

In: KSC-BC-2020-06
The 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 Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hashim Thaçi

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Public Redacted Version of 'Urgent Thaçi Defence Request for Temporary Release on Compassionate Grounds with Confidential *Ex Parte* Annex 1'

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I. INTRODUCTION

1. Mr Hashim Thaçi's father, Mr Haxhi Thaçi, is [REDACTED], and in very poor health. When hospitalised in mid-2023, he was assessed [REDACTED],¹ which they described as [REDACTED]. He was again hospitalised between [REDACTED] January 2025, with [REDACTED],² including [REDACTED]. He was described as being [REDACTED]. He was diagnosed with [REDACTED],³ and [REDACTED].⁴

2. After having been discharged on [REDACTED] January 2025,⁵ Mr Haxhi Thaçi was readmitted through the Emergency Department on [REDACTED] January 2025 [REDACTED].⁶ Upon his second discharge after he stabilised, his treating doctor noted that [REDACTED].⁷

3. The Defence accordingly requests that the Trial Panel order the temporary custodial release of Mr Thaçi for a period of three (3) days to allow him to visit his father. The visit would be limited to [REDACTED], in presence of his father, his mother, [REDACTED], his father's carer, [REDACTED], as well as his wife and son, [REDACTED]. To avoid any disruption to the Trial Panel's sitting schedule, release is sought during the week beginning 3 February 2025.

4. The present request is brought in front of Trial Panel II, on the understanding that the same request will also need to be subsequently filed in front of the Pre-Trial Judge in KSC-BC-2023-12.

¹ KSC-BC-2020-06/F01749, *URGENT Thaçi Defence Second Request for Temporary Release on Compassionate Grounds With Confidential Ex Parte Annex 1*, 30 August 2023, confidential and *ex parte* ("Thaçi Second Request"), para. 1 (a public redacted version was filed on 7 September 2023).

² See Annex 1, Medical Reports for Mr Haxhi Thaçi, p. 6 ("Medical Reports").

³ Medical Reports, pp. 6, 8.

⁴ Medical Reports., p. 6.

⁵ Medical Reports., p. 8.

⁶ Medical Reports., p. 6.

⁷ Medical Reports., p. 6.

II. PROCEDURAL AND FACTUAL BACKGROUND

5. On 5 November 2020, following the confirmation of an indictment and the issuance of an arrest warrant,⁸ Mr Thaçi voluntarily resigned from the Office of President and surrendered to KSC custody.⁹ He has been in detention ever since.

6. Mr Thaçi's continued detention has been reviewed on seventeen occasions. In the most recent review of detention, the Trial Panel found Mr Thaçi's continued detention was necessary "in order to avert the risks in Article 41(6)(b)(ii) and (iii)",¹⁰ but considered that detention was "not justified at this time based on the risk of flight pursuant to Article 41(6)(b)(i)."¹¹ The Trial Panel "has credited Mr Thaçi with cooperation because when he was informed of his arrest warrant, he resigned from the position of President of Kosovo and subjected himself voluntarily to the jurisdiction of the SC."¹²

7. On 23 May 2023, the Defence filed an urgent request for the temporary release of Mr Thaçi on compassionate grounds, on the basis of his mother's critical medical condition.¹³ At that time, the SPO did not oppose the request, subject to the imposition of specific conditions.¹⁴ The Registrar also confirmed the feasibility of the visit, and proposed conditions including that the visit be limited to one day, Mr Thaçi's

⁸ KSC-BC-2020-06/F00027/A01/RED, *Public Redacted Version of Arrest Warrant for Hashim Thaçi*, 5 November 2020.

⁹ KSC-BC-2020-06/F00065/RED, Registrar, *Public Redacted Version of 'Report on the Arrest and Transfer of Hashim Thaçi to the Detention Facilities'*, filing F00065 dated 8 November 2020, 18 November 2020.

¹⁰ KSC-BC-2020-06/F02781, Trial Panel II, *Decision on Periodic Review of Detention of Hashim Thaçi*, 13 December 2024, public ("F02781"), para. 32.

¹¹ *Ibid.*, para. 17.

¹² *Ibid.*, para. 16.

¹³ KSC-BC-2020-06/F01547, *Urgent Thaçi Defence Request for Temporary Release on Compassionate Grounds*, 23 May 2023, confidential and *ex parte* (a public redacted version was filed on 5 June 2023).

¹⁴ KSC-BC-2020-06/F01550, *Prosecution response to urgent Thaçi request for temporary release*, 24 May 2023, confidential and *ex parte*, para. 1 (a public redacted version was filed on 1 June 2023).

interactions be limited to his mother and father, and a condition of secrecy.¹⁵ This request was granted by the Trial Panel on 25 May 2023, authorising Mr Thaçi's temporary and secure transfer to Kosovo for one day to visit his mother at his parents' home, subject to further specified conditions.¹⁶

8. The secure and temporary transfer of Mr Thaçi to Kosovo to visit his mother took place on 29 May 2023, and all of the stipulated conditions were fulfilled. The Registrar noted that "Mr Thaçi abided by the instructions of the chief custody officer and the escorting officers during the custodial visit."¹⁷

9. On 30 August 2023, the Defence filed a second request for the temporary release of Mr Thaçi on compassionate grounds, due to the critical medical condition of his father, then diagnosed with [REDACTED].¹⁸ The SPO did not oppose a strictly supervised, fully custodial visit for one day.¹⁹ The Registrar also confirmed the feasibility of the requested visit, and proposed conditions including that the visit be limited to one day, Mr Thaçi's interactions be limited to his mother and father, and two immediate family members at a time, and a condition of secrecy.²⁰ This request was granted by the Trial Panel on 1 September 2023, authorising Mr Thaçi's temporary and secure transfer to Kosovo for one day to visit his mother and father at his parents'

¹⁵ KSC-BC-2020-06/F01551, *Registrar's Submissions on Thaçi Defence Request for Temporary Release on Compassionate Grounds*, 24 May 2023, confidential and *ex parte*, paras. 13, 19-22 (a public redacted version was filed on 5 June 2023).

¹⁶ KSC-BC-2020-06/F01556/COR, Trial Panel II, *Corrected Version of Decision on Urgent Thaçi Request for Temporary Release on Compassionate Grounds*, 26 May 2023, confidential and *ex parte* ("Thaçi First Decision"), para. 30 (a public redacted version was filed on 21 June 2023).

¹⁷ KSC-BC-2020-06/F01591, *Report of the Registrar Pursuant to Decision on Urgent Thaçi Request for Temporary Release on Compassionate Grounds*, Confidential and *ex parte*, 8 June 2023, para. 18 (a public redacted version was filed on 30 June 2023) ("First Registrar's Report").

¹⁸ Thaçi Second Request, para. 1.

¹⁹ KSC-BC-2020-06/F01751, *Prosecution Response to Urgent Thaçi Defence Second Request for Temporary Release*, 30 August 2023, confidential and *ex parte*, para. 1 (reclassified as public on 18 September 2023).

²⁰ KSC-BC-2020-06/F01752, *Registrar's Submissions on Urgent Thaçi Defence Request for Temporary Release on Compassionate Grounds*, 31 August 2023, confidential and *ex parte*, paras. 19, 22, 25, 34 (a public redacted version was filed on 11 September 2023).

home, subject to further specified conditions.²¹ In particular, the Trial Panel required that:

During Mr Thaçi's visit at his parents' home, only those who currently reside at the home ([REDACTED], Mr Haxhi Thaçi, [REDACTED]), escort personnel, and required medical personnel shall be permitted on the property. However, the only individuals permitted to be present in the area or room where Mr Thaçi interacts with his mother and/or father are [REDACTED], escort personnel and required medical personnel²²

10. The secure and temporary transfer of Mr Thaçi to Kosovo to visit his father took place on 2 September 2023, and all of the stipulated conditions were fulfilled. Again, the Registrar noted that [REDACTED].²³

III. APPLICABLE LAW

11. Article 36(1) of the Kosovo Constitution and Article 8(1) of the European Convention on Human Rights ("Convention") 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.²⁴

12. Pursuant to Rule 56(3) of the Rules,²⁵ upon request by a detained person or

²¹ KSC-BC-2020-06/F01757, Trial Panel II, *Decision on Urgent Thaçi Defence Second Request for Temporary Release on Compassionate Grounds*, 1 September 2023, confidential and *ex parte*, paras. 23, 26 ("Thaçi Second Decision") (a public redacted version was filed on 21 September 2023).

²² *Ibid.*, para. 26(f).

²³ KSC-BC-2020-06/F01787, *Report of the Registrar Pursuant to Decision on Urgent Thaçi Defence Second Request for Temporary Release on Compassionate Ground*, 13 September 2023, confidential and *ex parte*, para. 16 ("Second Registrar's Report").

²⁴ ECtHR, *Chaldayev v. Russia*, 33172/16, Third Section, Judgment, 28 May 2019, § 59; *Messina v. Italy* (no. 2), 25498/94, Second Section, Judgment, 28 September 2000, § 61; *Kurkowski v. Poland*, 36228/06, Fourth Section, Judgment, 9 April 2013, § 95; *Vintman v. Ukraine*, 28403/05, Fifth Section, Judgment, 23 October 2014, § 78.

²⁵ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ("Rules").

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.

13. As noted by a Panel of the Court of Appeals Chamber, while Article 8 of the Convention 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 possibility of escorted leave and other circumstances informing the alleged “humanitarian” grounds.²⁶

14. Visiting a close relative in critical condition of health has been accepted, under certain conditions, by this and other jurisdictions, as a compelling humanitarian ground warranting temporary release.²⁷ In particular, Mr Kadri Veseli was authorised to visit his father at the hospital, who was in a critical condition, and his immediate family members, for a period of four days.²⁸ During the same trip, he was authorised

²⁶ KSC-CA-2022-01/F00020/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Gucati’s Third Request for Temporary Release on Compassionate Grounds*, 30 June 2022 (“Third Gucati Decision”), para. 11; KSC-CA-2022-01/F00043/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Gucati’s Fourth Request for Temporary Release on Compassionate Grounds*, 22 September 2022 (“Fourth Gucati Decision”), para. 16.

²⁷ Third Gucati Decision, para. 13; Fourth Gucati Decision, para. 18.

²⁸ KSC-BC-2020-06/F00271/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds*, 11 May 2021 (“Veseli First Decision”), paras. 14, 18. Mr Veseli was thereafter authorised to attend the funerals of his father and his mother: see KSC-BC-2020-06/F00386/RED, Pre-Trial Judge, *Public Redacted Version of Second Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds*, 16 July 2021; KSC-BC-2020-06/F00640, Pre-Trial Judge, *Public Redacted Version of Third Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds*, 17 January 2022.

to visit his mother in her home, who was 92 years-old, blind and bedridden.²⁹ 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 previous occasions.³⁰

IV. SUBMISSIONS

15. Mr Haxhi Thaçi, born [REDACTED], remains in a very poor state of health. As set out above, he was hospitalised twice in January, and diagnosed with [REDACTED].³¹ He was assessed as having an [REDACTED].³² Although he has now been discharged from the Emergency Department, his medical report indicated that due to his deteriorating condition he should be [REDACTED].³³ Namely, his current state of health would itself continue to justify hospitalisation.

16. For this reason, after his discharge on [REDACTED] January 2025, Mr Haxhi Thaçi was brought by his family to stay at [REDACTED], because of its proximity to the main hospital at which he is being treated.³⁴ This is an address which is known to the SPO. Staying with Mr Haxhi Thaçi in this house are his wife, [REDACTED], his carer, [REDACTED], as well as Mr Thaçi's wife and son.

²⁹ KSC-BC-2020-06/F00276/RED, *Public Redacted Version of Decision on Veseli Defence Request for Modification of Decision KSC-BC-2020-06/F00271*, 11 May 2021., paras. 7-12.

³⁰ Third Gucati Decision, para. 13, referring to: KSC-BC-2020-07/F00618/RED, Trial Panel I, *Public Redacted Version of Decision on Second Gucati Defence Request for Temporary Release on Compassionate Grounds*, 3 June 2022, paras 19-20, and KSC-BC-2020-07/F00604/RED, Trial Panel I, *Public Redacted Version of Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds*, 16 May 2022 ("Gucati May 2022 Decision"), paras. 15-16. Mr Gucati was subsequently authorised to visit his mother three other times. See for example, KSC-CA-2022-01/CR001/F00012/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Gucati Request for Fifth Custodial Visit on Compassionate Grounds*, 24 April 2023.

³¹ Medical Reports, pp. 6, 8.

³² Medical Reports, p. 6.

³³ Medical Reports, p. 6.

³⁴ [REDACTED].

17. In light of his father's diagnosis and ongoing poor state of health, as well as his history of medical conditions and hospitalisations, Mr Thaçi is anxious to visit his father before he experiences further decline or is again hospitalised. A visit would also allow Mr Thaçi to provide moral support and comfort to his mother, [REDACTED], and well as to his own wife and son who have been managing repeated health crises in Mr Thaçi's absence for over four years. In these circumstances, the Defence respectfully submits that Mr Thaçi's father's medical condition constitutes urgent, compelling and exceptional circumstances justifying Mr Thaçi's temporary release on humanitarian grounds, pursuant to Article 8 of the Convention, Article 36(1) of the Constitution and Rule 56(3) of the Rules.

18. Mr Thaçi, who surrendered voluntarily to the KSC's jurisdiction, is not a flight risk.³⁵ He has always cooperated with the relevant authorities regarding his detention. Any risks arising from a limited period of escorted custodial provisional release are greatly mitigated by Mr Thaçi having been provisionally released twice in similar circumstances, during which time he followed all instructions of the chief custody officers and escorting officers,³⁶ and returned to the Detention Unit in The Hague without incident. Mr Thaçi has no objection to submitting to the same logistical measures and security conditions that were imposed on him during his previous limited periods of provisional release to visit his mother and father.³⁷ To this end, the allegations of obstruction against Mr Thaçi do not include allegations against his parents, his wife and son, or his father's carer, [REDACTED],³⁸ further reducing any possible perceived risk.

³⁵ See F02781, para. 17, where the Trial Panel recently confirmed its previous findings that Mr Thaçi was not a flight risk, such that his detention is not justified based on a risk of flight.

³⁶ First Registrar's Report, para. 18; Second Registrar's Report, para. 16.

³⁷ Thaçi First Decision, para. 24; Thaçi Second Decision, para. 26.

³⁸ KSC-BC-2023-12/F00037/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Request for Arrest Warrants and Related Matters*, 19 December 2024.

19. As to the length of the visit, the Defence asks that Mr Thaçi be provisionally released for a period of three (3) days, including travel time. For reasons that would be apparent, provisional release of one (1) day including international travel as a detained person is fraught, rushed, stressful and exhausting for all involved. It also leaves no room for error. During Mr Thaçi's previous provisional release, for example, [REDACTED].³⁹ These hours were then lost from the visit. The purpose of the visit, being the provision of calming and comforting moral support from Mr Thaçi is extremely difficult in what becomes, in effect, a visit of a matter of hours.

20. This limited period also impedes the goal of meaningful interaction, particularly with an [REDACTED] in poor health, whose symptoms include [REDACTED],⁴⁰ who is objectively unlikely to be able to accommodate long periods of conversation. In between the emotions of the reunion and those of the separation, and the implementation of the necessary security protocols, there is limited scope for conversations or interactions of consequence during a provisional release of one (1) day. A longer visit would be more coherent with the goals of the provisional release, and its underlying humanitarian purpose.

21. Finally, in order to circumvent any disruption to the court schedule, the Defence proposes that this visit can be conducted in the week beginning 2 February 2025. Mr Dastid Pallaska, Co-Counsel for Mr Thaçi, will be the contact point for the Registry on behalf of the Defence.

V. CLASSIFICATION

22. This filing is classified as confidential and *ex parte* as it refers to sensitive medical information concerning Mr Thaçi's father. A public redacted version will be filed in due course.

³⁹ Second Registrar's Report, para. 8.

⁴⁰ Medical Reports, p. 6.

VI. CONCLUSION

23. For the above reasons, the Defence respectfully requests that the Trial Panel order the temporary provisional release of Mr Thaçi on compassionate grounds, for a period of three (3) days, to allow him to visit his father, in the presence of [REDACTED], at [REDACTED].

[Word count: 2,910 words]

Respectfully submitted,



Luka Misetic

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Tuesday, 28 January 2025

At The Hague, The Netherlands