

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

Date: 25 May 2023

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Public Redacted Version of ‘Thaçi Defence Reply to the SPO’s and Registrar’s Submissions on Thaçi Defence Request for Temporary Release on Compassionate Grounds’

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I. INTRODUCTION

1. The Defence for Mr Hashim Thaçi ("Defence") replies to the Prosecution¹ and Registrar's² Submissions on Thaçi Defence Request for Temporary Release on Compassionate Grounds.³ The Defence maintains its request that the Trial Panel order the immediate temporary release of Mr Thaçi for a period of **four** days, in order to allow him to provide a meaningful and necessary support to his mother and his immediate family members. The Defence also provides the supplementary information requested by the Registrar.

II. DISCUSSION

A. DURATION OF THE TEMPORARY TRANSFER

2. Nothing in either the SPO or Registrar's submissions justifies limiting the length of Mr Thaçi's release to one, rather than four days. It is likely that the current medical conditions of Mrs [REDACTED] Thaçi, [REDACTED], prevents her from having long visits or conversations; Mr Thaçi may therefore not be able to spend much time with her in one sitting. [REDACTED]. In order for Mr Thaçi to have a chance of spending quality time with his mother, and providing her with meaningful support, he should be authorised to meet her during (shorter) visits over the course of a longer period of time. Four days is reasonable. Mr Veseli, in a similar situation, was authorised to visit his father, who was in critical condition, and his immediate family members, for a period of four days.⁴ Thereafter, Mr Veseli benefited from two custodial visits of three days and two days, respectively, following the passing of his

¹ KSC-BC-2020-06/F01550, Prosecution response to urgent Thaçi request for temporary release, Confidential and *ex parte*, 24 May 2023 ("SPO Response").

² KSC-BC-2020-06/F01551, Registrar's Submissions on Thaçi Defence Request for Temporary Release on Compassionate Grounds, Confidential and *ex parte*, 24 May 2023 ("Registrar's Submissions").

³ KSC-BC-2020-06/F01547, Urgent Thaçi Defence Request for Temporary Release on Compassionate Grounds, Confidential and *ex parte*, 23 May 2023 ("Thaçi Request").

⁴ 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.

father and mother.⁵ Similarly, Mr Gucati, for his first visit to his sick relatives, benefited from a temporary transfer of three days.⁶

3. The SPO fails to justify why Mr Thaçi's visit should be limited to one day. The SPO seems to rely on the risk of interference.⁷ Any such risk, the existence of which remains disputed by the Defence, is sufficiently restricted by Mr Thaçi remaining in the permanent custody of the Specialist Chambers, be it in a secure transfer facility [REDACTED], or at his mother's house, where he will be constantly within both sight and earshot of escorting officers.⁸

4. The Registry submits that Mr Thaçi's temporary transfer should be limited to one day, *inter alia*, in light of the unique security and logistical challenges raised and the fact that Mr Thaçi's return to Kosovo may become public and attract attention, given Mr Thaçi's unique profile.⁹ Yet, the strict custodial conditions suggested by the Registry and previously approved for Mr Veseli or Mr Gucati are sufficient to remedy any security concerns for such a transfer, be it of one or four days. Mr Thaçi is not a flight risk. With regard to the likelihood that his presence in Kosovo may become public, the Registry proposed [REDACTED]¹⁰ and Mr Thaçi's detention [REDACTED] should limit any such risk. Mr Thaçi's Defence team and family are committed to maintain secrecy regarding his temporary transfer to Kosovo. The Defence notes that Mr Veseli and Mr Gucati are similarly well known figures in Kosovo and to the Defence's knowledge, their successive temporary transfers occurred without

⁵ 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/F00386/RED"), paras. 12, 15; KSC-BC-2020-06/F00640/RED, Public Redacted Version of Third Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds, 18 January 2022 ("KSC-BC-2020-06/F00640/RED"), paras. 21, 24.

⁶ KSC-BC-2020-07/F00604/RED, Public Redacted Version of the Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds, 16 May 2022, paras. 16, 20.

⁷ SPO Response, para. 12.

⁸ Registrar's Submissions, paras. 12, 24; SPO Response, para. 3(a).

⁹ Registrar's Submissions, paras. 16-17.

¹⁰ Registrar's Submissions, para. 30.

particular incidents. Further, unlike Mr Veseli and Mr Gucati, Mr Thaçi will not need to go to a public place such as a hospital or a cemetery so there is even less chance that his presence will be revealed.

B. MODALITIES OF THE VISIT TO Ms [REDACTED] THAÇI'S HOUSE

5. Mr Thaçi's mother, Mrs [REDACTED] Thaçi, lives in the family house located at the following address:

[REDACTED]

6. This is the permanent residence of Mrs Thaçi, where she lives with [REDACTED]. [REDACTED] provide, alternatively, constant care to Mrs [REDACTED] Thaçi, in addition to punctual support provided by additional family members or visits from medical personnel. For these reasons, the Defence requests that Mr Thaçi be authorised to visit his mother and father in the presence of the [REDACTED] family members listed above, [REDACTED]. [REDACTED], is unable to provide the care required [REDACTED]. As indicated by the medical certificates [REDACTED], she [REDACTED] needs care [REDACTED].¹¹

7. The SPO and Registrar's proposal to limit Mr Thaçi's visit to his mother and father is contrary to the regime adopted for the prior visit of Mr Veseli to his father, where he was "permitted to have visits with his father and immediate family members, with prior approval of the chief custody officer and upon proof of identity."¹² Similarly, Mr Gucati was authorised, during his visits to his sick relatives, to "communicate with his immediate family members (parents, spouse, children, grand-children, siblings)", the presence of these immediate family members being "subject to prior approval of the chief custody officer upon presentation of

¹¹ See Annexes 2 and 3 to the Thaçi Request.

¹² 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(c) and (d).

photographic identification.”¹³ The SPO and the Registrar fail to justify why a more restricted regime should apply to Mr Thaçi. Their proposal should be dismissed, and Mr Thaçi should benefit from a regime similar to the one applied to Mr Veseli and Mr Gucati.

8. Lastly, if Mrs [REDACTED] Thaçi needed to be attended in person by a nurse or doctor during Mr Thaçi’s visit, the Defence would endeavour to provide his/her identity to the Registry in advance. Mr Dastid Pallaska, Co-Counsel for Mr Thaçi, will be the contact point for the Registry on behalf of the Defence.¹⁴

III. CONCLUSION

9. For the above reasons, the Defence maintains its requests that the Trial Panel 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: 1,122 words]

Respectfully submitted,



Gregory W. Kehoe

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Thursday 25 May 2023

At The Hague, The Netherlands

¹³ KSC-BC-2020-07/F00604/RED, paras. 20(d) and (e).

¹⁴ Registrar’s Submissions, para. 23.