

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: 30 August 2023

Language: English

Classification: Public

**Public Redacted Version of URGENT Thaçi Defence Second Request for
Temporary Release on Compassionate Grounds
With Confidential *Ex Parte* Annex 1**

Specialist Prosecutor's Office

Ward Ferdinandusse

Counsel for Hashim Thaçi

Gregory Kehoe

I. INTRODUCTION

1. Mr Hashim Thaçi's father has been admitted to hospital in Kosovo [REDACTED].¹ The Defence for Mr Hashim Thaçi ("Defence") requests the Trial Panel order the immediate temporary release of Mr Thaçi for a period of three (3) days in order to allow him to visit his father, and provide comfort to his mother and other close family members. In this regard, his mother being particularly affected by the deterioration of the health of her husband, and suffering from her own unimproved medical condition, Mr Thaçi requests to be authorised to visit her in her house in presence of immediate 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,² Mr Thaçi voluntarily resigned from the Office of President and surrendered to KSC custody.³ He has been in detention ever since.

3. Mr Thaçi's continued detention has been reviewed on ten occasions. In the most recent review of detention, the Trial Panel found Mr Thaçi's continued detention was necessary "in order to avert the risks in Article 41(6)(b)(ii) and (iii)",⁴ but considered that detention was "not justified at this time based on the risk of flight pursuant to Article 41(6)(b)(i)."⁵ The Trial Panel observed that "Mr Thaçi has cooperated with relevant authorities associated with his detention and transfer."⁶

¹ See Annex 1, Medical Report for Mr. [REDACTED] Thaçi, [REDACTED] August 2023.

² KSC-BC-2020-06/F00027/A01/RED, Public Redacted Version of Arrest Warrant for Hashim Thaçi, 5 November 2020.

³ 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.

⁴ KSC-BC-2020-06/F01720, Trial Panel II: Decision on Periodic Review of Detention of Hashim Thaçi, 16 August 2023, para. 32.

⁵ *Ibid.*, para. 17.

⁶ *Ibid.*, para. 14.

4. On 23 May 2023, the Defence filed an urgent request for the temporary release of Mr Thaçi on compassionate grounds, due to the critical medical condition of his mother.⁷ At that time, the SPO did not oppose the request, subject to the imposition of specific conditions.⁸ The Registrar also confirmed the feasibility of the requested visit, and proposed conditions including that the visit be limited to one day, Mr Thaçi's interactions be limited to his mother and father, and a condition of secrecy.⁹ This request was granted by the Trial Panel on 25 May 2023, authorising Mr Thaçi's temporary and secure transfer to Kosovo for one day to visit his mother at his parents' home, subject to further specified conditions.¹⁰

5. The secure and temporary transfer of Mr Thaçi to Kosovo to visit his mother took place on 29 May 2023, and all of the stipulated conditions were fulfilled. Relevantly, the Registrar noted "Mr Thaçi abided by the instructions of the chief custody officer and the escorting officers during the custodial visit."¹¹

6. Mr [REDACTED] Thaçi, born in [REDACTED], was admitted into [REDACTED]¹² in Prishtinë on [REDACTED] August 2023, [REDACTED]."¹³ A medical report issued [REDACTED] on [REDACTED] August 2023 states that Mr Thaçi was diagnosed with [REDACTED]."¹⁴ This report also identifies that

⁷ KSC-BC-2020-06/F01547, Urgent Thaçi Defence Request for Temporary Release on Compassionate Grounds, Confidential and *ex parte*, 23 May 2023 (a public redacted version was filed on 5 June 2023).

⁸ KSC-BC-2020-06/F01550, Prosecution response to urgent Thaçi request for temporary release, Confidential and *ex parte*, 24 May 2023, para. 1 (a public redacted version was filed on 1 June 2023).

⁹ KSC-BC-2020-06/F01551, Registrar's Submissions on Thaçi Defence Request for Temporary Release on Compassionate Grounds, 24 May 2023, confidential and *ex parte*, paras. 13, 19-22 (a public redacted version was filed on 5 June 2023).

¹⁰ KSC-BC-2020-06/F01556/COR, Corrected Version of Decision on Urgent Thaçi Request for Temporary Release on Compassionate Grounds, 26 May 2023, confidential and *ex parte* ("Thaçi First Decision"), para. 30 (a public redacted version was filed on 21 June 2023).

¹¹ KSC-BC-2020-06/F01591, Report of the Registrar Pursuant to Decision on Urgent Thaçi Request for Temporary Release on Compassionate Grounds, Confidential and *ex parte*, 8 June 2023, para. 18 (a public redacted version was filed on 30 June 2023).

¹² [REDACTED].

¹³ See Annex 1.

¹⁴ See Annex 1.

[REDACTED]. In light of this dire prognosis, Mr Thaçi would like to visit his father before there is any further decline in his health.

7. In addition, the health of his mother, Ms [REDACTED] Thaçi, having not improved since his last visit in May 2023,¹⁵ Mr Thaçi would like to visit her in her house [REDACTED],¹⁶ in presence of his wife [REDACTED], his son [REDACTED], and his sisters [REDACTED], in order that they comfort each other in this difficult time.

III. APPLICABLE LAW

8. 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.¹⁷

9. Pursuant to Rule 56(3) of the Rules,¹⁸ 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.

10. 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

¹⁵ KSC-BC-2020-06/F01547/A01, A02, A03.

¹⁶ Her house is located at [REDACTED].

¹⁷ *Chaldayev v. Russia*, 2019, § 59; *Messina v. Italy* (no. 2), 2000, § 61; *Kurkowski v. Poland*, § 95; *Vintman v. Ukraine*, § 78.

¹⁸ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 (“Rules”).

relative or attend their funeral, every limitation on this right must be justifiable as 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.”¹⁹

11. 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.²⁰ In particular, Mr Kadri Veseli was authorised to visit his father at the hospital, who was in a critical condition, and his immediate family members, for a period of four days.²¹ During the same trip, he was authorised to visit his mother in her home, who was 92 years-old, blind and bedridden.²² Similarly, Trial Panel II found that the poor health situation of Mr Hysni Gucati’s mother qualified as a compelling consideration when deciding in favour of granting his custodial visits on two previous occasions.²³

¹⁹ 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.

²⁰ 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.

²¹ KSC-BC-2020-06/F00271/RED, Public Redacted Version of Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds, 11 May 2021 (“Veseli First decision”), 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.

²² KSC-BC-2020-06/F00276/RED, Public Redacted Version of Decision on Veseli Defence Request for Modification of Decision KSC-BC-2020-06/F00271, 11 May 2021., paras 7-12

²³ 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

IV. SUBMISSION

12. Mr Thaçi seeks urgent permission to visit his [REDACTED]father at the [REDACTED] Hospital in Prishtinë, in light of his critical medical condition. On [REDACTED] August 2023, Mr Thaçi was admitted to the hospital, and was subsequently assessed [REDACTED].²⁴ Mr Thaçi's medical team advises that [REDACTED].

13. Mr Thaçi is extremely distressed by his father's grave medical condition and wishes to provide him support and to comfort his close relatives who are similarly distressed by this situation. Mr Thaçi is concerned that his father's condition is so severe that his health may quickly deteriorate further, without warning, and he may not recover. In these circumstances, Mr Thaçi's father's critical medical condition constitutes urgent, compelling and exceptional circumstances²⁵ justifying Mr Thaçi's temporary release on humanitarian grounds, pursuant to Article 8 of the Convention, Article 36(1) the Constitution and Rule 56(3) of the Rules.

14. Mr Thaçi, who surrendered voluntarily to the jurisdiction of the KSC, is not a flight risk. Further, Mr Thaçi has always cooperated with relevant authorities regarding his detention, including following all instructions during his previous temporary release.²⁶ There is also no suggestion that Mr Thaçi has obstructed the work of the court, including while previously temporarily released. Regardless, the Defence notes that a number of logistical measures and security conditions were imposed on

Redacted Version of Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds, 16 May 2022 ("Gucati May 2022 Decision"), 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.

²⁴ See Annex 1.

²⁵ Registrar's Submissions, para. 11.

²⁶ Registrar's Report, para. 18.

Mr Thaçi during his previous temporary visit to his mother.²⁷ The Defence has no objection to the imposition of similar conditions to allow Mr Thaçi to visit his father in the [REDACTED] Hospital, with two exceptions.

15. First, Mr Thaçi should be permitted to have contact not only with his father, but with other (pre-identified) immediate family members during the visit, be it at the hospital or [REDACTED].²⁸ This condition has been granted in similar circumstances in past applications for temporary release. For example, when visiting his father in hospital, Mr Veseli 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.”²⁹ 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 photographic identification.”³⁰ Similar conditions may be imposed on Mr Thaçi, which would mitigate any risks.

16. Second, Mr Thaçi should be permitted to visit his father for a longer duration than that previously authorised, namely three days. A period of three days, including travel, allows for the possibility of multiple visits between Mr Thaçi and his father, who is critically ill and unable to accommodate long visits or conversation. This is reflected in the medical report, [REDACTED].³¹ In order for Mr Thaçi to maximise his opportunity to spend quality time with his father, and provide him with meaningful

²⁷ Thaçi First Decision, para. 24.

²⁸ Mr Veseli was for instance authorised to receive visits from his immediate family at the local detention facility of the Kosovo Specialist Chambers: see KSC-BC-2020-06/F00274/RED, Public Redacted Version of URGENT Veseli Defence Request for Modification of Decision KSC-BC-2020-06/F00271, 6 May 2021, para. 6.

²⁹ Veseli First Decision, paras. 18(c), (d) & (g).

³⁰ Gucati May 2022 Decision, paras. 20(d) and e.

³¹ Annex 1.

support, he should be authorised to meet him for (shorter) visits over a longer period of time. This increased duration also reflects that it may well be Mr Thaçi's last opportunity to spend such time with his father. The strict custodial conditions previously imposed have proven sufficient to remedy any security concerns for a transfer of any duration.

17. Mr Thaçi further requests that a short visit to his mother, Ms [REDACTED] Thaçi, be facilitated in her house [REDACTED], in presence of his wife, son and sisters. Ms [REDACTED] Thaçi's health condition has not improved [REDACTED]. In these circumstances, it is both humane and essential for Mr Thaçi to comfort his mother and close relatives at a time when his father's medical situation is so grave.

18. Finally, in order to minimise disruption to the court schedule, the Defence proposes that this visit can be conducted on or after Thursday, 31 August. Mr Dastid Pallaska Co-Counsel for Mr Thaçi, will be the contact point for the Registry on behalf of the Defence.

V. CLASSIFICATION

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

VI. CONCLUSION

20. 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 three days, to allow him to visit his father in hospital and his mother at her house, and comfort immediate family members, such as his wife [REDACTED], his son [REDACTED], and his sisters [REDACTED].

[Word count: 2.441 words]

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'G. W. Kehoe', is written over a white rectangular redaction box.

Gregory W. Kehoe

Counsel for Hashim Thaçi

Wednesday, 30 August 2023

At The Hague, The Netherlands