



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-06

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

Before: Pre-Trial Judge

Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 30 April 2021

Language: English

Classification: Public

**Public Redacted Version of Decision on Veseli Defence Request for Temporary
Release on Compassionate Grounds**

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THE PRE-TRIAL JUDGE,¹ pursuant to Article 53 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rules 56(3) and 56(5) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby issues the following decision.

I. PROCEDURAL BACKGROUND

1. On 5 November 2020, Kadri Veseli ("Mr Veseli" or "Accused") was arrested pursuant to a decision² and an arrest warrant issued by the Pre-Trial Judge,³ and further to the confirmation of an indictment against him.⁴
2. On 17 December 2020, the Mr Veseli filed an application for interim release.⁵
3. On 22 January 2021, the Pre-Trial Judge rejected Mr Veseli's request for interim release.⁶ Mr Veseli appealed the Pre-Trial Judge's decision.⁷
4. On 28 April 2021, and pending Mr Veseli's appeal, Mr Veseli requested immediate temporary release on compassionate grounds ("Request").⁸ That same

¹ KSC-BC-2020-06, F00001, President, *Decision Assigning a Pre-Trial Judge*, 23 April 2020, public.

² KSC-BC-2020-06, F00027/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Request for Arrest Warrants and Transfer Orders*, 26 October 2020, public.

³ KSC-BC-2020-06, F00027/A03/RED, Pre-Trial Judge, *Public Redacted Version of Arrest Warrant for Kadri Veseli*, 26 October 2020, public.

⁴ KSC-BC-2020-06, F00026/RED, Pre-Trial Judge, *Public Redacted Version of Decision on the Confirmation of the Indictment against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi* ("Confirmation Decision"), 26 October 2020, public.

⁵ KSC-BC-2020-06, F00151, Defence for Mr Veseli, *Application for Interim Release of Kadri Veseli*, 17 December 2020, public, with Annexes 1-7, confidential.

⁶ KSC-BC-2020-06, F00178, Pre-Trial Judge, *Decision on Kadri Veseli's Application for Interim Release* ("Decision on Interim Release"), 22 January 2021, public.

⁷ KSC-BC-2020-06/IA001, F00001, Defence for Mr Veseli, *Defence Request to appeal the "Decision on Kadri Veseli's Application for Interim Release"*, 1 February 2021, public.

⁸ KSC-BC-2020-06, F00265, Defence for Mr Veseli, *Urgent Veseli Defence Request for Temporary Release on Compassionate Grounds* ("Request"), 28 April 2021, confidential and *ex parte*, with Annexes 1-3, confidential and *ex parte*.

day, the Registrar filed submissions on Mr Veseli's request for temporary release ("Registry Submissions").⁹

5. On 29 April 2021, the Specialist Prosecutor's Office ("SPO") responded to the Request ("Response"),¹⁰ and Mr Veseli replied to the Response and the Registry's Submissions.¹¹

II. SUBMISSIONS

6. Mr Veseli requests temporary release on compelling humanitarian grounds, for a period of seven days, due to [REDACTED] his father's health situation.¹² Mr Veseli submits that his father, 93 years of age, [REDACTED]¹³ and is currently in grave condition.¹⁴ A treating physician has described Mr Veseli's father's prognosis as dire, and has stated that he is in a "critical life condition".¹⁵ Mr Veseli's family has come to the understanding that Mr Veseli's father is extremely close to the end of his life.¹⁶ Mr Veseli argues that he should be given

⁹ KSC-BC-2020-06, F00267, Registrar, *Registrar's Submissions on Veseli Defence Request for Temporary Release on Compassionate Grounds* ("Registry Submissions"), 28 April 2021, confidential and *ex parte*. A confidential redacted version was filed the following day. KSC-BC-2020-06, F00267/CONF/RED, Registrar, *Confidential Redacted Version of 'Registrar's Submissions on Veseli's Defence Request for Temporary Release on Compassionate Grounds', filing F00267 dated 28 April 2021*, 29 April 2021, confidential and *ex parte*.

¹⁰ KSC-BC-2020-06, F00268, Specialist Prosecutor, *Prosecution Response to Urgent Veseli Release Request* ("Response"), 29 April 2021, confidential and *ex parte*.

¹¹ KSC-BC-2020-06, F00270, Defence for Mr Veseli, *Urgent Veseli Defence Reply to SPO Filing KSC-BC-2020-06/F00268 & Registry Filing KSC-BC-2020-06/F00267* ("Reply"), 29 April 2021, confidential and *ex parte*.

¹² Request, paras 1, 29.

¹³ Request, para. 9.

¹⁴ Request, para. 10; KSC-BC-2020-06, F00265/A01, Defence for Mr Veseli, *Annex 1 to Urgent Veseli Defence Request for Temporary Release on Compassionate Grounds*, 28 April 2021, confidential and *ex parte*.

¹⁵ Request, para. 11; KSC-BC-2020-06, F00265/A02, Defence for Mr Veseli, *Annex 2 to Urgent Veseli Defence Request for Temporary Release on Compassionate Grounds* ("Annex 2"), 28 April 2021, confidential and *ex parte*, p. 3.

¹⁶ KSC-BC-2020-06, F00265/A03, Defence for Mr Veseli, *Annex 3 to Urgent Veseli Defence Request for Temporary Release on Compassionate Grounds*, 28 April 2021, confidential and *ex parte*.

the opportunity to [REDACTED].¹⁷ As to logistical considerations, Mr Veseli emphasises that the authorities in Kosovo are obliged to carry out any order of the Specialist Chambers (“SC”) and that his Defence team is ready to assist as necessary.¹⁸ He also agrees to safeguard the secrecy of his visit in Kosovo until after his return to detention in the Host State and not to engage with others than his immediate family.¹⁹

7. The Registrar submits that temporary transfer of Mr Veseli to a secure facility in Kosovo, where the Accused will remain in pre-trial detention, in the custody of the SC, could be organised securely and swiftly while mitigating any associated risks and meeting applicable international standards.²⁰ The Registrar maintains that Mr Veseli can be securely transported to the relevant hospital in Kosovo for an in-person visit to see his father and immediate family members.²¹ The Registry would require [REDACTED]²² to facilitate a maximum release period of four days.²³ The Registry seeks leave and authorisation to make final operational and security planning arrangements with external partners²⁴ and to notify any authorities deemed necessary for the implementation of the Pre-Trial Judge’s orders.²⁵

8. The SPO responds that it opposes the Request to the extent that temporary release for seven days on largely unspecified conditions is sought.²⁶ The SPO submits that temporary release should be granted only in exceptional circumstances and should be weighed against the gravity of the charged offences

¹⁷ Request, paras 19, 25.

¹⁸ Request, paras 26, 28.

¹⁹ Request, para. 2.

²⁰ Registry Submissions, paras 12-13, 22.

²¹ Registry Submissions, para. 14.

²² Registry Submissions, paras 20-21.

²³ Registry Submissions, para. 18.

²⁴ Registry Submissions, para. 24.

²⁵ Registry Submissions, para. 28.

²⁶ Response, para. 1.

and any identified risks associated with release.²⁷ In the present circumstances, the SPO does not oppose the granting of a fully escorted visit under strict conditions.²⁸ The SPO submits that the transfer to Kosovo should be strictly time limited, and in this regard, a four-day transfer, including travel, encompassing a single hospital visit would be appropriate in the circumstances.²⁹

9. Mr Veseli replies that the conditions proposed by the SPO have the effect of rendering pointless the requested compassionate release.³⁰ Mr Veseli maintains that the SPO's concerns can be addressed by denying access to communication devices and ensuring that he is supervised, discreetly, by non-uniformed law enforcement officials.³¹ Mr Veseli objects to being held in a detention facility in Kosovo and suggests that the restrictions on his movement would serve as a sufficient counterbalancing measure.³² Mr Veseli also objects to being limited to one short visit with his father.³³ As long as he is being discretely supervised, Mr Veseli asserts that there is no need to limit the amount of immediate family members he can come in contact with at one time.³⁴ Mr Veseli agrees not to pass or receive any item other than those that are culturally acceptable in the

²⁷ Response, paras 2-3.

²⁸ These conditions include: (i) the Accused remain in custody of the SC at all times; (ii) the Accused be detained in Kosovo in detention facilities of the SC; (iii) the Accused be securely transported, in custody, to and from the hospital for one visit to his father; (iv) the Accused be escorted at all times; (v) the Accused not be permitted to be alone with any person except his father, and even then must remain at all times within sight of the escorting officer(s); (vi) the Accused not be permitted to meet with or otherwise have contact with any person other than identified immediate family members (and only while accompanied by the escorting officer(s)); (vii) the Accused not have access to communication devices, pen and paper or any other means of communication of any kind other than as facilitated by the SC; (viii) the Accused not be permitted to pass or receive items to or from any person; (ix) the Accused (his Counsel and/or other relatives or associates) make no public statement and undertake to maintain secrecy with respect to his presence in Kosovo to the maximum extent possible; and (x) the Accused not be permitted to leave the detention facility (even under escort) other than for a single escorted visit to the hospital, and transport to and from Kosovo. Response, paras 1, 4.

²⁹ Response, para. 5.

³⁰ Reply, para. 2.

³¹ Reply, paras 4, 5 (4a-4g)

³² Reply, paras 5(4b), 9.

³³ Reply, para. 5(4j).

³⁴ Reply, para. 5(4e and 4f).

circumstances and have been inspected by supervising law enforcement.³⁵ As for the length of the temporary release, Mr Veseli asserts that seven days is the minimum requirement for a dignified visit.³⁶ Mr Veseli stipulates that he will undertake to maintain the secrecy of his release.³⁷ With regard to the Registry Submissions, Mr Veseli maintains that “operational security reasons” do not constitute grounds for objecting to provisional release or limiting the length of such release.³⁸ Finally, Mr Veseli reiterates his request for temporary release on compassionate grounds for a period of seven days.³⁹

III. APPLICABLE LAW

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

11. 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.

12. Pursuant to Article 53(1) of the Law, all entities and persons in Kosovo shall co-operate with the SC and shall comply without undue delay with any request for assistance or an order or decision issued by the SC.

³⁵ Reply, para. 5(4h).

³⁶ Reply, para. 6.

³⁷ Reply, para. 5(4i).

³⁸ Reply, paras 9-10.

³⁹ Reply, para. 12.

IV. DISCUSSION

A. TEMPORARY RELEASE ON COMPELLING HUMANITARIAN GROUNDS

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.⁴⁰

14. Mr Veseli is charged with grave crimes⁴¹ and his detention was found to be necessary.⁴² That said, the Pre-Trial Judge has taken note of the Registry's Submissions regarding feasibility, security and logistics. Moreover, the Pre-Trial Judge considers the fact that Mr Veseli's father is in "critical life condition," as stipulated by his treating physician, to be a decisive factor.⁴³ On balance, and in the specific circumstances of the case, the ailing health of an immediate family member, [REDACTED], amounts to exceptional circumstances and compelling humanitarian grounds justifying temporary release of Mr Veseli for a custodial visit.⁴⁴

15. The Pre-Trial Judge accordingly finds that the requirements of Rule 56(3) of the Rules have been met.

⁴⁰ ECtHR, *Lind v. Russia*, no. 25664/05, 6 December 2007, para. 95, with further case law references.

⁴¹ Namely, the crimes against humanity of persecution, imprisonment, other inhumane acts, torture, murder, and enforced disappearance, and the war crimes of arbitrary detention, cruel treatment, torture, and murder in violation of Articles 13(1) and 14(1)(c) of the Law, respectively. Confirmation Decision, paras 474, 478, 482, 491, 498, 505, 512.

⁴² Decision on Interim Release, para. 54.

⁴³ Annex 2, p. 3.

⁴⁴ Similarly, ICTY, *Prosecutor v. Šainović et al.*, IT-05-87-A, Appeals Chamber, [Public Redacted Version of the Decision on Sreten Lukic's Second Motion for Provisional Release on Compassionate Grounds](#), 14 July 2010, paras 11, 13; *Prosecutor v. Popović et al.*, IT-05-88-AR65.4-6, Appeals Chamber, [Decision on Consolidated Appeal Against Decision on Borovčanin's Motion for a Custodial Visit and Decisions on Gvero's and Miličić's Motions for Provisional Release During the Break in the Proceedings](#), 15 May 2008, public, paras 17-18.

16. The Pre-Trial Judge will now turn to whether conditions must be imposed on Mr Veseli's custodial visit.

B. CONDITIONS OF CUSTODIAL VISIT

17. The Pre-Trial Judge recalls his prior finding that that there is a risk that Mr Veseli may (i) abscond; (ii) obstruct the progress of proceedings; or (iii) commit further crimes⁴⁵ and conditions on release would insufficiently mitigate the risk that Mr Veseli may obstruct proceedings or commit further crimes.⁴⁶ In light of this finding, the Pre-Trial Judge considers that conditions falling short of implementing a custodial visit in Kosovo would not sufficiently address the risks associated with the release of Mr Veseli.

18. Therefore, in order to address the compelling humanitarian grounds put forth by Mr Veseli, as well as the risks attendant with his release, Mr Veseli's secure and temporary transfer to a facility in Kosovo, where he will remain in pre-trial detention in the custody of the SC, shall be ordered. This period for the custodial visit shall have a maximum duration of four days,⁴⁷ including travel, and be carried out under the following conditions:

- a) the Accused shall be transferred to a secure detention facility in Kosovo where he will remain in the custody of the SC;
- b) the Accused shall remain in the custody of the SC and be escorted and in the sight of escorting officer(s) at all times; escorting officers may be uniformed, if necessary, and remain at all times in the vicinity of the Accused, as necessary;

⁴⁵ Decision on Interim Release, paras 35, 49, 53, 54.

⁴⁶ Decision on Interim Release, para. 60.

⁴⁷ The exact dates of travel shall be determined by the Registry.

- c) the Accused shall only be permitted to have visits with his father and immediate family members, with prior approval of the chief custody officer and upon proof of identity;
- d) the Accused is not permitted to meet or otherwise have contact with persons other than identified immediate family members and attending medical personnel;
- e) the Accused shall provide the Registry with copies of the identity documents of immediate family members;
- f) the Accused shall not have access to communication devices other than as facilitated by the SC;
- g) the Accused is not permitted to pass or receive items to or from any person without prior inspection of the escorting officer(s);
- h) the Accused shall not have any contact whatsoever or in any way interfere with any victim or potential witness or otherwise interfere in any way with the proceedings or the administration of justice;
- i) the Accused shall not seek direct access to documents nor destroy evidence;
- j) the Accused shall not discuss his case with anyone, including the media, other than with his Counsel and members of his Defence team;
- k) the Accused, his Counsel, family members or associates shall refrain from making public statements and shall maintain the confidentiality of the Accused's presence on the territory of Kosovo prior to and during the entirety of Mr Veseli's stay in Kosovo; and
- l) the Accused shall comply strictly with any further order of the Pre-Trial Judge varying the terms or terminating his custodial visit.

19. The Pre-Trial Judge is accordingly satisfied that the compelling humanitarian grounds for temporary release put forward by Mr Veseli, when combined with strict custodial conditions, as detailed above, outweigh any risks that he may flee, obstruct the progress of proceedings, or commit further crimes.

20. The Pre-Trial Judge is further satisfied that a period of four days, including travel, enables adequate time for a visit, or multiple visitations, as the case may be, with a critically ill family member, and is thus proportional to the grounds for which the temporary release is sought.

21. Should there be a need to amend any of the above conditions, the Parties or Registry shall seize the Pre-Trial Judge immediately.

C. EXECUTION OF CONDITIONS

22. In the implementation of the above conditions, the Pre-Trial Judge authorises the Registry to make final operational and security arrangements with external partners and to notify any other authorities, including those in the Host State and Kosovo, as necessary for the implementation of this order.

23. The Pre-Trial Judge recalls that all entities and persons in Kosovo shall cooperate with the SC and shall comply without undue delay with any decision issued by the SC or any request for assistance.

D. REPORTING OBLIGATIONS

24. Throughout the custodial visit, the Registry shall provide the Pre-Trial Judge with regular updates. Such regular updates shall occur, at the very least, upon: i) the transfer of Mr Veseli to Kosovo; (ii) completion of the hospital visitation(s); and (iii) Mr Veseli's return to the detention unit of the SC in the Host State. Within

one week of completion of the custodial visit, the Registry shall file a report before the Pre-Trial Judge on the implementation of this decision.

V. DISPOSITION

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

- a. **GRANTS** the Request, in part, and **ORDERS** Mr Veseli to comply with all conditions specified in paragraph 18, above;
- b. **INSTRUCTS** the Registry to implement Mr Veseli's custodial visit under the conditions specified in paragraph 18, above;
- c. **ORDERS** the Defence to provide the Registry with the information described in paragraph 18(e), above;
- d. **INVITES** the Parties and/or the Registry to seize the Panel immediately should an amendment to the conditions set forth in paragraph 18 be required;
- e. **AUTHORISES** the Registry to make arrangements with external partners for the implementation of this decision;
- f. **AUTHORISES** the Registry to notify any other authorities deemed necessary for the implementation of this decision;
- g. **REMINDS** authorities in Kosovo that they shall comply without undue delay with any decision issued by the SC or any request for assistance;
- h. **ORDERS** the Registry to provide updates and file a report on the implementation of the present decision as indicated in paragraph 24, above.



Judge Nicolas Guillou

Pre-Trial Judge

Dated this Friday, 30 April 2021
At The Hague, the Netherlands.