



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: **KSC-CA-2022-01**

Before: **A Panel of the Court of Appeals Chamber**
Judge Michèle Picard
Judge Kai Ambos
Judge Nina Jørgensen

Registrar: Fidelma Donlon

Date: 16 November 2022

Original language: English

Classification: **Public**

**Public Redacted Version of Decision on Haradinaj's Request for
Temporary Release on Compassionate Grounds**

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THE PANEL OF THE COURT OF APPEALS CHAMBER of the Kosovo Specialist Chambers (“Court of Appeals Panel” or “Panel” and “Specialist Chambers”, respectively),¹ acting pursuant to Article 33(1)(c) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 172 of the Rules of Procedure and Evidence (“Rules”), is seised of a request filed on 27 October 2022 by Mr Nasim Haradinaj (“Request” and “Haradinaj”, respectively).²

I. BACKGROUND

1. On 25 September 2020, Haradinaj was arrested in Kosovo pursuant to an arrest warrant issued by the Single Judge.³ He was transferred to the detention facilities of the Specialist Chambers in The Hague on the same day.⁴
2. On 18 May 2022, the Trial Panel issued a judgment finding Haradinaj guilty of five of the six counts charged and sentencing him to four and a half years of imprisonment, with credit for the time served, and to a fine of one hundred euros.⁵

¹ F00011, Decision Assigning a Court of Appeals Panel, 21 June 2022.

² F00077, Urgent Haradinaj Request for Temporary Release on Compassionate Grounds, 27 October 2022 (confidential and *ex parte*) (“Request”).

³ KSC-BC-2020-07, F00016, Notification of Arrest Pursuant to Rule 55(4), 25 September 2020 (strictly confidential and *ex parte*, reclassified as public on 15 October 2020); KSC-BC-2020-07, F00012/A03/COR/RED, Public Redacted Version of Corrected Version of Arrest Warrant for Nasim Haradinaj, 26 September 2020 (strictly confidential and *ex parte* uncorrected version filed on 24 September 2020, strictly confidential and *ex parte* corrected version filed on 24 September 2020, reclassified as confidential and *ex parte* on 9 October 2020). See also KSC-BC-2020-07, F00012, Decision on Request for Arrest Warrants and Transfer Orders, 24 September 2020 (strictly confidential and *ex parte*, reclassified as public on 9 October 2020).

⁴ KSC-BC-2020-07, F00020, Notification of the Reception of Nasim Haradinaj in the Detention Facilities of the Specialist Chambers, 26 September 2020 (strictly confidential and *ex parte*, reclassified as public on 15 October 2020). See also KSC-BC-2020-07, F00012/A04/RED, Public Redacted Version of Order for Transfer to Detention Facilities of the Specialist Chambers, 26 September 2020 (strictly confidential and *ex parte* version filed on 24 September 2020).

⁵ KSC-BC-2020-07, F00611/RED, Public Redacted Version of the Trial Judgment, 18 May 2022 (confidential version filed on 18 May 2022), paras 1015-1017.

3. On 27 October 2022, Haradinaj filed the Request, seeking temporary release on compassionate grounds, and stating *inter alia* that medical information in support of his Request would be filed within 24 hours thereof.⁶
4. On 7 November 2022, the Specialist Prosecutor's Office ("SPO") responded ("SPO Response").⁷
5. On 8 November 2022, Counsel for Haradinaj informed the Panel via email that they hoped to submit the relevant medical reports in the next one or two days, and that they would be replying to the SPO Response the following day.⁸
6. On 15 November 2022, Counsel for Haradinaj informed the Panel via email that the relevant medical records had still not been obtained, asked the Panel to grant "an additional period" to file a reply and provide documentation, and asked that the Panel not make any ruling until at least 21 November 2022.⁹

II. DISCUSSION

A. PRELIMINARY MATTERS

7. Regarding Haradinaj's request for an extension of time to file his reply, the Panel notes that, pursuant to Rule 76 of the Rules, a reply must be filed within five days of the response, and the Panel shall only consider parts thereof addressing new issues arising from the response. The Panel recalls, however, that Rule 9(5)(a) of the Rules allows for the variation of any time limit prescribed by the Rules, upon a showing of good cause or *proprio motu*.¹⁰ In addition, again pursuant to Rule 76 of the

⁶ Request, paras 2, 4.

⁷ F00086, Prosecution Response to Haradinaj Request for Temporary Release, 7 November 2022 (confidential and *ex parte*) ("SPO Response").

⁸ CRSPD8, Emails re Medical Reports, 8 November 2022 (confidential) ("Email of 8 November 2022").

⁹ CRSPD9, Emails between CMU and Nasim Haradinaj Defence Team regarding Medical Records, 15 November 2022 (confidential) ("Email of 15 November 2022").

¹⁰ See e.g. KSC-BC-2020-06, IA024/F00014, Decision on Defence Requests for Extension of Time and Word Limits to Reply, 22 September 2022 ("Decision on Requests for Extension"), para. 2.

Rules, applications for an extension of time shall be filed sufficiently in advance to enable the Panel to rule on the application before the expiry of the relevant time limit.¹¹

8. The Panel notes that the request for an extension of time was not properly brought before the Panel, having merely been included in an email which was, without reason, not also addressed to the opposing party. In any event, the Panel notes that the request for extension is untimely, under Rule 76 of the Rules, having been made after the time limit for the reply in question (14 November 2022) had already expired. The request for extension also fails to show good cause. In this regard, the Panel notes that the delay in obtaining the relevant medical reports is not pertinent to the issue of filing a reply, as the latter is not a proper vehicle for filing, for the first time, documents which (should) form the very foundation for the original motion. The Panel further notes that Haradinaj makes no submissions on when the requested extended deadline should be.

9. The Appeals Panel therefore dismisses Haradinaj's request for an extension of time to reply to the SPO Response, and as a result also his request not to rule on the Request until at least 21 November 2022.

B. SUBMISSIONS OF THE PARTIES

10. Haradinaj requests urgent temporary release to the [REDACTED] to allow him to visit his [REDACTED], [REDACTED], who is suffering from [REDACTED], is in critical condition with a grave prognosis, and may not survive.¹² He submits that additional information, including from the attending physician, will be filed within 24 hours of the Request.¹³ Haradinaj argues that, subject to conditions imposed by the Panel, not granting his request would disproportionately interfere with his rights

¹¹ Decision on Requests for Extension, para. 2.

¹² Request, paras 1-2, 4, 11.

¹³ Request, paras 2, 4.

under Article 8 of the European Convention on Human Rights (“ECHR”) and Articles 36(1) and 37(3) of the Constitution of Kosovo.¹⁴

11. The SPO responds that the Request should be rejected as Haradinaj failed to provide any information substantiating his [REDACTED] alleged medical condition or its severity.¹⁵ Moreover, it argues that, unlike in Kosovo, the Specialist Chambers and SPO have no permission to operate in [REDACTED] and the latter is not bound to cooperate with them.¹⁶ In the SPO’s view, there is also no indication that [REDACTED] would accommodate a custodial visit – noting that the accused person remained in the Specialist Chamber’s custody in all previous instances of temporary release – and it is impractical to urgently arrange this.¹⁷ Finally, the SPO argues that, given the nature of Haradinaj’s conviction and his statements that he would repeat the criminal conduct, he cannot be expected to follow any conditions governing temporary release.¹⁸

C. ASSESSMENT OF THE COURT OF APPEALS PANEL

12. The Panel recalls that, pursuant to Rule 56(3) of the Rules, upon request by a detained person or *proprio motu*, the Panel may order the temporary release of the detained person, where compelling humanitarian grounds justify such release.¹⁹ Article 8 of the ECHR does not guarantee an unconditional right to leave prison to visit a sick relative and there are cases where the rights of a detainee, by the very nature of his or her situation, must be subjected to various limitations.²⁰ However, every such limitation must be justifiable as being necessary in a democratic society.²¹ Among the

¹⁴ Request, paras 8-10.

¹⁵ SPO Response, paras 1-2, 4-5.

¹⁶ SPO Response, paras 1, 3-4, citing Articles 53 and 55 of the Law.

¹⁷ SPO Response, para. 3, fn. 5.

¹⁸ SPO Response, para. 4.

¹⁹ F00043/RED, Public Redacted Version of Decision on Gucati’s Fourth Request for Temporary Release on Compassionate Grounds, 22 September 2022 (confidential and *ex parte* version filed on 13 September 2022) (“Gucati Fourth Temporary Release Decision”), para. 16.

²⁰ Gucati Fourth Temporary Release Decision, para. 16.

²¹ Gucati Fourth Temporary Release Decision, para. 16.

factors to be considered in this assessment are 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, the possibility of escorted leave and other circumstances informing the alleged "humanitarian" grounds.²²

13. The Panel also notes 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.²³ To this end, the Accused must provide medical evidence detailing the nature and severity of the close relative's condition.²⁴ However, despite promising to provide medical substantiation of the Request no later than 24 hours thereafter, and then again stating that he would provide it one or two days following his Counsel's email of 8 November 2022, Haradinaj provided none.²⁵ He therefore failed to show that compelling humanitarian grounds justifying the requested release exist, as required by Rule 56(3) of the Rules.

14. The Panel furthermore notes that Rule 56(4) of the Rules states that a detained person shall not be released in a third state without the consent of that state, and that the Panel shall hear the third state to which the detained person seeks to be released.²⁶ In this regard, the Panel notes that Haradinaj did not make any submissions nor file any documents addressing the requirements of Rule 56(4) of the Rules, namely

²² Gucati Fourth Temporary Release Decision, para. 16.

²³ Gucati Fourth Temporary Release Decision, para. 18.

²⁴ ICTY, *Prosecutor v. Strugar*, IT-01-42-A, Decision on Defence Request Seeking Provisional Release on the Grounds of Compassion, 2 April 2008, paras 12-13. See also F00020/RED, Public Redacted Version of Decision on Gucati's Third Request for Temporary Release on Compassionate Grounds, 4 July 2022 (confidential and *ex parte* version filed on 30 June 2022), para. 12; Gucati Fourth Temporary Release Decision, para. 17.

²⁵ Request, paras 2, 4; Email of 8 November 2022. See also Email of 15 November 2022, where Counsel for Haradinaj reiterates the difficulties in obtaining the relevant medical reports, but does not give an indication of when they may be forthcoming.

²⁶ See also Article 55(2) of the Law; Rule 208(1)(b) of the Rules.

obtaining guarantees from [REDACTED] on its willingness and ability to permit and facilitate the requested temporary release.²⁷

15. For these reasons, the Panel dismisses Haradinaj's Request, without prejudice to him filing a new request for temporary release on compassionate grounds containing the necessary supporting documents.

III. CLASSIFICATION OF FILINGS

16. The Panel notes that the Request was filed confidentially and *ex parte*, as it contains medical information regarding Haradinaj's [REDACTED], and the SPO Response was filed under the same classification pursuant to Rule 82(4) of the Rules.²⁸ Considering that all submissions filed before the Specialist Chambers shall be public unless there are exceptional reasons for keeping them confidential, and that Parties shall file public redacted versions of all non-public submissions filed,²⁹ the Panel directs the Parties to respectively file a public redacted version of the Request (F00077) and the SPO Response (F00086) within seven days of being notified of the present Decision.

IV. DISPOSITION

17. For these reasons, the Court of Appeals Panel:

DISMISSES Haradinaj's request for an extension of time to file a reply;

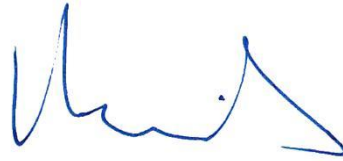
DISMISSES the Request; and

²⁷ See KSC-BC-2020-04, IA003/F00005/RED, Public Redacted Version of Decision on Pjetër Shala's Appeal Against Decision on Review of Detention, 11 February 2022 (confidential version filed on 11 February 2022), para. 57. See also ICTR, *Prosecutor v. Ndindiliyimana et al.*, ICTR-2000-56-I, Decision on Augustin Ndindiliyimana's Emergency Motion for Temporary Provisional Release, 11 November 2003, para. 18.

²⁸ Request, para. 12; SPO Response, fn. 8.

²⁹ See e.g. Gucati Fourth Temporary Release Decision, para. 26.

ORDERS the Parties to file public redacted versions of their respective filings identified in paragraph 16 of the present Decision within seven days of being notified of this Decision.



**Judge Michèle Picard,
Presiding Judge**

Dated this Wednesday, 16 November 2022

At The Hague, the Netherlands