

In: KSC-BC-2020-06
**The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli,
Rexhep Selimi and Jakup Krasniqi**

Before: **Trial Panel II**
Judge Charles L. Smith, III, Presiding
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hashim Thaçi

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**Public Redacted Version of ‘URGENT Thaçi Defence Request for Temporary
Release on Compassionate Grounds
With Confidential *Ex Parte* Annexes 1 – 3’**

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I. INTRODUCTION

1. The Defence for Mr Hashim Thaçi (“Defence”) requests the Trial Panel to order the immediate temporary release of Mr Thaçi for a period of four (4) days in order to allow him to visit his mother who is suffering from a critical medical condition, and provide comfort to his father and other close family members.

II. PROCEDURAL AND FACTUAL BACKGROUND

2. On 5 November 2020, following the confirmation of an indictment and the issuance of an arrest warrant,¹ Mr Thaçi voluntarily resigned from the Office of President and surrendered to KSC custody.²

3. On 15 December 2022, the Pre-Trial Judge transmitted the case file KSC-BC-2020-06 to Trial Panel II.³

4. The trial started on 3 April 2023.⁴ The SPO has been authorised to present its case until April 2025.

5. On 17 April 2022, the Trial Panel issued its ‘Decision on Periodic Review of Detention of Hashim Thaçi’. It ordered Mr Thaçi’s continued detention “in order to avert the risks in Article 41(6)(b)(ii) and (iii)”⁵ but considered that detention was “not justified at this time based on the risk of flight pursuant to Article 41(6)(b)(i).”⁶ The

¹ KSC-BC-2020-06/F00027/A01/RED, Public Redacted Version of Arrest Warrant for Hashim Thaçi, 5 November 2020.

² KSC-BC-2020-06/F00065/RED, Public Redacted Version of ‘Report on the Arrest and Transfer of Hashim Thaçi to the Detention Facilities’, filing F00065 dated 8 November 2020.

³ KSC-BC-2020-06/F01166, Decision Transmitting the Case File to Trial Panel II, 15 December 2022.

⁴ KSC-BC-2020-06, Transcript, 3 April 2023.

⁵ KSC-BC-2020-06/F01459/RED, Decision on Periodic Review of Detention of Hashim Thaçi, 17 April 2023, para. 32.

⁶ *Ibid.*, para. 17.

Trial Panel observed that “Mr Thaçi has cooperated with relevant authorities associated with his detention and transfer.”⁷

6. Mr Thaçi’s mother, Mrs [REDACTED] Thaçi, was born in [REDACTED]. On [REDACTED] 2023, Mrs Thaçi was hospitalised in [REDACTED]. [REDACTED]. Having now been released from [REDACTED]. [REDACTED].⁸ Mr Thaci would like to visit her mother [REDACTED].

III. APPLICABLE LAW

7. Article 36(1) of the Kosovo Constitution and Article 8(1) of the European Convention on Human Rights (“Convention”) guarantee the right to respect for family life. The European Court of Human Rights has ruled that it is an essential part of a prisoner’s right to respect for family life that the prison authorities assist him or her in maintaining contact with his or her close family.⁹

8. Pursuant to Rule 56(3) of the Rules,¹⁰ upon request by a detained person or *proprio motu*, 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, the Panel may impose such conditions upon the release as deemed appropriate to ensure the presence of the detained person.

9. As noted by a Panel of the Court of Appeals Chamber, while Article 8 of the Convention does not guarantee an unconditional right to leave prison to visit a sick relative or attend their funeral, every limitation on this right must be justifiable as

⁷ *Ibid.*, para. 14.

⁸ See Annex 1, [REDACTED]; Annex 2, [REDACTED]; Annex 3, [REDACTED].

⁹ *Chaldayev v. Russia*, 2019, § 59; *Messina v. Italy* (no. 2), 2000, § 61; *Kurkowski v. Poland*, § 95; *Vintman v. Ukraine*, § 78.

¹⁰ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 (“Rules”).

being “necessary in a democratic society”. Among the 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.”¹¹

10. Visiting a close relative in critical condition of health has been accepted, under certain conditions, by this and other jurisdictions, as a compelling humanitarian ground warranting temporary release.¹² In particular, Mr Kadri Veseli was authorised to visit his father, who was in a critical condition, and his immediate family members, for a period of four days.¹³ Similarly, Trial Panel II found that the poor health situation of Mr Hysni Gucati’s mother, who was similarly confined to her home, qualified as a compelling consideration when deciding in favour of granting his custodial visits on two previous occasions.¹⁴

¹¹ KSC-CA-2022-01/F00020/RED, Public Redacted Version of Decision on Gucati’s Third Request for Temporary Release on Compassionate Grounds, 30 June 2022, para. 11; KSC-CA-2022-01/F00043/RED, Public Redacted Version of Decision on Gucati’s Fourth Request for Temporary Release on Compassionate Grounds, para. 16.

¹² KSC-CA-2022-01/F00020/RED, Public Redacted Version of Decision on Gucati’s Third Request for Temporary Release on Compassionate Grounds, 30 June 2022, para. 13; KSC-CA-2022-01/F00043/RED, Public Redacted Version of Decision on Gucati’s Fourth Request for Temporary Release on Compassionate Grounds, para. 18.

¹³ KSC-BC-2020-06/F00271-RED, Public Redacted Version of Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds, 11 May 2021, paras 14, 18. Mr Veseli was thereafter authorised to attend the funerals of his father and his mother. See KSC-BC-2020-06/F00386-RED, Public Redacted Version of Second Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds, 16 July 2021; KSC-BC-2020-06/F00640, Public Redacted Version of Third Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds, 17 January 2022.

¹⁴ KSC-CA-2022-01/F00020/RED, Public Redacted Version of Decision on Gucati’s Third Request for Temporary Release on Compassionate Grounds, 30 June 2022, para. 13, referring to: KSC-BC-2020-07, F00618/RED, Public Redacted Version of Decision on Second Gucati Defence Request for Temporary Release on Compassionate Grounds, 3 June 2022, paras 19-20, and KSC-BC-2020-07/F00604/RED, Public Redacted Version of Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds, 16 May 2022, paras 15-16. Mr Gucati was subsequently authorised to visit his mother three other times. See KSC-CA-2022-01/F00020/RED, KSC-CA-2022-01/F00043/RED, KSC-CA-2022-01/CR001/F00012/RED, Public Redacted Version of Decision on Gucati Request for Fifth Custodial Visit on Compassionate Grounds, 24 April 2023.

IV. SUBMISSION

11. Mr Thaçi seeks urgent permission to visit his [REDACTED] mother at her home in [REDACTED], in light of her critical medical condition, [REDACTED]. Specifically, Mrs Thaçi's [REDACTED].¹⁵

12. Mr Thaçi is extremely distressed by his mother's deteriorating health and wishes to provide her support and to comfort his close relatives who are similarly distressed by this situation. In particular, he is [REDACTED]. In these circumstances, Mrs Thaçi's critical medical condition constitutes a compelling humanitarian ground justifying Mr Thaçi's temporary release pursuant to Article 8 of the Convention, Article 36(1) the Constitution and Rule 56(3) of the Rules.

13. Mr Thaçi, who surrendered voluntarily to the jurisdiction of the KSC, is not a flight risk. Regardless, the Defence notes that a number of logistical measures and security conditions were imposed on Mr Veseli¹⁶ and Mr Gucati¹⁷ in order to make the visit of their relatives in Kosovo feasible, pursuant to Rule 56(5) of the Rules. The Defence has no objection to the imposition of similar conditions upon Mr Thaçi's visit to his mother and immediate family members.

V. CLASSIFICATION

14. This filing is classified as confidential and *ex parte* as it refers to sensitive medical information concerning Mr Thaçi's mother. A public redacted version will be filed in due course.

¹⁵ See Annexes 1 to 3.

¹⁶ See, *inter alia*, KSC-BC-2020-06/F00271-RED, Public Redacted Version of Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds, 11 May 2021, paras 18.

¹⁷ See, *inter alia*, KSC-CA-2022-01/CR001/F00012/RED, para. 30.

VI. CONCLUSION

15. For the above reasons, the Defence respectfully requests the Trial Panel to order the immediate temporary release of Mr Thaçi on compassionate grounds, for a period of four (4) days, to allow him to visit his mother and immediate family members.

[Word count: 1,243 words]

Respectfully submitted,



Gregory W. Kehoe

Counsel for Hashim Thaçi

Tuesday, 23 May 2023

At The Hague, The Netherlands