

**In:** KSC-BC-2020-06  
**Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi**

**Before:** **Trial Panel II**  
Judge Charles L. Smith III, Presiding  
Judge Christoph Barthe  
Judge Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr. Fidelma Donlon

**Filing Participant:** Specialist Counsel for Jakup Krasniqi

**Date:** 6 October 2024

**Language:** English

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**Public Redacted Version of 'Urgent Krasniqi Defence Request for Temporary Release on Compassionate Grounds with Confidential and *Ex Parte* Annex 1 (F02613)'**

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**Specialist Prosecutor**

Kimberly P. West

**Counsel for Victims**

Simon Laws KC

**Counsel for Hashim Thaçi**

Luka Mišetić

**Counsel for Kadri Veseli**

Rodney Dixon KC

**Counsel for Rexhep Selimi**

Geoffrey Roberts

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

## I. INTRODUCTION

1. The Defence for Mr. Jakup Krasniqi (“Defence”) requests the Trial Panel to order an immediate temporary release of Mr. Krasniqi for a period of four days to allow him to visit and provide comfort and emotional support to his close family members, and to receive support from them, following [REDACTED] passing of his brother, [REDACTED].

2. This filing is submitted confidentially because it refers to confidential information pertaining to Mr. Krasniqi’s brother.

## II. RELEVANT BACKGROUND

3. Mr. Krasniqi has been detained for 46 months. During that time, he has not been allowed to visit his home at all. Mr. Krasniqi is 73 years old [REDACTED].

4. In these 46 months, Mr. Krasniqi has adhered to all protocols and exemplified nothing but good conduct.

5. The Trial Panel has repeatedly found that Mr. Krasniqi does not present a flight risk.<sup>1</sup>

6. On [REDACTED], Mr. Krasniqi’s brother [REDACTED] passed away.

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<sup>1</sup> KSC-BC-2020-06, F02313, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 15 May 2024, public, para. 16; F02183, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi* (“March 2024 Decision”), 15 March 2024, para. 18; F02059, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 15 January 2024, public, para. 17; F01926, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 15 November 2023, public, para. 17; F01795, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 15 September 2023, confidential, para. 13; F01679, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 17 July 2023, confidential, para. 18; F01530, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 17 May 2023, confidential, para. 15.

7. [REDACTED].

8. [REDACTED].

### III. APPLICABLE LAW

9. Article 36(1) of the Kosovo Constitution and Article 8(1) of the European Convention on Human Rights (“ECHR”) guarantee the right to respect for family life. The European Court of Human Rights has ruled that it is an essential part of a prisoner’s right to respect for family life that the prison authorities assist him or her in maintaining contact with his or her close family.<sup>2</sup>

10. Pursuant to Rule 56(3) of the Rules,<sup>3</sup> upon a request by a detained person or *proprio motu*, 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.

11. As noted by a Panel of the Court of Appeals Chamber, while Article 8 of the ECHR does not guarantee an unconditional right to leave prison to visit a sick relative or attend their funeral, every limitation on this right must be justifiable as being “necessary in a democratic society”. Among the factors to be considered in this assessment are 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

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<sup>2</sup> ECHR, *Chaldayev v. Russia*, 2019, § 59; *Messina v. Italy* (no. 2), 2000, § 61; *Kurkowski v. Poland*, § 95; *Vintman v. Ukraine*, § 78.

<sup>3</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 (“Rules”).

possibility of escorted leave and other circumstances informing the alleged “humanitarian” grounds.”<sup>4</sup>

12. The International Criminal Tribunal for the Former Yugoslavia (“ICTY”) has firmly recognized that temporary release on compassionate grounds may be ordered in order to permit accused persons to attend the funerals of immediate family members or memorial services held thereafter according to the tradition prevalent in Balkan countries.<sup>5</sup>

13. Furthermore, on 25 May 2023, Mr. Kadri Veseli was authorised to visit his father, who was in a critical condition, and his immediate family members, for a period of four days.<sup>6</sup> Mr. Veseli was thereafter authorised to attend the funerals of his father and his mother.<sup>7</sup> Similarly, Trial Panel II found that the poor health situation of Mr. Hysni Gucati’s mother qualified as a compelling consideration when deciding in favour of granting his custodial visits on two occasions.<sup>8</sup> The Trial Panel also granted

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<sup>4</sup> KSC-CA-2022-01, F00020RED, Court of Appeals Panel, *Public Redacted Version of Decision on Gucati’s Third Request for Temporary Release on Compassionate Grounds*, 30 June 2022, para. 11; F00043RED, Court of Appeals Panel, *Public Redacted Version of Decision on Gucati’s Fourth Request for Temporary Release on Compassionate Grounds*, 13 September 2022, public, para. 16.

<sup>5</sup> ICTY, *Prosecutor v. Sainovic et al*, Case no IT-05-87-A, *Decision on Urgent Motion Requesting Provisional Release of Nebojsa Paokovic on Compassionate Grounds*, 17 September 2009; *Prosecutor v. Sainovic et al*, Case no IT-05-87-A, *Decision on Dragoljub Ojdanic’s Motion for Temporary Provisional Release on Compassionate Grounds*, 9 August 2010; *Prosecutor v. Popovic et al*, Case no IT-05-88-T, *Decision on Pandurevic’s Request for Provisional Release on Compassionate Grounds*, 11 December 2007; *Prosecutor v. Haradinaj et al*, Case no IT-04-84-T, *Order to Lift the Confidential Status of the Trial Chamber’s Urgent Decision on Ramush Haradinaj’s Motion on Provisional Release and all Related Filings*, 3 October 2007; *Prosecutor v. Sainovic et al*, Case no IT-05-88-A, *Decision on Sreten Lukic’s Third Motion for Provisional Release on Compassionate Grounds*, 3 September 2010; *Prosecutor v. Popovic et al*, Case no IT-05-88-A, *Decision on Vinko Pandurevic’s Urgent Motion for Provisional Release on Compassionate Grounds*, 11 January 2012.

<sup>6</sup> KSC-BC-2020-06, F00271RED, Pre-Trial Judge, *Public Redacted Version of Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds*, 11 May 2021, public, paras 14, 18.

<sup>7</sup> KSC-BC-2020-06, F00386RED, Pre-Trial Judge, *Public Redacted Version of Second Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds*, 16 July 2021, public; F00640RED, Pre-Trial Judge, *Public Redacted Version of Third Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds*, 17 January 2022.

<sup>8</sup> KSC-CA-2022-01, F00020RED, Court of Appeals Panel, *Public Redacted Version of Decision on Gucati’s Third Request for Temporary Release on Compassionate Grounds (“Third Gucati Decision”)*, 30 June 2022, para. 13, referring to: KSC-BC-2020-07, F00618RED, Trial Panel II, *Public Redacted Version of Decision on*

the Thaçi Defence's urgent request for the temporary release of Mr. Hashim Thaçi on compassionate grounds, due to the critical medical condition of his mother, authorising Mr. Thaçi's temporary and secure transfer to Kosovo for one day to visit his mother at his parents' home.<sup>9</sup>

#### IV. SUBMISSIONS

14. Mr. Krasniqi seeks urgent permission to visit and spend four days with his family following the funeral of his brother [REDACTED]. Mr. Krasniqi is [REDACTED] and wishes to provide support and comfort to his close family, [REDACTED], and receive support from them. Mr. Krasniqi's brother's passing constitutes urgent, compelling, and exceptional circumstances justifying Mr. Krasniqi's temporary release on humanitarian grounds, pursuant to Article 8 of the ECHR, Article 36(1) of the Constitution and Rule 56(3) of the Rules.

15. Considering these circumstances, Mr. Krasniqi's visit should take place as soon as possible after the funeral service for his brother [REDACTED], which took place [REDACTED]. According to mourning rites, Mr Krasniqi will be required to participate in a three-day mourning period and therefore seeks temporary release for a period of four days following the funeral.

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*Second Gucati Defence Request for Temporary Release on Compassionate Grounds*, 3 June 2022, public, paras 19-20, and KSC-BC-2020-07, F00604RED, Trial Panel II, *Public Redacted Version of Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds*, 16 May 2022, public, paras 15-16. Mr Gucati was subsequently authorised to visit his mother three other times. See Gucati Third Decision, KSC-CA-2022-01, F00043RED, Court of Appeals Panel, *Public Redacted Version of Decision on Gucati's Fourth Request for Temporary Release on Compassionate Grounds*, 22 September 2022, CR001/F00012RED, Single Judge, *Public Redacted Version of Decision on Gucati Request for Fifth Custodial Visit on Compassionate Grounds*, 24 April 2023, public.

<sup>9</sup> KSC-BC-2020-06, F01556CORRED, Trial Panel II, *Public Redacted Corrected Version of Decision on Urgent Thaçi Request for Temporary Release on Compassionate Grounds*, 21 June 2023, public, para. 30.

16. This period of mourning is essential to Mr. Krasniqi's faith and tradition. Mr. Krasniqi would require further time to grieve with his immediate family. An important part of the rituals is the last day of the mourning period, on which day the imam will visit the family of the deceased to perform the prayer with all family members. Participation in the mourning rite and supporting the grieving is both a familial and religious obligation and, thus, a constitutionally protected and basic human right.

17. At this difficult time for Mr. Krasniqi's family and in the light of his previous good conduct, the Defence respectfully requests the Panel that during his time in [REDACTED], Mr. Krasniqi be permitted to stay overnight at his family home.

18. In the alternative, Mr. Krasniqi will abide by any condition imposed by the Panel.

## V. CONCLUSION

19. For the above reasons, the Defence respectfully requests the Trial Panel to order the immediate temporary release of Mr. Krasniqi on compassionate grounds, for a period of four days, to allow him to visit and provide comfort and emotional support to his close family members following the recent passing of his brother [REDACTED].

20. Although the Defence is aware that the time frame for issuing the decision is very short, it expresses its hope that the Trial Panel will, taking into account all the circumstances of the case, grant this Request and enable Mr. Krasniqi to visit his close family.

**Word count: 1621**



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**Venkateswari Alagenda**

6 October 2024

Kuala Lumpur, Malaysia.



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**Aidan Ellis**

6 October 2024

London, United Kingdom.



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**Shyamala Alagenda Khan**

6 October 2024

The Hague, the Netherlands.



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**Victor Băieșu**

6 October 2024

The Hague, the Netherlands.