

**In:** KSC-BC-2020-06

**Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi**

**Before:** Pre-Trial Judge  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Counsel for Kadri Veseli

**Date:** 06 May 2021

**Language:** English

**Classification:** Public

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**Public Redacted Version of**

**URGENT**

**Veseli Defence Request for Temporary Release on Compassionate Grounds**

(F/00265 dated 28 April 2021)

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**Specialist Prosecutor's Office**

Jack Smith

**Counsel for Kadri Veseli**

Ben Emmerson

## I. INTRODUCTION

1. The Defence for Mr Kadri Veseli ("Defence") requests that the Pre-Trial Judge order the temporary release of Mr Veseli for the period of seven (7) days in order to allow him to attend to his father who is in a grave medical condition.

## II. CLASSIFICATION

2. This request is filed confidentially and *ex parte* for two reasons. Firstly, the request will reveal sensitive medical information concerning Mr Veseli's father which should not be in the public domain. Secondly, the Defence wishes to dispel, in advance, the possible argument that Mr Veseli will exploit the grant of temporary release for anything other than private family purposes. Reducing the number of non-essential parties to the present litigation will avoid the content of this application being leaked unnecessarily. Should the Pre-Trial Judge accede to the present request, Mr Veseli will give a strict undertaking not to engage with anyone other than his immediate family. Indeed, Mr Veseli will do his utmost to safeguard, as far as possible, the secrecy of his presence in Kosovo until after his return to detention whereupon the Defence will file a public redacted version of this filing.

## III. RELEVANT PROCEDURAL HISTORY

3. On 19 December 2019, Mr Veseli voluntarily attended an interview with the Specialist Prosecutor's Office ("SPO").

4. On 5 November 2020, Mr Veseli surrendered himself to the jurisdiction of the Kosovo Specialist Chambers.

5. On 17 December 2020, the Defence filed an application for interim release.<sup>1</sup>

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<sup>1</sup> KSC-BC-2020-06/F00151.

6. On 22 January 2020, the learned Pre-Trial Judge denied the aforementioned application by way of his “Decision on Kadri Veseli’s Application for Interim Release” (“Decision on Interim Release”).<sup>2</sup>

7. On 1 February 2021, the Defence filed its appeal of the Pre-Trial Judge’s decision mentioned in paragraph 6 above (“Defence Appeal”).<sup>3</sup>

8. As of the date of this filing, the Appeals Chamber is yet to render its judgment on the Defence Appeal.

#### IV. RELEVANT FACTUAL BACKGROUND

9. Mr Kadri Veseli has been informed that his father [REDACTED], 93 years old,<sup>4</sup> was admitted to hospital in Mitrovica, Kosovo a few days ago. [REDACTED].

10. [REDACTED].<sup>5</sup>

11. Given Mr [REDACTED] Veseli’s advanced age, current condition and pre-existing health problems set out in the medical report attached to this application,<sup>6</sup> the prognosis is dire. According to the doctors treating him, Mr [REDACTED] Veseli is in a “critical life condition”.

12. Mr Kadri Veseli is, understandably, extremely distressed. His immediate desire is to be with his close family and to be at his father’s side before he should pass away. This request is supported by Mr Kadri Veseli’s 92 year old mother and his brother

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<sup>2</sup> KSC-BC-2020-06/F00178.

<sup>3</sup> KSC-BC-2020-06/IA001/F00001.

<sup>4</sup> Date of birth – [REDACTED].

<sup>5</sup> Confidential, ex parte, Annex 1 (letter from [REDACTED]).

<sup>6</sup> Confidential, ex parte, Annex 2. The authors of the medical report have provided a declaration whereby they affirm that they are bound by the law preventing false testimony before the Kosovo Specialist Chambers.

[REDACTED], both of whom have come to terms with the understanding that Mr [REDACTED] Veseli is extremely close to passing away.<sup>7</sup>

## V. APPLICABLE LAW

13. Rule 56(3) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”) stipulates that “[u]pon 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”.

14. Article 194 of the Kosovo Criminal Procedure Code<sup>8</sup> which deals with the “Treatment and Conditions for Detained Persons” reads as follows: “1. The personality and dignity of a person held in detention on remand must not be abused. The detainee on remand must be treated in a humane manner and his or her physical and mental health must be protected. 2. Only those restrictions which are necessary to prevent escape or communications that might be harmful to the effective conduct of proceedings may be imposed against a person in detention on remand.”

## VI. SUBMISSION

15. Rule 56(3) is a unique provision that was introduced into the statutory framework of the Kosovo Specialist Chambers in the third review of the Rules. It is unique in so far as other international criminal tribunals have previously resorted to inherent and residual powers to entertain applications such as the present request. As such, Rule 56(3) should be given paramount consideration in determining the present application.

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<sup>7</sup> Confidential, ex parte, Annex 3 (letter from [REDACTED]).

<sup>8</sup> Law No. 04/L-123:

[https://www.oak-ks.org/repository/docs/CRIMINAL\\_PROCEDURE\\_CODE\\_502172.pdf](https://www.oak-ks.org/repository/docs/CRIMINAL_PROCEDURE_CODE_502172.pdf)

16. The Defence incorporates by reference its previous submissions on interim release and submits that the arguments presented below, in light of the importance to be attached to Rule 56(3), are more than sufficient to displace, on a temporary basis, the articulable grounds presently found by the Pre-Trial Judge to justify the detention order.

17. Detention, as with any other measure depriving a person of his liberty, entails inherent limitations on family life. Notwithstanding, the Defence submits that it is an essential part of a detainee's right to respect for family life as enshrined, for example, in Article 8.1 of the European Convention on Human Rights and Articles 36.1 and 37.3 of the Kosovo Constitution, that the relevant authorities enable him and, if need be, assist him in maintaining contact with his close family. This principle is even more pronounced in situations where a close family member is grievously ill.

18. Given the urgency of this application, the Defence will not dwell on the well-established precedent of the International Criminal Tribunal for the Former Yugoslavia ("ICTY") which has firmly recognized that temporary release on compassionate grounds may be ordered to permit accused persons to attend the funerals of immediate family members or memorial services held 40 days thereafter according to the tradition prevalent in Balkan countries.<sup>9</sup>

19. There can be no dispute, however, that it is far more important - even essential - for an accused person to bid farewell to a beloved close relation, in dignified fashion,

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<sup>9</sup> Prosecutor v. Sainovic et al, Case no IT-05-87-A, Decision on Urgent Motion Requesting Provisional Release of Nebojsa Pavkovic 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.

than to attend that relation's funeral. For this reason alone, the Defence will focus on precedent which supports temporary release on compassionate grounds for accused persons whose relations are facing life-threatening situations.

20. In the *Tarčulovski* case at the ICTY, it was held as follows:

“In cases where a convicted person seeks provisional release pending the appellate proceedings, the Appeals Chamber has found that special circumstances related to humane and compassionate considerations exist where there is an acute justification, such as the applicant's medical need, **extremely poor health of a close family member whose death is believed to be imminent**, or a memorial service for a close family member immediately after his or her death” [emphasis added].<sup>10</sup>

21. Tarčulovski's request for release to Macedonia was, ultimately, denied because it was motivated, primarily, by a desire to attend an event commemorating his father who had passed away ten years earlier. The reasoning of the ICTY Appeals Chambers, however, is pertinent because it recognises that the perceived imminence of death is sufficient to warrant temporary release on compassionate grounds. This, sadly, is exactly the situation facing Mr Kadri Veseli with respect to his father.

22. The fact that the *Tarčulovski* decision relates to temporary release in a post-conviction scenario is irrelevant. By contrast, the *Pavković* case at the ICTY concerned an individual who had been sentenced to 22 years at the time that he sought temporary release immediately after the death of his father. The ICTY Appeals Chamber found that the risk factors militating against release were more pronounced in a post-conviction scenario yet, nonetheless, allowed the temporary release that had been sought.<sup>11</sup> It should be noted that Pavković's request was not actively opposed by

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<sup>10</sup> IT-04-82-A, Decision on Tarčulovski Motion for Provisional Release on Compassionate Grounds, 22 July 2009 at para. 8.

<sup>11</sup> c.f.; IT-05-87-A, Decision on Urgent Motion Requesting Provisional Release of Nebojša Paković on Compassionate Grounds, 17 September 2009:

the Prosecution. To summarise, Mr Veseli has less of a reason to abscond than an individual appealing a substantial prison sentence; he enjoys the presumption of innocence and is entitled to a presumption of faithful cooperation with the Kosovo Specialist Chambers in light of his voluntary conduct to date.

23. The *Brđanin* appeal at the ICTY concerned a convict sentenced, at the time of his application, to 32 years imprisonment. In this specific case, the ICTY Prosecution acknowledged that “important religious duties” might warrant temporary release. The ICTY Appeals Chamber denied the relief sought but provided further guidance on the relevant test for assessing the nature of the humanitarian predicament likely to generate permission for temporary release on compassionate grounds.

“Even assuming that some of Brđanin's siblings are in very poor health conditions - an assertion which he offers no evidence to substantiate - there is no suggestion of an acute crisis” [emphasis added].<sup>12</sup>

24. Mr Veseli's present request is triggered by just such an “acute crisis” that has generated “compelling humanitarian grounds” justifying his immediate temporary release.

25. Finally, and in keeping with the spirit of Article 194 of the Kosovo Criminal Procedure Code, the privilege and filial duty of comforting one's father as he fights for his life must be deemed fundamentally integral to Mr Kadri Veseli's mental health. In such circumstances, the temporary nature of the release sought, combined with any undertakings deemed appropriate by the Pre-Trial Judge, would foreclose “escape

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“The Appeals Chamber notes that the risk of flight associated with granting the request for provisional release is higher at the present stage, after Pavkovic was sentenced by the Trial Chamber to 22 years of imprisonment, than it was when the trial proceedings were ongoing. However, the Appeals Chamber finds, in light of the discussion below, that the requirement under Rule 65(I)(i) of the Rules is satisfied”.

<sup>12</sup> IT-99-36-A, Decision on Radoslav Brđanin's Motion for Provisional Release, 23 February 2007 at para. 6.

and/or communications that might be harmful to the effective conduct of the proceedings".

## VII. LOGISTICAL ARRANGEMENTS

26. The Defence is guided by the provisions of Article 53 of the Law on the Specialist Chambers and the Specialist Prosecutor's Office ("Law") which would oblige "all entities and persons in Kosovo" to cooperate without undue delay with any order issued by the Pre-Trial Judge. This obligation is recognized in domestic legislation by virtue of Law No. 04/L-076 "On the Police". The Defence, furthermore, reminds the Pre-Trial Judge of the letter from the Acting Director of the Kosovo Police Service, produced at first instance, which unequivocally confirms that the Kosovo Police has the capacity to monitor and enforce *any order* the Kosovo Specialist Chambers considers necessary as a condition for provisional release.<sup>13</sup>

27. The Defence has made enquiries as to whether Covid-19 related restrictions would delay Mr Veseli's return to Kosovo. Information promulgated online by the Kosovo Ministry of Foreign Affairs and Diaspora indicates that "[a]ll citizens of Kosovo, upon entering Kosovo must present a certificate for a negative RT-PCR test made no later than 72 hours before entering Kosovo, otherwise they must self-isolate for 7 days".<sup>14</sup> The Defence hopes that the Registry and the Detention Facility will be of assistance in ensuring that such a requirement is met and fast-tracked.

28. To conclude, and in light of the urgency of this application, the Defence reiterates its immediate readiness to assist the Registry with the implementation of any decision of the Pre-Trial Judge in order to facilitate temporary release in the swiftest manner possible.

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<sup>13</sup> Decision on Interim Release at para. 56.

<sup>14</sup> <https://mfa-ks.net/en/baner>.

## VIII. CONCLUSION

29. The Pre-Trial Judge is respectfully requested to order urgent responses from the SPO and Registry and, thereafter, to order the immediate temporary release of Mr Veseli on compassionate grounds.

**Word count:** 2069



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**Dated 6 May 2021**