



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2023-12

**The Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj, Isni
Kilaj, Fadil Fazliu and Hajredin Kuçi**

Before: Pre-Trial Judge

Judge Marjorie Masselot

Registrar: Fidelma Donlon

Date: 31 January 2025

Language: English

Classification: Public

**Further Public Redacted Version of
Decision on the Urgent Thaçi Defence Request for Temporary Release on
Compassionate Grounds**

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THE PRE-TRIAL JUDGE,¹ pursuant to Rule 56(3) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby issues the following decision.

I. PROCEDURAL BACKGROUND

1. On 5 December 2024, Hashim Thaçi (“Mr Thaçi”) was served with an arrest warrant, issued by the Pre-Trial Judge further to the confirmation of an indictment against him.²
2. On 8 December 2024, Mr Thaçi appeared before the Pre-Trial Judge and his (continued) detention was found to be necessary.³
3. On 28 January 2025, the Defence for Mr Thaçi (“Thaçi Defence”) filed an urgent request for the temporary release of Mr Thaçi on compassionate grounds (“Request”).⁴
4. On 30 January 2025, following an order from the Pre-Trial Judge,⁵ the SPO responded to, and the Registrar filed her submissions on, the Request.⁶

¹ KSC-BC-2023-12, F00015, President, *Decision Assigning a Pre-Trial Judge*, 6 June 2024, public.

² KSC-BC-2023-12, F00036, Pre-Trial Judge, *Decision on the Confirmation of the Indictment* (“Confirmation Decision”), 29 November 2024, confidential; F00037, Pre-Trial Judge, *Decision on Request for Arrest Warrants and Related Matters* (“Decision on Arrest Warrants”), 29 November 2024, confidential, with Annexes 1-8, strictly confidential and *ex parte*; see Annex 4. A public redacted version was issued on 19 December 2024, [F00037/RED](#); F00048, Registrar, *Notification of Service of Arrest Warrant on Hashim Thaçi Pursuant to Rule 55(4)*, 5 December 2024, public.

³ KSC-BC-2023-12, Transcript of Hearing, 8 December 2024, public, p. 18, line 10 to p. 19, line 15; [Decision on Arrest Warrants](#), paras 43, 45-55.

⁴ KSC-BC-2023-12, F00140, Thaçi Defence, *Urgent Thaçi Defence Request for Temporary Release on Compassionate Grounds*, 28 January 2025, confidential and *ex parte*, with Annex 1, confidential and *ex parte*.

⁵ KSC-BC-2023-12, CRSPD26, *Email from Pre-Trial Judge to the SPO, the Registry and the Thaçi Defence, via the Court Management Unit, re Order Shortening Time Limits re F00140*, 29 January 2025, at 11:13.

⁶ KSC-BC-2023-12, F00146, Specialist Prosecutor, *Prosecution Response to Urgent Thaçi Release Request* (“SPO Submissions”), 30 January 2025, confidential and *ex parte*; F00147, Registrar, *Registrar’s Submissions on Urgent Thaçi Defence Third Request for Temporary Release on Compassionate Grounds* (“Registrar Submissions”), 30 January 2025, confidential and *ex parte*. A corrected version of the Registrar Submissions was filed on 31 January 2025, F00147/COR.

5. On 31 January 2025, the Thaçi Defence replied.⁷

II. SUBMISSIONS

A. THAÇI DEFENCE REQUEST

6. The Thaçi Defence requests the temporary custodial release of Mr Thaçi to Kosovo, for a period of three (3) days during the week 3-9 February 2025, to allow him to visit his father, whose health is [REDACTED].⁸ According to the Thaçi Defence, Mr Thaçi's father – who is [REDACTED] – was first hospitalised in [REDACTED] and, more recently, between [REDACTED].⁹ While he has now been discharged, his treating doctor assessed that [REDACTED].¹⁰ Mr Thaçi requests, in addition, that said visit take place in the presence of [REDACTED].¹¹

7. The Thaçi Defence submits that any concern that the Pre-Trial Judge has that Mr Thaçi is a flight risk – which the Thaçi Defence contests – can be mitigated by imposing measures which mirror those imposed on the previous two occasions when Mr Thaçi was released on compassionate grounds.¹²

B. SPO RESPONSE

8. The SPO opposes the Request and submits that: (i) Mr Thaçi presents an extraordinarily high risk of obstruction and interference; (ii) the trial in Case KSC-BC-2020-06 remains ongoing [REDACTED]; and (iii) the grounds presented in support of the Request do not appear to be at the level of

⁷ KSC-BC-2023-12, F00148, Thaçi Defence, *Thaçi Defence Consolidated Reply to SPO and Registry's Submissions on Request for Temporary Release on Compassionate Grounds* ("Reply"), confidential and *ex parte*, 31 January 2025, with Annex 1, confidential and *ex parte*.

⁸ Request, paras 1-3, 30-32, 34.

⁹ Request, paras 1-2, 19.

¹⁰ Request, paras 2, 19.

¹¹ Request, para. 3.

¹² Request, paras 22-29.

exceptionality and urgency that would justify compassionate release.¹³ Should the Pre-Trial Judge nonetheless be minded to grant the Request, the SPO submits that any authorised visit should be fully custodial and time-limited.¹⁴

C. REGISTRAR SUBMISSIONS

9. The Registrar highlights that: (i) [REDACTED];¹⁵ (ii) Mr Thaçi's father is not currently hospitalised;¹⁶ and (iii) there are other available alternative means for Mr Thaçi to remain in close contact with [REDACTED] at this time, including video visits and telephone calls.¹⁷

10. In terms of security, feasibility and operational requirements, the Registrar submits that: (i) the proposed visit will have a high probability of being public knowledge, [REDACTED]; (ii) [REDACTED], with the assistance of external partners, subject to certain operational and security requirements; (iii) the resources needed to organise the proposed visit are considerable and only justifiable in urgent, compelling and exceptional circumstances; and (iv) the Registry [REDACTED] only a short custodial visit of one (1) day.¹⁸

D. THAÇI DEFENCE REPLY

11. The Thaçi Defence submits in reply that: (i) the medical circumstances of Mr Thaçi's father are [REDACTED];¹⁹ (ii) any risk of obstruction and interference is sufficiently mitigated by Mr Thaçi remaining in the permanent custody of the Specialist Chambers, within sight and earshot of escorting

¹³ SPO Submissions, paras 1-7, 9.

¹⁴ SPO Submissions, para. 8.

¹⁵ Registrar Submissions, para. 10.

¹⁶ Registrar Submissions, para. 10.

¹⁷ Registrar Submissions, paras 11-18.

¹⁸ Registrar Submissions, paras 19-39.

¹⁹ Reply, paras 3-4.

officers;²⁰ (iii) Mr Thaçi agrees to be limited to seeing only [REDACTED];²¹ and (iv) nothing in the SPO's or the Registrar's submissions justifies limiting the length of Mr Thaçi's release to one (1) day.²²

III. APPLICABLE LAW

12. Pursuant to Rule 56(3) of the Rules, upon request by a detained person or *prioprio motu*, a Panel may order the temporary release of a detained person, where compelling humanitarian grounds justify such release.

IV. DISCUSSION

13. The Pre-Trial Judge notes that temporary release on compelling humanitarian grounds is exceptional. Several factors may be relevant in the assessment, such as 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, and the possibility of escorted leave.²³ Visiting a close relative in critical condition has been accepted by this and other jurisdictions as a compelling humanitarian ground warranting temporary release under certain conditions.²⁴

²⁰ Reply, paras 5-7.

²¹ Reply, paras 8, 13.

²² Reply, paras 9-10.

²³ 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](#) ("Decision on Gucati's Third Request for Temporary Release"), 30 June 2022 (date of public redacted version, 4 July 2022), public, para. 11; KSC-BC-2020-06, F01757/RED, Trial Panel II, [Public Redacted Version of Decision on Urgent Thaçi Defence Second Request for Temporary Release on Compassionate Grounds](#), 1 September 2023 (date of public redacted version, 21 September 2023), public, para. 18; KSC-BC-2020-06, F00271/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds](#), 30 April 2021 (date of public redacted version, 11 May 2021), public, para. 13.

²⁴ [Decision on Gucati's Third Request for Temporary Release](#), para. 13 and references therein.

14. The Pre-Trial Judge is mindful of the fact that Mr Thaçi's father is of [REDACTED] age and that his [REDACTED].²⁵ Nonetheless, the Pre-Trial Judge notes that Mr Thaçi's father was discharged from hospital on [REDACTED] "in a stable health condition".²⁶ He was [REDACTED] discharged again the same day, with the recommendation that [REDACTED].²⁷ The Pre-Trial Judge observes that she has not received any information or material from the Thaçi Defence suggesting that, in the approximately [REDACTED] weeks that have passed since his [REDACTED] discharge,²⁸ the condition of Mr Thaçi's father has seen "no improvement", has deteriorated, or has become critical. Indeed, the Thaçi Defence makes no such submissions.

15. The Pre-Trial Judge also takes into account: (i) the nature of the charges against Mr Thaçi in the present case, which involve Mr Thaçi's unlawful interference with witnesses through others;²⁹ (ii) the Registrar's submissions on the security and feasibility of the operation;³⁰ and (iii) the fact that there are alternative means available to Mr Thaçi to communicate with [REDACTED] from the Specialist Chambers' Detention Facilities, including video visits.³¹

16. In light of the above, balancing all relevant factors, the Pre-Trial Judge finds that, in the present circumstances, Mr Thaçi has not demonstrated that

²⁵ Request, paras 1-2; Annex 1 to the Request, pp. 6-9.

²⁶ Annex 1 to the Request, p. 9.

²⁷ Annex 1 to the Request, p. 6.

²⁸ At the time the Request was made, [REDACTED] days had passed from the [REDACTED] discharge.

²⁹ See KSC-BC-2023-12, F00040, Specialist Prosecutor, *Submission of Confirmed Indictment*, 2 December 2024, strictly confidential, with Annex 1, strictly confidential. A public redacted version was filed on 6 December 2024, [F00055/A01](#).

³⁰ Registrar Submissions, paras 19-38. The Pre-Trial Judge notes, at this juncture, that the already challenging security and feasibility aspects of the requested custodial visit may become even more complex in light of the upcoming parliamentary elections, scheduled for 9 February 2025. See European Union Election Observation Mission, Kosovo Parliamentary Elections 2025, Factsheet, at: https://www.eeas.europa.eu/sites/default/files/documents/2025/Factsheet%202025_ENG_0.pdf; Euronews, *EU assembles 100-strong observer mission for February elections in Kosovo*, 19 January 2025, at: <https://www.euronews.com/my-europe/2025/01/19/eu-assembles-100-strong-observer-mission-for-kosovo-elections-scheduled-for-february>.

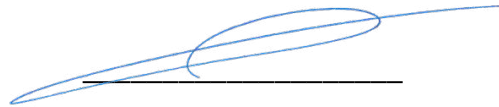
³¹ Registrar Submissions, paras 11-12, 18.

compelling humanitarian grounds exist that would justify a temporary release. Accordingly, the Pre-Trial Judge rejects the Request.

V. DISPOSITION

17. For the above reasons, the Pre-Trial Judge hereby:

- a. **REJECTS** the Request; and
- b. **ORDERS** the Thaçi Defence, the SPO and the Registrar to file public redacted versions of their respective submissions (F00140, F00146, F00147/COR and F00148), or request reclassification, by no later than **Friday, 7 February 2025**.



Judge Marjorie Masselot

Pre-Trial Judge

Dated this Friday, 31 January 2025

At The Hague, the Netherlands.