



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-CA-2022-01/CR002

Before: Single Judge

Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 27 March 2023

Language: English

Classification: Public

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

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THE SINGLE JUDGE,¹ pursuant to Article 33(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 82 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 2 February 2023, a Panel of the Court of Appeals Chamber rendered the Appeal Judgment wherein it partially affirmed the convictions by Trial Panel II of Hysni Gucati and Nasim Haradinaj ("Mr Haradinaj"),² reducing their sentences to four years and three months of imprisonment, with credit for time served, further affirming the additional sentence imposed on each to pay a fine of one hundred Euros (100 EUR).³

2. On 3 March 2023, Counsel for Mr Haradinaj filed a request seeking temporary release on compassionate grounds ("Haradinaj Request").⁴ Mr Haradinaj requests a custodial visit to attend the funeral of his brother, Agron Haradinaj, who passed away at 23h45 on 1 March 2023, in Germany.⁵ Mr Haradinaj likewise requests to attend the three-day mourning period to be held following the funeral according to mourning rites.⁶

¹ KSC-CA-2022-01, CR002/F00002, President, *Decision Assigning a Single Judge*, 2 March 2023, confidential.

² KSC-BC-2020-07, F00611/RED, Trial Panel II, *Public Redacted Version of the Trial Judgment*, 18 May 2022, public.

³ KSC-CA-2022-01, F00114, Court of Appeals, *Appeal Judgment* ("Appeal Judgment"), 2 February 2023, public, para. 442.

⁴ KSC-CA-2022-01, CR002/F00001, Specialist Counsel, *Haradinaj Defence Request for Temporary Release on Compassionate Grounds*, 3 March 2023, confidential, with one Annex, confidential.

⁵ Haradinaj Request, paras 1-2, 23-24. *See also* Annex A to Haradinaj Request.

⁶ Haradinaj Request, paras 16, 23-24.

3. On 3 March 2023, the SPO filed a response to the Haradinaj Request (“SPO Response”), agreeing to a one-day custodial visit under conditions and deferring to the Registrar as to whether and when such a visit would be most appropriate.⁷

4. On 3 March 2023, the Single Judge rendered an order instructing the Registrar to file submissions on the Haradinaj Request by Monday, 16 March 2023 at 16h00, and ordering Mr Haradinaj to file a reply to the SPO Response and the Registrar’s forthcoming submissions, if he so wishes, by Tuesday, 7 March 2023, at 12h00.⁸

5. On 3 March 2023 after working hours, Counsel for Mr Haradinaj filed further submissions,⁹ informing the Single Judge that the funeral is scheduled for 5 March 2023 at 15h00, in Glogjan, Kosovo, and seeking an urgent ruling on the Haradinaj Request (“Supplement to the Haradinaj Request”).¹⁰

6. On 6 March 2023 noting, *inter alia*, the missing information in the Haradinaj Request concerning the location of custodial visit in Kosovo, the Registrar requested an extension of two working days to file her submissions on the Haradinaj Request (“Extension of Time Request”).¹¹ The Registrar further informed the Single Judge that [REDACTED], and that she would be evaluating the impact thereof on her assessment of feasibility, in particular in relation to mission security.¹²

⁷ KSC-CA-2022-01, CR002/F00003, Specialist Prosecutor, *Prosecution Response to Haradinaj Request for Temporary Release on Compassionate Grounds*, 3 March 2023, confidential.

⁸ KSC-CA-2022-01, CR002/F00004, Single Judge, *Order for Submissions on Temporary Release Request*, 3 March 2023, confidential.

⁹ KSC-CA-2022-01, CR002/F00005, Specialist Counsel, *Urgent Filing Further Submissions on the Haradinaj Defence Request for Temporary Release on Compassionate Grounds*, confidential, with one Annex, confidential.

¹⁰ Supplement to the Haradinaj Request, paras 1-2. *See also* Annex A to Supplement to the Haradinaj Request.

¹¹ KSC-CA-2022-01, CR002/F00006, Registrar, *Request for Extension of Time to File the Registrar’s Submissions on the Haradinaj Request for Temporary Release on Compassionate Grounds*, 6 March 2023, confidential.

¹² Extension of Time Request, para. 5.

7. On 6 March 2023, Counsel for Mr Haradinaj withdrew the Haradinaj Request on the basis that the funeral of Mr Haradinaj's brother was held on 5 March 2023, and the attendance at the funeral was the central part of the Request.¹³

8. On 7 March 2023, the Registrar submitted additional information about her assessment of the Haradinaj Request ("Submission of Additional Information").¹⁴ In particular, the Registrar informed the Single Judge that [REDACTED].¹⁵

II. DISCUSSION

9. The Single Judge recalls that pursuant to Rule 56(3) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers, 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.

10. The Single Judge notes that neither this nor other jurisdictions guarantee an unconditional right to temporary release on compelling humanitarian grounds.¹⁶ Rather, temporary release on compassionate grounds is exceptional.¹⁷ A number of factors may be relevant in relation to this assessment, such as the stage of proceedings, the nature of the criminal offence, the detained person's character, the gravity of the relative's illness, the degree of kinship, the possibility of escorted leave, as well as other circumstances informing the alleged humanitarian

¹³ KSC-CA-2022-01, CR002/F00008, Specialist Counsel, *Withdrawal of the Haradinaj Defence Request for Temporary Release on Compassionate Grounds*, 6 March 2023, confidential, para. 3.

¹⁴ KSC-CA-2022-01, CR002/F00009, Registrar, *Submission of Additional Information Related to the Registrar's Assessment of Requests for Temporary Release on Compassionate Grounds*, 7 March 2023, confidential, with Annexes 1-2, confidential.

¹⁵ Submission of Additional Information, para. 4. The Registrar also submitted the transcript of both video segments to the Single Judge. See Annexes 1-2 to Submission of Additional Information.

¹⁶ See for example KSC-CA-2022-01, F00043/RED, Court of Appeals, *Public Redacted Version of Decision on Gucati's Fourth Request for Temporary Release on Compassionate Grounds* ("Decision on Gucati's Fourth Request"), 13 September 2022, public, para. 16. See also ECtHR, *Lind v. Russia*, no. 25664/05, 6 December 2007, para. 95, with further case law references.

¹⁷ See, for example, KSC-BC-2020-06, F00271/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds*, 30 April 2021, public, para. 13.

grounds.¹⁸ Moreover, for the purpose of granting a request of this kind, a series of preparatory steps must be taken, including feasibility and security assessments, in addition to coordinating the transfer with external partners.

11. The Single Judge recalls that Mr Haradinaj's brother passed away at 23h45 on Wednesday, 1 March 2023, in Germany.¹⁹ The Single Judge further observes that Counsel for Mr Haradinaj filed the Haradinaj Request on Friday, 3 March 2023. The Single Judge immediately ordered the Registrar to provide any relevant information that would facilitate the assessment of the Haradinaj Request, including operational requirements. Later that evening, at 17h51, Counsel for Mr Haradinaj informed the Single Judge about the exact date and place of the funeral of Mr Haradinaj's brother, seeking an urgent ruling on the Haradinaj Request.²⁰

12. The Single Judge underscores that any such temporary release, if granted, hinges on certain operational and mission security requirements and, in this sense, consultations with, and the cooperation of external partners. Given the necessary consideration that should be afforded to the logistical and security aspects of a temporary release, Mr Haradinaj cannot expect that the Single Judge rule on the Haradinaj Request before the Registrar had the opportunity to conduct the requisite feasibility and security assessments and advise the Single Judge on the matter. The necessary steps to be taken by the Registrar for that purpose, such as to deploy a transfer team, liaise with external partners in the field for logistical and security support, or arrange for air transport, imply that a custodial visit, if granted, cannot be arranged in a matter of a few hours.

13. In view of the above, the Single Judge notes that the Haradinaj Request was not denied, but that Counsel for Mr Haradinaj withdrew the Haradinaj Request,

¹⁸ See for example Decision on Gucati's Fourth Request, para. 16.

¹⁹ Haradinaj Request, para. 2 See also Annex A to Haradinaj Request.

²⁰ Supplement to the Haradinaj Request. See also Annex A to Supplement to the Haradinaj Request.

while the feasibility and security assessments were ongoing. Accordingly, the Single Judge takes note of the withdrawal of the Haradinaj Request and finds that a ruling on the matter is moot.

14. Lastly, considering the principle of publicity, the Single Judge directs the Parties and the Registry to either indicate whether the following filings can be reclassified as public, or to file public redacted versions of their respective filings by 29 March 2023:

- the Haradinaj Request (CR002/F00001, main filing only);
- the SPO Response (CR002/F00003);
- the Supplement to the Haradinaj Request (CR002/F00005, main filing only);
- the Extension of Time Request (CR002/F00006);
- the withdrawal of the Haradinaj Request (CR002/F00008); and
- the Registrar's Submission of Additional Information (CR002/F00009, including Annexes 1-2).

III. DISPOSITION

15. For the above-mentioned reasons, the Single Judge hereby:

ORDERS the Parties and the Registry to either indicate whether the filings identified in paragraph 14 of this decision can be reclassified as public, or to file public redacted versions of their respective filings by 29 March 2023.



Judge Nicolas Guillou

Single Judge

Dated this Monday, 27 March 2023

At The Hague, the Netherlands