

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

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Public Redacted Version of
URGENT Veseli Defence Reply to SPO Filing KSC-BC-2020-06/F00268
& Registry Filing KSC-BC-2020-06/F00267
(F/00270 dated 29 April 2021)

Specialist Prosecutor's Office
Jack Smith

Counsel for Kadri Veseli
Ben Emmerson

I. INTRODUCTION

1. The Defence for Mr Kadri Veseli ("Defence") hereby replies to the response of the Specialist Prosecutor's Office ("SPO")("SPO Response") and the Registrar to the urgent request for temporary release on compassionate grounds.¹

II. THE SPO SUBMISSION

2. The Defence regrets the nature of the terms and conditions proposed by the SPO for the temporary release of Mr Veseli. Such conditions have the effect of rendering pointless the purpose of the requested compassionate release and, as such, render the SPO's seemingly gracious "non-opposition" to temporary release an empty gesture. Mr Veseli is entitled to the utmost respect and sensitivity at such a difficult time.

3. The Defence notes that the substance of the SPO response and the conditions it proposes are designed to address only two concerns: i) that Mr Veseli may communicate, through any non-public means, with his so-called "community or support network", and; ii) that no entity in Kosovo has the means to adequately monitor someone of his stature. The SPO, of course, has no choice but to object to temporary release on these grounds because the Pre-Trial Judge has ruled that the risk of flight could be adequately mitigated by the conditions proposed by the Defence.²

i) The concern that Mr Veseli may communicate with others

4. The first of the concerns identified by the SPO may be addressed by denying Mr Veseli personal access to communication devices and by ordering that his visits to the medical facility where his father is being treated be supervised by law enforcement officials who will maintain a respectful distance from Mr Veseli, his father and his immediate family. Mr Veseli will have no objection to being transported discretely by

¹ KSC-BC-2020-06/F00268.

² KSC-BC-2020-06/F00178 at para. 58.

non-uniformed law enforcement officials at all times. The Defence is confident that the local law enforcement officials will do their utmost to respect the dignity of Mr Veseli and his family at all times by ensuring that Mr Veseli is conveyed to his father by means which will avoid the need for him to be exposed to the public or to be paraded in public with implements of restraint (handcuffs).

5. To this end, the Defence comments on the conditions set out in paragraph 4 of the SPO Response as follows:

4a.	Mr Veseli has no objection to being supervised at all times by officials of the Kosovo Specialist Chambers ("KSC") as opposed to the being in the physical custody of the KSC. Such supervision should be exercised at a respectful distance.
4b.	Mr Veseli objects to the requirement that he be detained in Kosovo in detention facilities. Such a condition as mentioned above renders the request for compassionate release pointless. As a counterbalancing measure, and in order to address the only risk identified by the SPO, Mr Veseli agrees not to be permitted to move freely in Kosovo but rather that his presence be limited to three places only; the medical facility where his father is being treated, his own place of residence or his mother's place of residence – details of which will be supplied as necessary. Mr Veseli will agree to supervision by non-uniformed law enforcement officials who will maintain a discrete yet effective working distance from these three places.
4c.	Mr Veseli has no objection to being transported discretely by non-uniformed law enforcement officials in a vehicle which does not display the insignia of a law enforcement agency and with opaque windows which prevent the general public from viewing the passengers within.

4d.	Mr Veseli repeats his observations above. He has no objection to being escorted at all times on condition that a respectful and discrete distance is maintained between him and non-uniformed officials.
4e. and 4f.	Mr Veseli notes that the SPO agrees for Mr Veseli to meet with and to have contact with identified immediate family members. The names of these family members will be communicated in due course. Mr Veseli has no objection to the supervision of such contact at a discrete distance which maintains respect for Mr Veseli's dignity and privacy. In light of the SPO agreement to the condition in paragraph 4f, the Defence does not see the need for the condition stipulated in paragraph 4e. Should Mr [REDACTED] Veseli pass away while Mr Kadri Veseli is at his side, it is understandable that other immediate family members will desire to be present. Furthermore, while Mr Veseli will agree for his house to be supervised, it would be inappropriate for such supervision to intrude upon his sleeping arrangements.
4g.	Mr Veseli agrees to the condition that he be denied access to communication devices apart from those facilitated by the KSC.
4h.	Mr Veseli agrees, in principle, not to pass or to receive any item other than those which are culturally acceptable in the circumstances. Notwithstanding the aforementioned, Mr Veseli will permit examination of any non-privileged item transferred between him and any other person so long as it does not intrude on his privacy.
4i.	Mr Veseli not only assents to a condition whereby he undertakes to maintain the secrecy of his compassionate release to Kosovo but reminds the Pre-Trial Judge that he predicated his urgent request thereupon.
4j.	Mr Veseli strenuously objects to limiting contact with his father to one short visit for the reasons mentioned by way of reply to condition 4b.

6. The Defence submits that a four day transfer is not sufficient. The Defence calculated the period of seven days as the minimum required for Mr Veseli to be in Kosovo after considering travel requirements and possible Covid-19 strictures. This period was deemed to be the minimal period of time necessary to effect a dignified visit without overtaxing the authorities who will be required to implement it.

ii) *No entity in Kosovo has the means to adequately monitor someone of Mr Veseli's stature*

7. The SPO bears the burden of satisfying the Pre-Trial Judge of the truth of its submissions. The assertion that Mr Veseli is of such a stature that he cannot be monitored is unsupported by any evidence whatsoever and, furthermore, flies directly in the face of hard evidence produced by the Defence. As mentioned in the originating motion, a letter from the Acting Director of the Kosovo Police Service was produced at first instance unequivocally confirming that the Kosovo Police has the capacity to monitor and enforce *any order* that the Kosovo Specialist Chambers considers necessary as a condition for provisional release.

III. THE REGISTRY SUBMISSION

8. The Defence respectfully submits that the Registrar should adopt a position of neutrality with respect to the substance of the urgent request and that her intervention, in the present instance, should be limited to addressing the logistics of effecting an order of the Pre-Trial Judge. Accordingly, the Defence repeats its observations with respect to the allegation made by the Registrar that monitoring someone of Mr. Veseli's stature presents "considerable risks".³ The Defence notes that the Registrar does not supply any independently acquired evidence for this submission other than to cite to the Prosecution's Response to the Application for Interim Release – filing number F00161 in the case record.

³ KSC-BC-2020-06/F00267 at para. 9.

9. The Defence also notes that the Registrar proposes that Mr. Veseli remain in pre-trial detention while in Kosovo. For reasons comprehensively stated above and in the originating motion, ICTY precedent has recognised that temporary release should be granted in exceptional humanitarian situations and "operational security reasons"⁴ cannot and must not be allowed, in any way whatsoever, to trump the fundamental right of an accused person to liberty if risk factors recognised by the KSC Law can be displaced. "Operational security reasons" potentially faced by the Registrar are **not** among the recognised grounds for objecting to provisional release.

10. The Defence further notes the Registry's observation that it "can facilitate this temporary transfer for a maximum period of 4 days which includes 2 days for travel, 1 day for facilitating an in-person visit to the hospital and 1 day for facilitating an in-person visit with immediate family members".⁵ The Registrar, however, does not explain why it is not possible to accede to the request as formulated by the Defence for a seven (7) day visit. The shortness of time proposed by the Registrar seems to be predicated on the assumption (to which the Defence strongly objects) that the aforementioned operational security reasons would prevent a longer visit.

11. Finally, and with respect to the [REDACTED] requirements mentioned by the Registrar, the Defence informs the Pre-Trial Judge that [REDACTED] evidence will be submitted if necessary.

⁴ KSC-BC-2020-06-F/00267 at para. 14.

⁵ KSC-BC-2020-06-F/00267 at para. 18.

IV. CONCLUSION

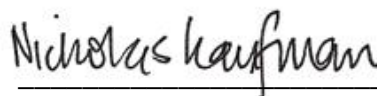
12. The Pre-Trial Judge is respectfully requested to order temporary release on compassionate grounds for the period of seven (7) days on the terms and conditions stipulated in paragraph 5 above.

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