

In: **KSC-BC-2023-10**

Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala

Before: **President of the Kosovo Specialist Chambers**

Judge Ekaterina Trendafilova

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Haxhi Shala

Date: 21 March 2025

Language: English

Classification: **Public**

Public Redacted Version of Urgent Request for Leave to Visit on Compelling Humanitarian Grounds with three ex parte confidential Annexes

Counsel for Haxhi Shala

Toby Cadman

I. INTRODUCTION

1. The Defence for Mr Haxhi Shala ("Defence") hereby urgently requests authorisation for him to visit [REDACTED], [REDACTED], who is dangerously ill.

II. PROCEDURAL BACKGROUND

2. On 11 December 2023, Mr. Haxhi Shala was arrested in Prishtinë, Republic of Kosovo. The next day he was transferred to the Kosovo Specialist Chambers Detention Management Unit in The Hague, the Netherlands.¹
3. On 6 December 2024 Mr Shala entered into a plea agreement with the Specialist Prosecutor's Office ("SPO").²
4. On 17 December 2024 the SPO submitted a Further Revised Indictment.³
5. On 4 February 2025, during a hearing, the Trial Panel: (i) approved Mr Shala's Plea Agreement; (ii) found him guilty under Counts 1 and Count 2 of the 17

¹ KSC-BC-2023-11/F00014, Decision Setting the Date for the Initial Appearance of Haxhi Shala and Related Matters, 12 December 2023, paras. 4-5.

² KSC-BC-2023-10/F00618, URGENT Prosecution submissions on plea agreements and sentencing with confidential Annexes 1-3, 6 December 2024. Annex 1 contains the Haxhi Shala Plea Agreement. Annex 1 was reclassified as public on 17 December 2024.

³ KSC-BC-2023-10, F00630, Specialist Prosecutor, Submission of Further Revised Indictment, 17 December 2024, confidential, with Annex 1, confidential.

December 2024 Indictment; and (iii) sentenced him to three years of imprisonment with credit for time served.⁴

6. The Registrar sent Specialist Counsel a letter dated 5 February 2025, according to which his services as Mr. Shala's Specialist Counsel and those of his Defence Team would terminate with effect from 7 March 2025. In a further letter dated 5 March 2025 the Registrar informed Specialist Counsel that his services and his Team's services were extended to 21 March 2025.⁵

III. APPLICABLE LAW

7. 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.⁶

⁴ Transcript of Hearing, 4 February 2025, public, p. 612, line 19 to p. 618, line 23 (4 February 2025 Transcript).

⁵ See Confidential and ex parte Annex 3.

⁶ *Chaldayev v. Russia*, 2019, § 59; *Messina v. Italy (no. 2)*, 2000, § 61; *Kurkowski v. Poland*, § 95; *Vintman v. Ukraine*, § 78.

8. Pursuant to Rule 56(3) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers,⁷ (“Rules”), upon 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.⁸
9. 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.”⁹

⁷ KSC-BD-03/Rev3/2020, 2 June 2020.

⁸ KSC-BC-2020-06/ F01757/RED, Public Redacted Version of Decision on Urgent Thaçi Defence Second Request for Temporary Release on Compassionate Grounds, 1 September 2023, para. 16.

⁹ KSC-CA-2022-01/F00020/RED, Public Redacted Version of Decision on Gucati’s Third Request for Temporary Release on Compassionate Grounds, 30 June 2022, para. 11; KSC-CA-2022-01/F00043/RED, Public Redacted Version of Decision on Gucati’s Fourth Request for Temporary Release on Compassionate Grounds, para. 16.

IV. SUBMISSIONS

10. Mr Haxhi Shala's [REDACTED], [REDACTED],¹⁰ is an in-patient at the [REDACTED]; he is suffering from [REDACTED] and is [REDACTED].¹¹ The medical report dated "19.03.23" indicates the gravity of his condition. The specification of the year as "23" is a clerical error: the document was in fact produced on 19 March 2025. The Defence understands that [REDACTED] is terminally ill and that he can only be expected to live a matter of days.
11. Mr Haxhi Shala and [REDACTED] are particularly [REDACTED].
12. The Defence submits that compelling humanitarian grounds justify Mr. Shala's temporary release in these circumstances and respectfully requests that the President authorise him to travel to Kosovo for 3 (three) days in order to visit [REDACTED] as soon as the necessary arrangements can be made.
13. Article 89 of the Law on the Execution of Criminal Sanctions of the Republic of Kosovo¹² is of particular relevance:

¹⁰ See Confidential and ex parte Annex 1.

¹¹ See Confidential and ex parte Annex 2.

¹² Official Gazette of the Republic of Kosovo, No. 21, 10 August 2022, Pristina, Law No. 08/L-132.

“1. In case of serious illness, or direct danger of death, or death of a family member, the director of the correctional facility may grant leave to the convicted person in accordance with the act on house order.

“2. Exceptionally from paragraph 1 of this Article, extraordinary leave may be granted for serious personal or family occurrences.

“3. The convicted person has the right to use the extraordinary leave up to seven (7) days within the year.

“4. The director of the correctional facility may set conditions which he or she deems reasonable and necessary for the protection of the social circle when allowing leave in accordance with this article, including the order that the convicted person be accompanied during the leave by a member of correctional personnel, or other persons authorized by the director.”

14. The KSC itself has granted persons in detention leave to visit close relatives in similar circumstances to those of Mr. Shala. 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.¹³ Similarly, Trial Panel II found that the

¹³ KSC-BC-2020-06/F00271-RED, Public Redacted Version of Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds, 11 May 2021, 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, Public Redacted Version of Second Decision on Veseli Defence Request for Temporary Release on

poor health situation of Mr Hysni Gucati's mother, who was confined to her home, qualified as a compelling consideration when deciding in favour of granting his custodial visits on two previous occasions.¹⁴

15. The Defence submits that the present circumstances constitute a compelling humanitarian ground justifying leave to visit to [REDACTED] pursuant to Article 8 of the Convention, Article 36(1) the Constitution and Rule 56(3) of the Rules.
16. The Defence notes that a number of logistical measures and security conditions were imposed on Mr Veseli¹⁵, Mr Gucati¹⁶ and Mr Thaçi¹⁷ in order to make the visit to their relatives in Kosovo feasible, pursuant to Rule 56(5)

Compassionate Grounds, 16 July 2021; KSC-BC-2020-06/F00640, Public Redacted Version of Third Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds, 17 January 2022.

¹⁴ KSC-CA-2022-01/F00020/RED, Public Redacted Version of Decision on Gucati's Third Request for Temporary Release on Compassionate Grounds, 30 June 2022, para. 13, referring to: KSC-BC-2020-07, F00618/RED, 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, Public Redacted Version of Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds, 16 May 2022, paras 15-16. Mr Gucati was subsequently authorised to visit his mother three other times. See KSC-CA-2022-01/F00020/RED, KSC-CA-2022-01/F00043/RED, KSC-CA-2022-01/CR001/F00012/RED, Public Redacted Version of Decision on Gucati Request for Fifth Custodial Visit on Compassionate Grounds, 24 April 2023.

¹⁵ See, *inter alia*, KSC-BC-2020-06/F00271-RED, Public Redacted Version of Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds, 11 May 2021, para. 18.

¹⁶ See, *inter alia*, KSC-CA-2022-01/CR001/F00012/RED, para. 30.

¹⁷ KSC-BC-2020-06/F01757/RED, Public Redacted Version of Decision on Urgent Thaçi Defence Second Request for Temporary Release on Compassionate Grounds, 1 September 2023, para. 26.

of the Rules. The Defence has no objection to the imposition of similar reasonable conditions upon Mr Shala's visit to [REDACTED] in Kosovo.

17. Following the letters from the Registrar of 5 February and 5 March 2025, the services of Mr. Shala's Specialist Counsel and his Defence Team are due to terminate on 21 March 2025. The Defence submits that it is in the interests of justice for their services to be prolonged at least until 4 April 2025 so as to enable them to support Mr Shala in his request for leave to visit [REDACTED] and, if the request is granted, to conduct the necessary liaison with the KSC.

V. CLASSIFICATION

18. This filing is classified as confidential and *ex parte* as it contains personal information concerning [REDACTED].

VI. CONCLUSION

19. In conclusion, the Defence requests that the President order as a matter of urgency:

- (i) the temporary release of Mr Shala on compassionate grounds, for a period of 3 (three) days, to allow him to visit [REDACTED] in the University Clinic Centre of Kosovo in Prishtinë;
- (ii) the prolongation of the services of the Specialist Counsel and his Team until 4 April 2025 in connection with the present Request.

Word Count: [1,567 words]



Toby Cadman

Specialist Counsel

21 March 2025

At Dubai, United Arab Emirates