



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

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

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

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 30 August 2023

Language: English

Classification: Confidential and *ex parte*

**Prosecution response to urgent Thaçi Defence second request for temporary
release**

Specialist Prosecutor's Office
Ward Ferdinandusse

Counsel for Hashim Thaçi
Gregory Kehoe

1. The Specialist Prosecutor's Office ('SPO') hereby responds to the Urgent Second Request.¹ Subject to the conditions outlined below, the SPO does not oppose a strictly supervised, fully custodial, return visit of one day (meaning traveling to and from Kosovo on the same day).

2. Temporary release under Rule 56(3) and (5) of the Rules² must be weighed against factors including the gravity of the offenses of which the Accused is charged and the risks previously identified by the Panel.³ In this instance, the Panel has recently affirmed that the risks presented by Mr Thaçi ('Accused') are such as can only be effectively managed through the fully controlled environment that detention can provide, including in particular the communication monitoring framework at the Specialist Chambers ('KSC').⁴ Any modification of that framework, however temporary and exceptional, presents a heightened risk. This is particularly so given that the trial is now ongoing and witnesses have been notified to the Accused and have commenced testifying. At this stage of proceedings, the risk of interference, as well as the incentive and capacity of the Accused for doing so, is significantly increased.⁵ Any exception to the current detention regime should be strictly limited to achieve the purposes supporting the exception. As such, the SPO opposes a multi-day visit, consisting of multiple visits to and from the hospital.

¹ URGENT Thaçi Defence Second Request for Temporary Release on Compassionate Grounds, KSC-BC-2020-06/F01749, 30 August 2022, Confidential and *Ex Parte* ('Urgent Second Request'). See also URGENT Thaçi Defence Supplementary Submissions in Support of Second Request for Temporary Release on Compassionate Grounds, KSC-BC-2020-06/F01750, 30 August 2023, Confidential and *Ex Parte*.

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein are to the Rules, unless otherwise specified.

³ Public Redacted Version of Second Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds, KSC-BC-2020-06/F00386/RED, 8 July 2021 (redacted version notified 16 July 2021), paras 11-12.

⁴ Decision on Periodic Review of Detention of Hashim Thaçi, KSC-BC-2020-06/F01720, 16 August 2023, paras 22, 26-27, 32.

⁵ This is in contrast to, for example, the circumstances which prevailed at the time when Mr Veseli was granted a custodial visit (as relied upon in Urgent Second Request, KSC-BC-2020-06/F01749, paras 11, 15).

3. In the specific circumstances, and to the extent logistically feasible, the SPO would not oppose a fully custodial escorted visit of no longer than one day under strict conditions consistent with those imposed for Mr Thaçi's prior custodial visit, including:⁶

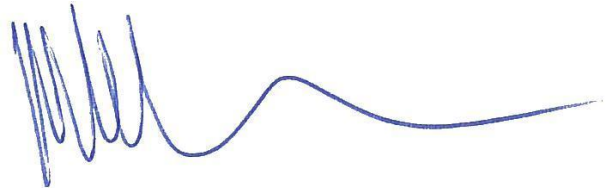
- a. the Accused remain in the custody of the KSC at all times;
- b. the Accused be detained in Kosovo in detention facilities of the KSC when not engaged in the visit;
- c. the Accused be escorted at all times;
- d. the Accused not be permitted to be alone with any person at any time, and must remain within both sight and earshot of the escorting officers;
- e. the Accused not be permitted to meet with or otherwise have contact with any person other than his mother and father (and only while accompanied by the escorting officer(s)). The Accused be permitted to attend his mother's home only to the extent that such a visit can be accommodated within the one-day return visit;⁷
- f. all non-authorised persons shall be required to vacate the designated address for the visit for its full duration;
- g. the Accused not have access to communication devices, pen and paper or any other means of communication of any kind other than as facilitated by the KSC;
- h. the Accused not be permitted to pass or receive items to or from any person;

⁶ See *similarly* Public Redacted Corrected Version of Decision on Urgent Thaçi Request for Temporary Release on Compassionate Grounds, KSC-BC-2020-06/F01556/COR/RED, para.24. The SPO is confident that the Registry will ensure that these conditions are implemented in a manner respectful of the circumstances.

⁷ To the extent that such a visit is granted, persons permitted to be present should be limited in the same manner as in KSC-BC-2020-06/F01556/COR, para.24(g).

- i. the Accused (his Counsel and/or other relatives or associates) make no public statement and undertake to maintain secrecy with respect to his presence in Kosovo to the maximum extent possible;⁸
 - j. the Accused shall not discuss his case with anyone (other than Counsel and members of his Defence team);
 - k. the Accused shall not have any contact whatsoever (direct or indirect) or in any way interfere with any victim or potential witness, or otherwise interfere in any way with the proceedings or the administration of justice; and
 - l. the Accused shall not seek direct access to documents nor destroy evidence.
4. Finally, the SPO emphasises that due to the risks previously outlined by the Panel, as well as the operational and security risks in a transfer of custody of this nature, such facilitation should be exceptional.
5. This filing is submitted as confidential and *ex parte* in accordance with Rule 82(4).

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Ward Ferdinandusse

Acting Deputy Specialist Prosecutor

Wednesday, 30 August 2023

At The Hague, the Netherlands.

⁸ In the event that the Accused's presence in Kosovo should become known, the SPO requests that the SPO, Registrar and/or EULEX, as appropriate and to the extent necessitated in the circumstances, be authorised to provide any public clarification or statement which may be needed, including for the purposes of maintaining operational security.