

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

**Before:** The President of the Specialist Chambers  
Judge Ekaterina Trendafilova

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Counsel for Nasim Haradinaj

**Date:** 2 March 2023

**Language:** English

**Classification:** Public

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**Public Redacted Version of Haradinaj Defence Request for Temporary Release on  
Compassionate Grounds with One Confidential Annex**

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## I. INTRODUCTION

1. Mr. Nasim Haradinaj (“Applicant”) requests that the President of the Specialist Chambers grants temporary release by way of a custodial visit, the date and duration of which is to be determined, to allow the Applicant to attend the funeral service of his brother, Argon Haradinaj [DOB 17/07/1966], who was being treated at the Klinikum Forchheim - Fränkische Schweiz gGmbH in a critical condition having [REDACTED].
2. The Applicant’s brother passed away at 23:45hrs on 1 March 2023.
3. The death certificate is appended at Annex A to this application.

## II. BACKGROUND

4. 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.<sup>1</sup>
5. On 27 October 2022, the Appellant submitted an application for temporary release on compassionate grounds to visit his brother at the Klinikum Forchheim - Fränkische Schweiz gGmbH in Germany due to the Appellant’s brother’s condition reaching a critical stage and the prognosis grave.<sup>2</sup>

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<sup>1</sup> KSC-CA-2022-01/F00031, para. 12.

<sup>2</sup> KSC-CA-2022-01/F00077. A publicly redacted version was filed on 22 November 2022.

6. On 7 November 2022, the SPO responded to the application opposing the Appellant's release.<sup>3</sup>
7. On 16 November 2022, the Appeals Panel issued a decision denying the application.<sup>4</sup>
8. On 2 February 2023, the Court of Appeals Panel issued its appeal judgment.<sup>5</sup>
9. On 1 March 2023, the Appellant's brother, Argon Haradinaj, passed away.

### III. LAW

10. 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.

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<sup>3</sup> KSC-CA-2022-01/F00086. A publicly redacted version was filed on 17 November 2022.

<sup>4</sup> KSC-CA-2022-01/F00092. A publicly redacted version was filed on 23 November 2022.

<sup>5</sup> KSC-CA-2022-01/F00114.

11. Pursuant to the Constitution of the Republic of Kosovo (“Constitution”), everyone enjoys the right to have her/his private and family life respected<sup>6</sup> and family enjoys special protection by the state in a manner provided by law.<sup>7</sup>
12. 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 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

13. The Specialist Chambers 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.<sup>8</sup>
14. The Applicant submits that subject to such conditions as the Specialist Chambers sees fit to impose a failure to grant him the temporary release that he is seeking would

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<sup>6</sup> Constitution, Article 36(1).

<sup>7</sup> Constitution, Article 37(3).

<sup>8</sup> KSC-CA-2022-01/F00043/RED, para. 16.

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.

15. It is understood that the circumstances are such that the visit should take place as soon as possible as the funeral service is likely to be held either on 5 or 6 March 2023. The Applicant's brother's body is expected to be transported to Kosovo on 4 March 2023 and according to the family's religious beliefs the funeral would need to place as soon as possible thereafter.
16. The Applicant further submits that, according to mourning rites, the Applicant will be required to attend a three-day mourning period and therefore seeks temporary release for a period of three days following the funeral.
17. The Applicant recalls that, the Specialist Chambers has previously ruled, temporary release on compelling humanitarian grounds is exceptional.<sup>9</sup> The Specialist Chambers will consider a variety of factors, such as the stage of the proceedings, the nature of the criminal offence, the Applicant's character, the gravity of the illness, the degree of kinship, and the possibility of escorted leave.<sup>10</sup>
18. It is noted that the Applicant's appeal was determined by the Court of Appeals Panel on 2 March 2023 and that the matter is pending an appeal to the Supreme Court. The Applicant has served two (2) years and five (5) months of a sentence of a total

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<sup>9</sup> KSC-BC-2020-06, F00386, *Pre-Trial Judge, Second Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds*, 8 July 2021, *confidential and ex parte*, para. 11. A public redacted version was issued on 16 July 2021, F00386/RED.

<sup>10</sup> *Ibid.* para. 20 citing ECtHR, *Lind v. Russia*, no. 25664/05, 6 December 2007, para. 95, with further case law references.

sentence of four (4) years and three (3) months' imprisonment. The Applicant has therefore served a considerable portion of his sentence already.

19. Second, the Applicant was convicted of administration of justice offences.
20. Third, the Applicant is a man of good character with the exception of the instance conviction.
21. Fourth and fifth, the Applicant made a previous request for release on compassionate grounds due to the ill-health of his brother, who was being treated at the Klinikum Forchheim - Fränkische Schweiz gGmbH in a critical medical condition, having [REDACTED]. The Applicant's brother has passed away and therefore, as the Specialist Chambers found in the *Third Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds*,<sup>11</sup> that 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,<sup>12</sup> and that the passing of a close family relative and the importance of the mourning ritual are decisive factors and found that the death of a close family member, in that case the Applicant's mother, amounted "to exceptional circumstances and compelling humanitarian grounds justifying his temporary release for a custodial visit".<sup>13</sup>

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<sup>11</sup> KSC-BC-2020-06, F00640, *Third Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds*, 8 January 2022, confidential and ex parte, para. 20. A public redacted version was issued on 17 January 2022, F00640/RED.

<sup>12</sup> KSC-CA-2022-01/F00043/RED, para. 18.

<sup>13</sup> *Ibid.*

22. Finally, the possibility of escorted leave. The Applicant's first application for temporary release for a custodial visit was refused on the basis that his brother, whilst undergoing medical care, was held at the Klinikum Forchheim - Fränkische Schweiz gGmbH in Germany, the logistical difficulties that would be encountered, the lack of documentation and that release to a third state shall require the consent of the third state. It is noted that the Applicant's brother, following his passing, would be transferred to the Republic of Kosovo and there should be no logistical or legal barrier to maintaining security for the Applicant's escorted leave in custody, documentation has been provided at Annex A, and the Specialist Chambers has previously ruled upon and maintained temporary release in custody in respect of two other detainees.
23. The Applicant submits in the first instance for provisional release in custody to attend the funeral service of his brother and secondly, provided security arrangements can be made, to attend the three-day mourning period.

## V. CONCLUSION

24. Accordingly, the President of the Specialist Chambers is requested to order the temporary release of the Applicant pursuant to Rule 56 of the Rules in order to allow him to attend the funeral of his brother and participate in the mourning ritual. The Applicant therefore seeks an order on compassionate grounds at this very critical time.

**VI. CLASSIFICATION**

25. This filing is classified as confidential because it refers to [REDACTED].

Word Count: [1,229] words



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