

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

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Public Redacted Version of

URGENT

Request for a Custodial Visit on Compassionate Grounds

(F00383 dated 7 July 2021)

Specialist Prosecutor's Office

Jack Smith

Counsel for Kadri Veseli

Ben Emmerson

I. INTRODUCTION

1. The Defence for Mr Kadri Veseli (“Defence”) hereby requests that Mr Veseli be afforded an immediate seven (7) day custodial visit to Kosovo on compassionate grounds.

II. CLASSIFICATION

2. This request is filed confidentially and *ex parte* because the Defence wishes to dispel, in advance, the possible argument that Mr Veseli will exploit the grant of a custodial visit 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 with his immediate family.

III. RELEVANT BACKGROUND

3. On 30 April 2021, the Pre-Trial Judge rendered his *Decision on the Veseli Defence Request for Temporary Release on Compassionate Grounds – KSC-BC-2020-06/F00271*. Pursuant to this decision, Mr Veseli was granted a custodial visit in the context of which he visited his fatally ill father in the hospital and his mother at her home address.

4. At 09:15, this morning, 7 July 2021, Mr Veseli's father passed away.¹

IV. APPLICABLE LAW

5. 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*

¹ Confidential Annex 1: Death Certificate.

motu, the Panel may order the temporary release of a detained person, where compelling humanitarian grounds justify such release“.

6. Article 194 of the Kosovo Criminal Procedure Code² 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.”

7. 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.

V. SUBMISSION

8. Mr Veseli's father will be buried at 19:00 this evening and the three day mourning period for him will commence tomorrow – 8 July 2021. This period of mourning is essential to Mr Veseli's faith and tradition. Mr Veseli would require further time to grieve with his immediate family and with his mother. The details of these immediate family members were transmitted to the Registry during the previous custodial visit.

9. Participation in the mourning rite and supporting the grieving is both a familial and religious obligation and, thus, a constitutionally protected and basic human right.

² Law No. 04/L-123:

https://www.oak-ks.org/repository/docs/CRIMINAL_PROCEDURE_CODE_502172.pdf

10. As will be recalled from the last custodial visit, Mr Veseli, his defence team and members of his family fully complied with the instructions of the Chief Custody Officer and ensured maximum respect for both the terms and confidentiality of the Pre-Trial Judge's decision.³

11. [REDACTED].

12. As previously argued, the International Criminal Tribunal for the Former Yugoslavia ("ICTY") has firmly recognized that temporary release on compassionate grounds may be ordered in order 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.⁴ By way of example, the Defence refers the Pre-Trial Judge to the *Pavković* case which 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.⁵ In the present instance, and by way of contrast, Mr Veseli is not seeking temporary release – rather a strictly supervised custodial visit.

³ <https://youtu.be/CNSVA7Sv1Sw>: Television news item reporting on Mr Veseli's custodial visit to Kosovo which specifically mentions that members of Mr Veseli's family refused to comment to the press. As the reporter states: "We went to meet his family members and they did not tell us anything on the matter because according to them they could interfere in the process if they give any statement".

⁴ 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.

⁵ c.f.; IT-05-87-A, Decision on Urgent Motion Requesting Provisional Release of Nebojsa Paković on Compassionate Grounds, 17 September 2009:

"The Appeals Chamber notes that the risk of flight associated with granting the request for provisional release is higher at the present stage, after Pavković 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".

VI. CONCLUSION

13. In light of all the aforementioned, the Pre-Trial Judge is respectfully requested to order the Registry to facilitate a seven (7) day custodial visit to Kosovo in order to allow Mr Veseli to mourn his father and to share his family's grief under the same terms and conditions fixed in paragraph 18, *mutatis mutandis*, of Decision KSC-BC-2020-06/F00271.

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Ben Emmerson, CBE QC

Specialist Counsel for Kadri Veseli



Nicholas Kaufman

Specialist Co-Counsel for Kadri Veseli