideration and not an inherent right to commutation after having served two-third of a sentence. There is therefore no “burden of proof”, as Mr Gucati suggests, on the part of the President to demonstrate that he “has not fulfilled the criteria for release on conditions”.¹⁰

10. The President notes that the Law, the Rules and the Practice Direction limit her competence to considering only the eligibility of a convicted person for commutation, modification or alteration of sentence and *not* the judgments rendered by the competent Panels.

11. Further, the President takes into account the views of the Judges of the sentencing Panels without, however, engaging with their analysis in her decision. The President will examine the factors set forth in Rule 196(3) of the Rules and determine, based on the facts of this case, whether there are sufficient factors present that warrant the commutation, modification or alteration of Mr Gucati’s sentence.

a) Genuine dissociation from the crime

12. The Trial Panel found in its judgment that Mr Gucati “expressed no remorse regarding his actions and reiterated his vow to repeat such actions in the future”.¹¹

The Trial Panel further took note of Mr Gucati’s testimony, wherein he stated:

Mr Gucati: “I am not afraid of saying anything. I’m not afraid for what I have done. I said every document that comes to my office to the detriment of my country, I will make it public”.¹²

⁹ See Rule 196(2) of the Rules; Article 3(1) of the Practice Direction.

¹⁰ Gucati Submissions, paras 3, 13 (pp. 2, 4).

¹¹ Trial Judgment, para. 976.

¹² Trial Judgment, para. 976, fn. 2010, *referring to* Transcript of Hearing, 6 December 2021, p. 2222.

(...)

SPO Counsel: "Do you have any remorse or regret for the actions you stand trial for?"

Mr Gucati: "I have never had a chance to regret in the 54 years of my life, 30 years of work, and so on and so forth. Where I make a mistake, I apologise. There is no need for me to apologise for anything. I did not steal these documents and take them to the WVA headquarters. If I'd done that, I would apologise for that burglary. I have not committed any burglary, I have not offended anyone, I haven't insulted any witness or anyone else. There is absolutely no reason for me to apologise because I have not caused harm to anyone".

SPO Counsel: "Would you do it all over again?"

Mr Gucati: "I said it earlier as well yesterday and the day before. I'm not a guardian of anyone, so of this institution or of the offices here in The Hague. I look after the work for which I'm paid. So please do not provoke me with questions regarding this documentation".¹³

13. Mr Gucati contends in his written submissions that "the presence or absence of remorse is not included as a relevant factor" in assessing whether to grant commutation of sentence.¹⁴ He therefore did not provide any information regarding his dissociation from the offences for which he was convicted in his written observations.¹⁵ Rather, Mr Gucati contends that he has dissociated from his crime "in the sense that he has no intention to take any further steps to oppose the Specialist Chambers, in practice or in principle".¹⁶

14. The Registrar submits that Mr Gucati has not made any reported expression of remorse or regret to DMU staff members regarding the crimes he has been convicted of.¹⁷ The DMU report reflects that Mr Gucati understands why he was convicted and why he is in detention, though he does not discuss his case or the crimes of which he has been convicted with DMU staff members.¹⁸

15. The SPO contends that, as far as they understand, Mr Gucati has not said or

¹³ Trial Judgment, para. 976, fn. 2010, *referring to* Transcript of Hearing, 8 December 2021, p. 2401.

¹⁴ Gucati Submissions, para. 7 (p. 3).

¹⁵ See generally Gucati Submissions.

¹⁶ Gucati Submissions, para. 31 (p. 8).

¹⁷ Registrar's Submissions, para. 34. See also DMU Report, para. 8.

¹⁸ DMU Report, para. 8.

done anything while detained to suggest any genuine disassociation from his crimes.¹⁹

16. During the oral hearing, Mr Gucati emphasised that “the past is the past” for him and that it was never his intention to intimidate or threaten anyone.²⁰ Mr Gucati stated that he is “in a position and able to ask for forgiveness and apologise” to anyone who may have felt threatened or intimidated by his actions.²¹ Mr Gucati stated that he intends to focus on his own future, his mother’s last days and his children.²²

17. The President recognises that Mr Gucati declined to express remorse during the proceedings against him, as pointed out by the Trial Panel. Following the service of two-thirds of his sentence, he still did not include views on any remorse in his written submissions.

18. However, during the oral hearing, Mr Gucati discussed how he felt about the offences for which he was convicted and expressed some remorse and regret for his actions.²³ The President considers these expressions of regret to have been genuine and finds that this demonstrates that he has used his time in detention to reflect on his behaviour and has chosen to disassociate himself from his past actions.

19. Accordingly, the President finds that this factor weighs in favour of a possible commutation, modification or alteration of Mr Gucati’s sentence.

b) Demonstration of rehabilitation

20. Mr Gucati submits that he has fully complied with the Rules of Detention and instructions given by the DMU staff. He further contends that he has conducted himself “respectfully, responsibly and appropriately at all times during his

¹⁹ SPO Report, para. 3.

²⁰ Transcript of Hearing, 28 September 2023, p. 5.

²¹ Transcript of Hearing, 28 September 2023, p. 6.

²² Transcript of Hearing, 28 September 2023, p. 6.

²³ Transcript of Hearing, 28 September 2023, pp. 6-7.

detention”.²⁴ Mr Gucati disagrees with the Registrar’s assessment that his decision not to answer the question whether he would do it all over again amounts to a “vow to repeat such actions in the future”.²⁵

21. Mr Gucati further contends that he has “no intention to take any further steps to oppose the Specialist Chambers and he will continue to abide by any and all conditions imposed upon his release (as he has done since his arrest)”.²⁶ Mr Gucati acknowledges that the Specialist Chambers “is firmly established and its work is well underway. [Mr] Gucati appreciates the reality that both the existence of the Specialist Chambers and the progress of its work are irreversible”.²⁷

22. Mr Gucati asserts that he has no present intention to resume any role within the Kosovo Liberation Army War Veterans’ Association and that he has no intention of seeking media attention relating to the opposition of the Specialist Chambers or his time in detention.²⁸

23. The Registrar submits that Mr Gucati made no any indication that he would engage in similar conduct again.²⁹ According to the DMU Report, Mr Gucati has displayed a friendly, responsible and respectful behaviour toward staff since his arrival at the DMU.³⁰ The DMU Report notes that Mr Gucati has not engaged in any inappropriate conduct or displayed any aggressive behaviour, verbal or otherwise.³¹ The DMU Report further reflects that Mr Gucati has fully complied with the Rules of Detention and instructions provided by staff members.³²

²⁴ Gucati Submissions, para. 2 (p. 1).

²⁵ Gucati Submissions, para. 23 (p. 6).

²⁶ Gucati Submissions, paras 5, 21, 24, 27 (pp. 2, 6-7).

²⁷ Gucati Submissions, paras 22, 25, 28 (pp. 6-7).

²⁸ Gucati Submissions, paras 19-20 (pp. 5-6).

²⁹ Gucati Submissions, para. 34 (pp. 8-9). See also DMU Report, para. 8.

³⁰ DMU Report, para. 9. See also DMU Report, paras 10-12, 15, 21-22.

³¹ DMU Report, para. 9. See also DMU Report, paras 16-19.

³² DMU Report, para. 13. See also DMU Report, paras 14-15, 20.

24. According to the SPO, there is no information available suggesting that Mr Gucati has done anything that could qualify as rehabilitation.³³ The SPO further contends that Mr Gucati persisted in his criminal behaviour despite three orders and SPO requests to desist from further disseminating confidential information and Mr Gucati's "clear resolve to repeat [his] actions in the future".³⁴

25. During the oral hearing, Mr Gucati expressed that he intends to leave the past in the past and that he will now think only of his future and that of his family.³⁵ Mr Gucati reiterated that it is not his intention to undermine justice by any means, including by obstructing justice.³⁶ Mr Gucati further confirmed that he will not prevent anyone from testifying before the Specialist Chambers in the future.³⁷

26. The President notes that Mr Gucati has complied with all rules and regulations while detained at the Detention Facilities, has behaved in a respectful and kind manner to DMU staff and other detainees and has expressed that he intends to focus on himself and his family in the future. The President further notes that Mr Gucati has expressly undertaken to refrain from any behaviour that could be qualified as obstruction of justice by the Specialist Chambers.

27. The President therefore considers that Mr Gucati has shown clear signs of rehabilitation and finds that this factor weighs in favour of a possible commutation, modification or alteration of Mr Gucati's sentence.

c) Prospect of resocialisation and successful resettlement

28. Mr Gucati contends that he has established positive family relationships and a stable living environment, which indicate a likelihood of successful resocialisation and

³³ SPO Report, para. 6.

³⁴ SPO Report, para. 5.

³⁵ Transcript of Hearing, 28 September 2023, pp. 5, 7.

³⁶ Transcript of Hearing, 28 September 2023, p. 7.

³⁷ Transcript of Hearing, 28 September 2023, p. 8.

resettlement after his release.³⁸ Mr Gucati submits that this factor “clearly” weighs in favour of the commutation of his sentence.³⁹

29. The DMU Report confirms Mr Gucati has an established family connection and a wide social network that could support his return and resocialisation after release.⁴⁰

30. The SPO contends that any consideration of Mr Gucati’s resocialisation or successful resettlement is contingent on his refusal to further commit any offences “against this court and its witnesses”.⁴¹ According to the SPO, Mr Gucati’s clear and consistent vows to continue to commit offences suggest that he cannot successfully reintegrate into society.⁴²

31. The President is of the view that Mr Gucati’s close family ties and social network will likely assist him in adapting and integrating upon his return to Kosovo following his release. At the hearing, Mr Gucati emphasised how important his family is to him.⁴³ The President considers the concerns raised by the SPO more relevant to Mr Gucati’s rehabilitation and disassociation, rather than his ability to reintegrate into society upon release.

32. The President therefore considers Mr Gucati’s family ties as a positive factor when assessing whether to grant Mr Gucati’s commutation, modification or alteration of his sentence.

d) Gravity of the crimes for which the person was convicted

33. Mr Gucati contends that while the gravity of the crime is included within Rule 196(3) of the Rules, it should not, as a matter of principle, be a factor that in itself

³⁸ Gucati Submissions, para. 4 (p. 1).

³⁹ Gucati Submissions, para. 30 (p. 8).

⁴⁰ DMU Report, para. 24. See also DMU Report, paras 25-26.

⁴¹ SPO Report, para. 7.

⁴² SPO Report, para. 7.

⁴³ Transcript of Hearing, 28 September 2023, p. 10.

weighs for or against commutation of sentence.⁴⁴ Instead, Mr Gucati submits that the gravity of the crime “is an integral and mandatory part of the original sentence imposed and this determines the time to be served before eligibility for early release is reached”.⁴⁵

34. When rendering its judgment, the Presiding Judge of the Trial Panel stated:

This case is important, because it reflects the very reason why the Specialist Chambers was created. This case concerns the proper administration of justice, the integrity and security of proceedings and, crucially, the safety, well-being and freedom from fear of hundreds of persons who have come forward to fulfil their civic duty as witnesses. Their protection from intimidation and harm lies at the very foundation of any system of criminal justice, be that domestic or international. Without witnesses, there can be no justice for victims or for society at large. The acts and conduct of the Accused challenged that very foundation.⁴⁶

35. The Court of Appeals Panel reflected that:

The nature of the crimes under the jurisdiction of the Specialist Chambers and the context in which they were committed necessitate reliance upon oral evidence. It is fundamental to the fulfilment of the Specialist Chambers’ mission that individuals who come to give evidence, often about traumatic or difficult experiences, may do so without fear. The protection of the witnesses from intimidation and harm lies at the very foundation of any system of criminal justice, including the Specialist Chambers. This case concerns therefore the proper administration of justice, the integrity and security of proceedings and the safety of witnesses.⁴⁷

36. The SPO submits that, as reflected by the Trial Panel and the Court of Appeals Panel Judgments, the crimes for which Mr Gucati has been convicted are “indisputably grave” and mitigate against commutation of his sentence.⁴⁸

37. The President observes that Mr Gucati’s conduct had a chilling effect on witnesses who may appear before the Specialist Chambers and the ability of the court to undertake its mandate. The President further notes the findings of both the Trial

⁴⁴ Gucati Submissions, para. 8 (p. 3). Gucati Submissions, para. 33 (p. 8).

⁴⁵ Gucati Submissions, para. 8 (p. 3). See also Gucati Submissions, para. 32 (p. 8).

⁴⁶ KSC-BC-2020-07, Summary of the Trial Judgment, 18 May 2022.

⁴⁷ KSC-CA-2022-01, Summary of the Appeal Judgment, 2 February 2023.

⁴⁸ SPO Report, para. 10. See also SPO Report, paras 8-9.

Panel and the Court of Appeals Panel when it comes to the gravity of the offences and the impact Mr Gucati's conduct has had on the integrity and functioning of the Specialist Chambers and the SPO.

38. The President therefore finds that this factor weighs against commutation of Mr Gucati's sentence.

e) Treatment of similarly situated prisoners

39. Mr Gucati asserts that a similarly situated prisoner within the Kosovo domestic system – that is, a person sentenced to five years or less – would have been eligible for release after having served only half their sentence.⁴⁹

40. The DMU Report reflects that Mr Gucati and Mr Haradinaj are the first persons convicted by the Specialist Chambers to have served two-thirds of their sentences.⁵⁰ Accordingly, there are no other similarly situated prisoners.⁵¹

41. The SPO submits that the offences committed by Mr Gucati “are of a nature and magnitude that they cannot be compared to others who have committed similar offences at other tribunals”.⁵² The SPO further contends that Mr Gucati, along with Mr Haradinaj, are the only persons convicted of offences under the Kosovo Criminal Code by the Specialist Chambers to date, “further complicating any meaningful comparison [with] [similarly-situated prisoners]”.⁵³

42. The President observes, as is reflected in the DMU Report, that this is the first occasion where persons convicted by the Specialist Chambers have served two-thirds of their sentences. Accordingly, there are no similarly situated prisoners and the President finds this a neutral factor in assessing commutation, modification or

⁴⁹ Gucati Submissions, para. 29 (p. 7). See also Gucati Submissions, para. 34 (pp. 8-9).

⁵⁰ DMU Report, para. 27.

⁵¹ DMU Report, para. 27.

⁵² SPO Report, para. 11.

⁵³ SPO Report, para. 11.

alteration of Mr Gucati's sentence.

f) Whether release would give rise to significant social instability

43. Mr Gucati contends that the probability of significant social instability resulting from his release is assessed as "very low".⁵⁴ Mr Gucati further submits that this factor "clearly" militates in favour of the commutation of his sentence.⁵⁵

44. The Registrar submits that following an assessment undertaken by the Safety and Security Unit ("SSU"), there will be an initial public reaction following Mr Gucati's release, likely promoted by the Kosovo War Veterans' Association as a form of "victor's return".⁵⁶ However, SSU noted that the probability of Mr Gucati's release resulting in a level of civil disorder that could be considered significant social instability is expected to be very low.⁵⁷ The SSU further states that it is not envisioned that the release of Mr Gucati will result in any increased threat to his personal security and safety.⁵⁸

45. The SPO submits that Mr Gucati "described the (potential) witnesses as liars, spies, traitors, collaborators, criminals, and bloodsuckers" and that these words were spoken against the background of what the Trial Panel characterised as "a prevalent climate of witness intimidation in Kosovo".⁵⁹ According to the SPO, there is reason to believe that Mr Gucati's release would give rise to significant social instability, "at least within the community of persons who have and/or are perceived to have co-operated with the SPO".⁶⁰

46. Having considered the information before her, the President is of the view that

⁵⁴ Gucati Submissions, para. 3 (p. 1).

⁵⁵ Gucati Submissions, para. 30 (p. 8).

⁵⁶ Registrar's Submissions, para. 16.

⁵⁷ Registrar's Submissions, para. 16. See also Registrar's Submissions, paras 17-21, 23.

⁵⁸ Registrar's Submissions, para. 22.

⁵⁹ SPO Report, para. 12.

⁶⁰ SPO Report, para. 12.

the risk for significant social instability in Kosovo upon Mr Gucati's release is low. While there may be some fear and discomfort among the victims or potential witnesses who may appear before the Specialist Chambers in the future, this is insufficient to find that Mr Gucati's release will cause social instability within the meaning of Rule 196(3)(f) of the Rules. The President notes that the SSU undertook a thorough risk analysis in this respect, to which the President attaches considerable weight.

47. The President therefore considers this a factor that weighs in favour of a possible commutation, modification or alteration of Mr Gucati's sentence.

g) Any substantial cooperation with the SPO

48. The SPO contends that there has been no cooperation, let alone substantial cooperation of Mr Gucati with the SPO.⁶¹

49. The President observes that there is no indication that the SPO has ever sought Mr Gucati's cooperation. Accordingly, the President consider this a neutral factor when assessing whether to grant Mr Gucati commutation, modification or alteration of his sentence.

h) Voluntary assistance of the convicted person in enabling the enforcement of the judgments and orders of the Specialist Chambers

50. The Registrar notes that the trial judgment against Messrs Gucati and Haradinaj is the first to be issued at the Specialist Chambers, followed by the issuance of the trial judgment in the proceedings against Mr Salih Mustafa.⁶² The Registrar further notes that she does not have information regarding any voluntary assistance of Mr Gucati in enabling the enforcement of Specialist Chambers judgments and

⁶¹ SPO Report, para. 13.

⁶² Registrar's Submissions, para. 24.

orders in other cases.⁶³

51. The SPO contends that Mr Gucati has not provided any voluntary assistance nor can he reasonably have been expected to do so.⁶⁴

52. The President is of the view that Mr Gucati cannot reasonably be expected to have provided voluntary assistance with respect to the enforcement of the Specialist Chambers' decisions and orders, nor was he realistically in a position to do so.

53. Accordingly, the President considers this a neutral factor when considering commutation, modification or alteration of Mr Gucati's sentence.

- i) Any significant action taken by the convicted person for the benefit of victims as well as any impact on the victims and their family in case of commutation, modification or alternation of sentence

54. The President observes that that there were no victims participating in the proceedings against Mr Gucati. Accordingly, the President considers this a neutral factor in assessing Mr Gucati's commutation, modification or alteration of his sentence.

- j) The individual circumstances of the convicted person

55. The DMU Report reflects that Mr Gucati has recently undergone surgery to address a chronic post-traumatic condition in his right hip, from which he continues to recover. According to the DMU Report, there are no other known concerns regarding Mr Gucati's medical condition.⁶⁵

56. The President recalls Mr Gucati's close family ties and acknowledges the difficulties he faces in being separated from his family, including his mother, who is

⁶³ Registrar's Submissions, para. 25.

⁶⁴ SPO Report, para. 14.

⁶⁵ DMU Report, Annex A.

in poor health. The President considers this a factor that weighs in favour of Mr Gucati's possible commutation, modification or alteration of his sentence.

- k) Other factors establishing a clear and significant change of circumstances sufficient to justify commutation, modification or alteration of sentence

57. The SPO contends that since the Appeal Judgment in this case, the trials against *Pjetër Shala* and *Hashim Thaçi et al.* commenced, with several SPO witnesses having testified in both cases.⁶⁶ The SPO submits that numerous other witnesses are scheduled to testify in the *Thaçi et al.* case, which is an added reason to ensure that Mr Gucati serve his full sentence "as this would mean that [he] continue[s] to be imprisoned while important evidence is heard by the court".⁶⁷

58. The President is not persuaded by the SPO's submissions that Mr Gucati's commutation, modification or alteration of sentence should depend on the evidence that is being heard in other cases. The President notes that the SPO does not explain why Mr Gucati should remain in detention while evidence is presented in other cases and observes that the case against *Hashim Thaçi et al.* will continue well after Mr Gucati will have served his sentence. Insofar as the SPO's submission may be construed as a fear that Mr Gucati would reoffend while the relevant Trial Panel is hearing important evidence in other cases, the President notes that she has already considered Mr Gucati's statements to this effect when assessing the extent to which he may be rehabilitated.⁶⁸ Accordingly, the President shall not consider this factor anew.

III. COMMUTATION OF SENTENCE

59. The President notes that Article 51(2) of the Law provides that a convicted person will become eligible for commutation of sentence upon having served two-

⁶⁶ SPO Report, para. 15.

⁶⁷ SPO Report, para. 15.

⁶⁸ See *supra*, paras 20-22, 25.

thirds of his or her sentence.

60. The President recalls that Mr Gucati has shown positive signs that he has disassociated himself from the offences for which he was convicted, has expressed his intention to refrain from committing any offences against the administration of justice in the future, and has behaved positively while detained at the Detention Facilities. However, the offences for which he was convicted are grave and include convictions for having ignored express orders to desist from further disseminating confidential information.

61. The President notes that commutation of sentence entails the immediate release of a convicted person, which would not allow for the imposition of conditions on the release. Given the nature of the offences for which Mr Gucati was convicted and the chilling effect his actions had on potential future witnesses and victims, and having considered the interests of justice and general principles of law in light of the facts of his case, the President does not consider commutation of sentence appropriate. Accordingly, the President shall not grant Mr Gucati a commutation of his sentence.

62. Since the President has determined that commutation of Mr Gucati's sentence is not appropriate, she will therefore decide whether to modify or alter his sentence in accordance with Article 51(2) of the Law and Article 10 of the Practice Direction.

IV. MODIFICATION OR ALTERATION OF THE SENTENCE

63. According to Article 51(2) the Law in conjunction with Articles 3(1) and 10 of the Practice Direction, the President may decide to modify or alter the sentence imposed on a convicted person once two-thirds of the sentence has been served, where she finds that commutation of sentence is not appropriate. To that end, the President may modify or alter the sentence of a convicted person by ordering his release under certain specific conditions. Such conditions shall apply for the duration of the term of

imprisonment imposed on the convicted person or any other earlier specified date.⁶⁹ In accordance with Article 11(2) of the Practice Direction, the President may decide to revoke or modify her decision if the convicted person breaches one or more of the conditions imposed.

64. The President considers that the offences of which Mr Gucati was convicted are indisputably grave given the impact that the release of confidential information, including the names of potential witnesses, has on the administration of justice. However, the President finds that there are a number of factors that weigh in favour of the modification of Mr Gucati's sentence by way of release, albeit with conditions.

65. The President recalls that: (i) Mr Gucati has shown genuine signs of disassociation from the offences for which he was convicted; (ii) Mr Gucati has demonstrated positive signs of rehabilitation; (iii) the likelihood that Mr Gucati's release would give rise to significant social instability in Kosovo is low; (iii) Mr Gucati has strong familial and social ties, which would help him reintegrate back into Kosovo; and (iv) the mental difficulties associated with being away from his family, particularly his mother, who is in poor health. The President notes that Mr Gucati has further firmly stated that he will abide by any conditions imposed on his release.⁷⁰

66. As indicated previously, the President is mindful that Mr Gucati has not always been willing to disassociate himself in the past from the offences for which he was convicted. However, the President considers that Mr Gucati has had the opportunity to reflect on his actions while serving over two-thirds of his sentence and finds that his comportment has changed over time. On balance, the President considers that Mr Gucati's expressions of regret, in particular his express apology during the oral hearing to anyone who could have felt threatened by his actions, and his confirmation that he will no longer engage in conduct that may be characterised as offences against

⁶⁹ See Article 11(1) of the Practice Direction.

⁷⁰ Gucati Submissions, para. 40 (p. 10). See also Gucati Submissions, para. 42 (pp. 10-11).

the administration of justice were genuine. Mr Gucati has expressed that he will respect any conditions, as long as he would be able to have access to medical care for one of his injuries.⁷¹

67. Accordingly, while the sentence of Mr Gucati stands as pronounced by the Court of Appeals Panel, the President is of the view that the sentence should be modified to include Mr Gucati's release with conditions. The President notes that the conditions to be put in place will give Mr Gucati an opportunity to demonstrate that he continues on his path toward full rehabilitation and that he will abide by any orders issued by the Specialist Chambers in the future, where applicable.

68. In view of the foregoing, and having considered the totality of the information before her as well as the views of the Judges of the sentencing Panels, the President determines that the following conditions will apply to Mr Gucati's release in accordance with Article 11(1) of the Practice Direction for the remainder of the duration of the sentence pronounced by the Court of Appeals Panel:

- a) assurance of permanent residency at the home address set forth in Gucati's Submissions;⁷²
- b) notification to the Registrar and to the police station identified by the Registrar of any relocation of the permanent residence, subject to permission thereof granted by the President;
- c) weekly reporting to the police station identified by the Registrar;
- d) surrender of Mr Gucati's passport or travel documents to the Registrar;
- e) to remain in Kosovo and to notify the Registrar of any wish to travel outside

⁷¹ Transcript of Hearing, 28 September 2023, pp. 8-9.

⁷² Gucati's Submissions, para. 15 (p. 5).

- Kosovo and request for permission thereof to be granted by the President;
- f) refraining from any contact or communication with (potential) witnesses or victims before the Specialist Chambers and SPO;
 - g) refraining from making any direct or indirect public statements about the Specialist Chambers and SPO;
 - h) requesting permission and approval from the Registrar in the event of conducting an interview with the media as provided for in the Practice Direction on Detainees (Media Communications);
 - i) abiding by any decision or order of the Specialist Chambers; and
 - j) refraining from making negative, violent, intimidating, threatening or coercive comments towards or about (potential) witnesses or other persons who are at risk on the account of their cooperation with the Specialist Chambers, officials of the Specialist Chambers or the SPO.

69. The President emphasises that the conditions, set forth above, on Mr Gucati's release remain in place for the remaining duration of the four year and three-month sentence imposed on him by the Court of Appeals Panel, namely until 24 December 2024. The President further emphasises that failure by Mr Gucati to comply with any of the conditions set forth in paragraph 68 shall result in the revocation or modification of the present decision in accordance with Article 11(2) of the Practice Direction.

V. CONCLUSION

70. Having carefully considered the information before her, including the views of the Judges of the sentencing Panels, as well as the interests of justice and general principles of law in light of the facts of this case, the President finds that commutation

of sentence is not appropriate. Instead, the President will modify Mr Gucati's sentence to provide for his release with the conditions set forth in paragraph 68 above.

71. The President notes in this respect that the offences for which Mr Gucati has been convicted are grave and that while he has shown genuine signs of disassociation from his offences and some positive signs of rehabilitation, it is important to ensure that by way of abiding by the conditions specified in paragraph 68 above, Mr Gucati continues down this road to full rehabilitation and disassociation. Given that the sentence is herewith modified, any consideration for an alteration of the sentence is moot.

VI. DISPOSITION

72. In view of the above, the President hereby:

DECIDES that commutation of Mr Gucati's sentence is not appropriate and is thus not granted;

DECIDES to modify Mr Gucati's sentence by releasing him with the conditions set forth in paragraph 68 above;

DECIDES that, subject to the transfer arrangements by the Registrar, Mr Gucati be released on 18 October 2023 to his permanent residence at the home address set forth in Gucati's Submissions;

ORDERS Mr Gucati to abide by the conditions set forth in paragraph 68 above;

ORDERS the Registrar to take all necessary measures to ensure the transfer of Mr Gucati to the home address set forth in Gucati's Submissions and the conditions set forth in paragraph 68 above;

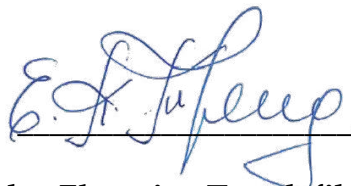
ORDERS the Kosovo police or any other authority of Kosovo to cooperate

pursuant to Article 51(1) of the Law with the Registrar on the enforcement of the conditions set forth in paragraph 68 above and to provide a monthly report to the Registrar on the adherence by Mr Gucati to the condition set forth in paragraph 68(c) above;

ORDERS the Registrar to report to the President on a monthly basis on the adherence of Mr Gucati to the conditions set forth in paragraph 68 above until the conclusion of his sentence of four years and three months, namely on 24 December 2024, or sooner if a breach of the conditions has occurred;

ORDERS the Court Management Unit ("CMU") to reclassify this decision as public upon confirmation from the Registrar of Mr Gucati's arrival at his designated location of release; and

ORDERS the CMU to ensure that the Annexes to this decision remain confidential and *ex parte*.



**Judge Ekaterina Trendafilova,
President of the Specialist Chambers**

Dated this Thursday, 12 October 2023
At The Hague,
The Netherlands