

In: KSC-CA-2022-01
The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: Court of Appeal Panel
Judge Michele Picard, Presiding Judge
Judge Kai Ambos
Judge Nina Jorgensen

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Nasim Haradinaj

Date: 27 October 2022

Language: English

Classification: Public

**Public Redacted Version of Urgent Haradinaj Request for
Temporary Release on Compassionate Grounds**

Specialist Prosecutor

Jack Smith

Alex Whiting

Matt Halling

Counsel for Nasim Haradinaj

Toby Cadman

Carl Buckley

Almudena Bernabeu

Counsel for Hysni Gucati

Jonathan Elystan Rees KC

Huw Bowden

Eleanor Stephenson

I. INTRODUCTION

1. Mr. Nasim Haradinaj (“Appellant”) requests that the Panel of the Court of Appeals Chamber order the temporary release of Mr. Nasim Haradinaj (“Appellant”) to allow him to visit [REDACTED], who is in a critical medical condition, suffering from [REDACTED].
2. It is understood that the circumstances are such that the visit should take place as soon as possible as [REDACTED] condition is critical and the prognosis grave. For this reason, in order to expedite matters, the Appellant has taken the unusual step of filing this Request before he is in a position to file the full details of [REDACTED] situation have been received. An Annex setting out the requisite additional information, including a statement from the attending physician [REDACTED], will be filed in due course.

II. BACKGROUND

3. On 28 July 2022, the Court of Appeals Panel ordered that the Appellant shall remain in detention pending his appeal, unless the Panel orders otherwise.¹
4. The Appellant has discovered that [REDACTED] is gravely ill at the [REDACTED] and that his condition is such that he should visit him urgently. The attending

¹ KSC-CA-2022-01/F00031, para. 12.

physician has agreed to be provide confirmation as to the prognosis within the next 24 hours.

III. LAW

5. Article 8 of the European Convention on Human Rights (“ECHR”) provides:

(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

6. Pursuant to the Constitution of the Republic of Kosovo (“Constitution”), everyone enjoys the right to have her/his private and family life respected² and family enjoys special protection by the state in a manner provided by law.³

7. Rule 56(3) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”) provides that “the Panel may order the temporary release of a

² Constitution, Article 36(1).

³ Constitution, Article 37(3).

detained person, where compelling humanitarian grounds justify such release”.

Pursuant to Rule 56(5) of the Rules, “[t]he Panel may impose such conditions upon the release as deemed appropriate to ensure the presence of the detained person”.

IV. SUBMISSIONS

8. The Panel has noted that visiting a close relative in critical condition has been accepted, under certain conditions, by this and other jurisdictions, as a compelling humanitarian ground warranting temporary release.⁴
9. The Panel has found that Article 8 of the ECHR does not guarantee an unconditional right to leave prison to visit a sick relative and that there are cases where the rights of a detainee, by the very nature of his or her situation, must be subjected to various limitations but that every such limitation must be justifiable as being necessary in a democratic society.⁵
10. The Appellant submits that subject to such conditions as the Panel sees fit to impose a failure to grant him the temporary release that he is seeking would constitute a disproportionate interference with his right to respect for family life under Article 8 of the ECHR and Articles 36(1) and 37(3) of the Constitution.

⁴ KSC-CA-2022-01/F00043/RED, para. 18.

⁵ KSC-CA-2022-01/F00043/RED, para. 16.

V. CONCLUSION

11. Accordingly, the Court of Appeals Panel is requested to order the temporary release of the Appellant pursuant to Rule 56 of the Rules in order to allow him to visit [REDACTED] who is in a critical medical condition in [REDACTED] in which the prognosis remains grave. There is a strong probability that the [REDACTED] condition will sharply decline, and he may not survive, and the Appellant seeks an order on compassionate grounds for him to visit [REDACTED] at this very critical time.

VI. CLASSIFICATION

12. This filing is classified as confidential and *ex parte* because it refers to sensitive medical information about [REDACTED].

Word Count: 700 words



Toby Cadman
Specialist Counsel for Nasim Haradinaj



Almudena Bernabeu
Specialist Co-Counsel



Carl Buckley
Specialist Co-Counsel