



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA 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:** 8 July 2021

**Language:** English

**Classification:** Public

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

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Jack Smith

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**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Article 53 of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 56(3) and (5) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 5 November 2020, further to the confirmation of an indictment ("Confirmation Decision"),<sup>2</sup> Kadri Veseli ("Mr Veseli") was arrested pursuant to a decision and an arrest warrant issued by the Pre-Trial Judge.<sup>3</sup>

2. On 30 April 2021, the Pre-Trial Judge authorised the temporary release of Mr Veseli on compelling humanitarian grounds due to his father's health situation,<sup>4</sup> as modified on 4 May 2021 ("First Temporary Release Decision").<sup>5</sup>

3. On 2 July 2021, the Pre-Trial Judge ordered Mr Veseli's continued detention ("Detention Decision").<sup>6</sup>

4. On 7 July 2021, Mr Veseli submitted an urgent request for a custodial visit on compassionate grounds ("Request").<sup>7</sup> The Specialist Prosecutor's Office ("SPO")

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

<sup>2</sup> 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*, 26 October 2020, public; F00045/A03, Specialist Prosecutor, *Further Redacted Indictment*, 4 November 2020, public.

<sup>3</sup> KSC-BC-2020-06, F00050, Registrar, *Notification of Arrest of Kadri Veseli Pursuant to Rule 55(4)*, 5 November 2020, public; F00027/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Request for Arrest Warrants and Transfer Orders*, 26 October 2020, public; F00027/A03/RED, Pre-Trial Judge, *Public Redacted Version of Arrest Warrant for Kadri Veseli*, 26 October 2020, public.

<sup>4</sup> KSC-BC-2020-06, F00271, Pre-Trial Judge, *Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds*, 30 April 2021, confidential and *ex parte*. A public redacted version was issued on 11 May 2021, F00271/RED.

<sup>5</sup> KSC-BC-2020-06, F00276, Pre-Trial Judge, *Decision on Veseli Defence Request for Modification of Decision KSC-BC-2020-06/F00271*, 4 May 2021, confidential and *ex parte*. A public redacted version was issued on 11 May 2021, F00276/RED.

<sup>6</sup> KSC-BC-2020-06, F00380, Pre-Trial Judge, *Decision on Review of Detention of Kadri Veseli*, 2 July 2021, confidential. A public redacted version was issued on the same day, F00380/RED.

<sup>7</sup> KSC-BC-2020-06, F00383, Defence for Mr Veseli, *Request for a Custodial Visit on Compassionate Grounds*, 7 July 2021, confidential and *ex parte*.

responded on the same day (“Response”).<sup>8</sup> The Registrar filed submissions on the Request on the same day as well (“Registry Submissions”).<sup>9</sup> Mr Veseli has not submitted a reply.

## II. SUBMISSIONS

5. Mr Veseli requests that he be afforded an immediate seven day custodial visit to Kosovo on compassionate grounds under the same terms and conditions fixed in the First Temporary Release Decision, *mutatis mutandis*, to allow him to mourn his father who passed away on 7 July 2021.<sup>10</sup> According to Mr Veseli, his father will be buried on 7 July 2021 and the three day mourning period will commence on 8 July 2021.<sup>11</sup> Mr Veseli submits that 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.<sup>12</sup> He adds that he would require further time to grieve with his mother and his immediate family.<sup>13</sup> Mr Veseli further submits that he, his defence team and members of his family fully complied with the instructions of the chief custody officer during the visit authorised pursuant to the First Temporary Release Decision.<sup>14</sup> In addition, Mr Veseli avers that [REDACTED].<sup>15</sup> Lastly, Mr Veseli argues that the International Criminal Tribunal for the Former Yugoslavia has ordered temporary release on compassionate grounds in similar circumstances.<sup>16</sup>

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<sup>8</sup> KSC-BC-2020-06, F00384, Specialist Prosecutor, *Prosecution Response to Urgent Veseli for Custodial Visit*, 7 July 2021, confidential and *ex parte*.

<sup>9</sup> KSC-BC-2020-06, F00385, Registrar, *Registrar’s Submissions on Urgent Request for a Custodial Visit on Compassionate Grounds*, 7 July 2021 (notified on 8 July 2021), confidential and *ex parte*.

<sup>10</sup> Request, paras 1, 4, 13; KSC-BC-2020-06, F00383/A01, Defence for Mr Veseli, *Annex 1 to Request for a Custodial Visit on Compassionate Grounds*, 7 July 2021, confidential and *ex parte*.

<sup>11</sup> Request, para. 8.

<sup>12</sup> Request, paras 8-9.

<sup>13</sup> Request, para. 8.

<sup>14</sup> Request, para. 10.

<sup>15</sup> Request, para. 11.

<sup>16</sup> Request, para. 12.

6. The SPO responds that it does not oppose a strictly supervised, and fully custodial, visit of limited duration to facilitate Mr Veseli's attendance at an appropriate memorial event for his father.<sup>17</sup> The SPO proposes a number of conditions for such a visit.<sup>18</sup> It further requests that, in the event that Mr Veseli's presence in Kosovo should become known, the SPO, Registrar and/or EULEX should, to the extent necessitated, be authorized to provide any public clarification or statement.<sup>19</sup> The SPO submits that one of the following authorisations would be appropriate in the circumstances: (i) a transfer to facilitate attendance during, but for no longer than, the three-day mourning period; or (ii) a transfer to see immediate family and attend a specified, one-day memorial.<sup>20</sup>

7. The Registrar submits that the death of the Accused's father is an extremely painful situation, potentially justifying humanitarian measures to facilitate the temporary transfer of the Accused for a custodial visit in Kosovo.<sup>21</sup> According to the Registrar, a temporary transfer of the Accused to Kosovo in line with the conditions specified by the Panel in relation to the First Temporary Release Decision would be feasible.<sup>22</sup> The Registrar proposes facilitating again the temporary transfer of the Accused to the Specialist Chambers' ("SC") secure transfer facility in Kosovo.<sup>23</sup> The Registrar adds that the chief custody officer can arrange for the Accused to be securely transported [REDACTED] for one custodial visit subject to a number of conditions, and that he can facilitate an in-person visit with immediate family members at the SC's secure transfer facility in Kosovo.<sup>24</sup> The Registrar submits that the temporary transfer of the Accused to Kosovo for the purpose of a custodial visit can be facilitated for a period of up to three days,

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<sup>17</sup> Response, para. 1.

<sup>18</sup> Response, paras 1, 3.

<sup>19</sup> Response, footnote 4.

<sup>20</sup> Response, para. 5.

<sup>21</sup> Registry Submissions, para. 8.

<sup>22</sup> Registry Submissions, para. 11.

<sup>23</sup> Registry Submissions, paras 12, 25.

<sup>24</sup> Registry Submissions, paras 13, 14, 17.

including travel.<sup>25</sup> The Registrar further specifies that the departure of the Accused via air transport could be arranged as early as [REDACTED], with the return of the Accused via air transport on [REDACTED].<sup>26</sup> Furthermore, according to the Registrar, in Kosovo, the Registry would require the logistical and security support [REDACTED].<sup>27</sup> The Registrar also indicates that COVID-19 testing requirements are factored into the logistical planning for the transfer team, and the Accused, depending on the current travel restrictions in place, the Accused may be required to observe the applicable quarantine period in the Host State upon his return.<sup>28</sup> Lastly, should the temporary transfer of the Accused be ordered, the Registrar requests authorisation to notify any authorities deemed necessary for the implementation of the order, and further requests the Panel to order the Defence and the Accused to keep the temporary transfer of the Accused confidential.<sup>29</sup>

### III. APPLICABLE LAW

8. 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.

9. 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.

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<sup>25</sup> Registry Submissions, para. 21.

<sup>26</sup> Registry Submissions, para. 24.

<sup>27</sup> Registry Submissions, para. 26.

<sup>28</sup> Registry Submissions, paras 28-29.

<sup>29</sup> Registry Submissions, paras 30-31.

10. 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.

#### IV. DISCUSSION

##### A. TEMPORARY RELEASE ON COMPELLING HUMANITARIAN GROUNDS

11. The Pre-Trial Judge notes that temporary release on compelling humanitarian grounds is exceptional. Several factors may be relevant in relation to such an 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.<sup>30</sup>

12. Mr Veseli is charged with grave crimes<sup>31</sup> and his continued detention has been found to be necessary.<sup>32</sup> That said, the Pre-Trial Judge has taken note of the Registry Submissions regarding feasibility, security and logistics. Moreover, the Pre-Trial Judge considers that the facts that Mr Veseli's father has passed away and that the mourning ritual is essential to his faith and tradition are decisive. On balance, and in the specific circumstances of this case, the death of Mr Veseli's father amounts to exceptional circumstances and compelling humanitarian grounds justifying his temporary release for a custodial visit.<sup>33</sup>

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<sup>30</sup> ECtHR, *Lind v. Russia*, no. 25664/05, 6 December 2007, para. 95, with further case law references.

<sup>31</sup> 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.

<sup>32</sup> Detention Decision, para. 57.

<sup>33</sup> Similarly ICTY, *Prosecutor v. Popović et al*, IT-05-88-T, Trial Chamber II, Decision on Pandurević's Request for Provisional Release on Compassionate Grounds, 11 December 2007; *Prosecutor v. Haradinaj et al*, IT-04-84-T, Trial Chamber I, 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. Šainović et al*, IT-05-88-A, Appeals Chamber, Decision on Sreten Lukic's Third Motion for Provisional Release on Compassionate Grounds, 3 September 2010.

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

#### B. CONDITIONS OF CUSTODIAL VISIT

14. The Pre-Trial Judge recalls his previous findings that there is a risk that Mr Veseli may: (i) abscond; (ii) obstruct the progress of proceedings; or (iii) commit further crimes, and that imposing conditions in relation to his release would insufficiently mitigate the latter two risks.<sup>34</sup> In light of these findings, 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 temporary release of Mr Veseli.

15. Therefore, in order to address the compelling humanitarian grounds put forth by Mr Veseli, as well as the risks associated with his temporary release, the Pre-Trial Judge orders 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. The custodial visit, including travel, shall last three days at the most,<sup>35</sup> subject to any need to extend the visit for operational needs as determined by the Registrar, and shall 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 at all times;
- b) the Accused shall, at all times and without exception, remain in the custody of the SC, be escorted by escorting officers, and remain in the sight and within earshot of escorting officers; the escorting officers may be

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<sup>34</sup> Detention Decision, paras 32, 33, 35-37, 39-41, 42, 47-51.

<sup>35</sup> The exact dates of travel shall be determined by the Registry in accordance with operational and logistical constraints.

uniformed, if necessary, and remain in the vicinity of the Accused at all times, as necessary;

c) the Accused shall only be transported from the secure detention facility [REDACTED] and, subject to prior approval of the chief custody officer and provision of proof of identity, immediate family members [REDACTED]; the chief custody officer may take any decision necessary regarding the custodial visit on the basis of operational and security concerns, including terminating the visit;

d) the Accused is not permitted to be alone with his mother and other pre-identified immediate family members at any time, and he shall not meet or otherwise have contact with persons other than his mother and other identified immediate family members;

e) the Accused shall provide the Registry with copies of the identity documents of immediate family members to the extent that such copies have not been provided in connection with the First Temporary Release Decision;

f) the Accused is permitted to be visited by immediate, pre-identified family members at the secure detention facility, within the sight and hearing of the chief custody officer and under any other conditions deemed necessary by the chief custody officer to implement the present decision;

g) the Accused shall not have access to communication devices or any other means of communication, including pen and paper, other than as facilitated by the SC;

h) the Accused is not permitted to pass or receive items to or from any person without prior inspection of the escorting officer(s);

i) 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;



- j) the Accused shall not seek direct access to documents nor destroy evidence;
- k) the Accused shall not discuss his case with anyone, including the media, other than with his Counsel and members of his Defence team;
- l) the Accused, his Counsel, members of his Defence team, family members or associates shall refrain from making public statements and shall maintain secrecy regarding the Accused's presence on the territory of Kosovo prior to and during the entirety of Mr Veseli's stay in Kosovo; should Mr Veseli's presence become known, the SPO, Registry or EULEX, as appropriate, are authorised to make any necessary statement in that regard;
- m) the Accused shall comply strictly with any further order of the Pre-Trial Judge varying the terms or terminating his custodial visit; and
- n) the Accused shall comply with any Covid-19 related measures as specified by the Registry.

16. 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.

17. The Pre-Trial Judge is further satisfied that a period of three days, including travel, enables adequate time for Mr Veseli to participate in part in the mourning ritual and to grieve with his mother and immediate family members, and is thus proportional to the grounds for which the temporary release is sought.

18. 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

19. 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.

20. 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

21. 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 any custodial visit [REDACTED]; (iii) completion of any in-person visit at the secure detention facility; (iv) any breaches of the aforementioned conditions by Mr Veseli or others; and (v) Mr Veseli's return to the detention unit of the SC in the Host State. Within one week of the completion of the custodial visit, the Registry shall file a report to the Pre-Trial Judge on the implementation of this decision.

### DISPOSITION

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

- a) **GRANTS** the Request and **ORDERS** Mr Veseli to comply with all conditions specified in paragraph 15 above;
- b) **INSTRUCTS** the Registry to implement Mr Veseli's custodial visit under the conditions specified in paragraph 15 above;

- c) **ORDERS** the Defence to provide the Registry with the information described in paragraph 15(e) above to the extent that such information has not been provided in connection with the First Temporary Release Decision;
- d) **INVITES** the Parties and/or the Registry to seize the Pre-Trial Judge immediately should an amendment to the conditions set forth in paragraph 15 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 21 above; and
- i) **ORDERS** the Defence, the SPO and the Registry to file public redacted versions of the Request, Response and Registry Submissions, respectively, upon the return of Mr Veseli to the Host State.



**Judge Nicolas Guillou**  
**Pre-Trial Judge**

Dated this Thursday, 8 July 2021

At the Hague, the Netherlands.