



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

**The 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: Fidelma Donlon

Date: 1 September 2023

Language: English

Classification: Public

**Public Redacted Version of Decision on Urgent Thaçi Defence Second Request for
Temporary Release on Compassionate Grounds**

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TRIAL PANEL II (“Panel”), pursuant to Articles 21(3), 41 and 53 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 56(3) and (5) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. Mr Hashim Thaçi (“Mr Thaçi”) has been in detention since his surrender into Kosovo Specialist Chambers (“KSC”) custody on 5 November 2020.¹
2. On 30 August 2023, the Defence for Mr Thaçi (“Thaçi Defence”) filed an urgent request for the temporary release of Mr Thaçi on compassionate grounds (“Request”).² On the same day, the Thaçi Defence filed a supplementary submission in support of its Request.³
3. Upon direction from the Panel,⁴ the Specialist Prosecutor’s Office (“SPO”) responded on the same day (“SPO Response”).⁵
4. On 31 August 2023, upon direction from the Panel,⁶ the Registrar filed submissions on the Request (“Registry Submissions”).⁷

¹ F00065, Registrar, *Report on the Arrest and Transfer of Hashim Thaçi to the Detention Facilities*, 9 November 2020, strictly confidential and *ex parte*, para. 7 (a public redacted version was filed on 19 November 2020, F00065/RED).

² F01749, Specialist Counsel, *URGENT Thaçi Defence Second Request for Temporary Release on Compassionate Grounds*, 20 August 2023, confidential and *ex parte*, with Annex 1, confidential *ex parte*.

³ F01750, Specialist Counsel, *URGENT Thaçi Defence Supplementary Submissions in Support of Second Request for Temporary Release on Compassionate Grounds* (“Supplement”), 20 August 2023, confidential and *ex parte*, with Annex 1, confidential *ex parte*.

⁴ 20230830-CRSPD302, Email from the Panel to the SPO, the Thaçi Defence, and to the Registrar, 30 August 2023, confidential and *ex parte*.

⁵ F01751, Specialist Prosecutor, *Prosecution Response to Urgent Thaçi Defence Second Request for Temporary Release*, 30 August 2023, confidential and *ex parte*.

⁶ 20230830-CRSPD302, Email from the Panel to the SPO, the Thaçi Defence, and to the Registrar, 30 August 2023, confidential and *ex parte*.

⁷ F01752, Registrar, *Registrar’s Submissions on Urgent Thaçi Defence Request for Temporary Release on Compassionate Grounds*, 31 August 2023, confidential and *ex parte*.

5. On 31 August 2023, the Thaçi Defence filed a Reply to the SPO Response and the Registry Submissions (“Reply”).⁸

6. On 31 August 2023, the Panel directed the Thaçi Defence to file a supplemental report regarding Mr Haxhi Thaçi medical diagnosis and prognosis.⁹

7. On 1 September 2023, the Thaçi Defence filed the requested supplemental documentation regarding Mr Haxhi Thaçi medical diagnosis and prognosis.¹⁰

II. SUBMISSIONS

8. The Thaçi Defence, pursuant to their modified request in the Reply, requests that Mr Thaçi be authorised to visit his father, Mr Haxhi Thaçi, and his mother, Ms [REDACTED] Thaçi (“Ms Thaçi”) at their home in [REDACTED], Kosovo, in the presence of Mr Thaçi’s wife [REDACTED] and his son [REDACTED].¹¹ The Thaçi Defence notes that other family members who reside at his parents’ home are willing to vacate the premises during Mr Thaçi’s visit.¹²

9. According to the Thaçi Defence, Mr Haxhi Thaçi is suffering from [REDACTED].¹³ The Thaçi Defence has submitted an annex which contains a signed medical report attesting to these circumstances,¹⁴ in addition to the requested supplemental materials.¹⁵

⁸ F01754, Specialist Counsel, *Thaçi Defence Reply in Support of Second Request for Temporary Release on Compassionate Grounds*, 1 September 2023, confidential and *ex parte*.

⁹ 20230831-CRSPD304, Email from the Panel to the Thaçi Defence, 31 August 2023, confidential and *ex parte*.

¹⁰ 20230901-CRSPD305, Email from the Thaçi Defence to the Panel, 1 September 2023, confidential and *ex parte*.

¹¹ Request, paras 1, 7; Reply, para. 4.

¹² Reply, para. 4.

¹³ Request, para. 6.

¹⁴ F01749/A01, Specialist Counsel, Annex 1 to *URGENT Thaçi Defence Second Request for Temporary Release on Compassionate Grounds*, 20 August 2023, confidential *ex parte*.

¹⁵ See 20230901-CRSPD305, Email from the Thaçi Defence to the Panel, 1 September 2023, confidential and *ex parte*.

10. The Thaçi Defence further requests that Mr Thaçi have the opportunity to visit his mother as well, in the presence of additional family because his mother is still in poor health, and the visit would allow family members to comfort each other during this time.¹⁶

11. The Thaçi Defence asserts that it has no objection to the imposition of security conditions similar to those previously imposed during Mr Thaçi's first temporary visit to his mother.¹⁷ However, Mr Thaçi seeks permission to visit additional immediate family members.¹⁸

12. The SPO does not oppose a strictly supervised, fully custodial visit for the duration of one day [REDACTED].¹⁹ The SPO asserts that the Panel must consider the gravity of the charges faced by Mr Thaçi, and the heightened risks regarding opportunities for Mr Thaçi to communicate with others, potential witness interference, and operational security.²⁰ In an effort to mitigate these risks to the extent possible, the SPO suggests the imposition of conditions consistent with those implemented during Mr Thaçi's prior custodial visit.²¹

13. The Registrar outlines the feasibility and operational requirements necessary to comply with Mr Thaçi's request.²² The Registrar asserts that the considerable resources necessary to deploy a transfer team, and to rapidly arrange for air transport are only justifiable in urgent, compelling and exceptional circumstances.²³

¹⁶ Request, para. 7. *See generally* Supplement.

¹⁷ Request, para. 14.

¹⁸ Request, para. 15; Reply, para. 4.

¹⁹ Response, para. 1.

²⁰ Response, paras 2, 4.

²¹ Response, para. 3 (*citing* F01556/COR/RED, *Public Redacted Corrected Version of Decision on Urgent Thaçi Request for Temporary Release on Compassionate Grounds*, 21 June 2023, para. 24).

²² Registry Submissions, paras 15-18.

²³ Registry Submissions, para. 17.

14. With regard to security concerns, the Registrar notes her submission regarding the previous temporary release of Mr Thaçi on compassionate grounds.²⁴ In that filing, the Registrar highlighted this Panel's previous findings that "Mr Thaçi has: (i) the interest and ability to obtain evidence provided by persons summoned by the SPO; (ii) attempted to undermine the [Specialist Chambers] and offered benefits to persons summoned by the SPO; (iii) a position of influence in Kosovo which could allow him to elicit the support of sympathisers; and (iv) given the commencement of trial, increased knowledge of the evidence underpinning the serious charges against him."²⁵

15. Based upon its assessment, the Registrar submits that it is necessary: (i) to limit Mr Thaçi's visit to one day;²⁶ (ii) to limit his interactions to his mother, his father, and two immediate family members at a time;²⁷ and (iii) that a condition of secrecy be maintained.²⁸

III. APPLICABLE LAW

16. Pursuant to Rule 56(3) of the Rules, upon request by a detained person, 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.

²⁴ Registry Submissions, para. 15 (citing F01551, Registrar, *Registrar's Submissions on Urgent Thaçi Defence Request for Temporary Release on Compassionate Grounds*, 24 May 2023, confidential and *ex parte*, paras 14-17).

²⁵ F01551, Registrar, *Registrar's Submissions on Urgent Thaçi Defence Request for Temporary Release on Compassionate Grounds*, 24 May 2023, confidential and *ex parte*, para. 14 (citing F01459, Trial Panel, *Decision on Periodic Review of Detention of Hashim Thaçi* ("Detention Decision"), 17 April 2023, confidential (a public redacted version was filed on the same day, F01459/RED), para. 19).

²⁶ Registry Submissions, para. 19.

²⁷ Registry Submissions, para. 22, 25.

²⁸ Registry Submissions, para. 34.

17. Pursuant to Article 53(1) of the Law, all entities and persons in Kosovo shall co-operate with the KSC and shall comply without undue delay with any request for assistance or an order or decision issued by the KSC.

IV. DISCUSSION

A. TEMPORARY RELEASE ON COMPELLING HUMANITARIAN GROUNDS

18. The Panel notes that there is no unconditional right to temporary release on compelling humanitarian grounds.²⁹ A decision whether to release a person on such grounds is subject to the discretion of the Panel, but must account for all relevant circumstances and factors and include a reasoned opinion thereon.³⁰ What these factors are, as well as the weight to be accorded to them depends upon the particular circumstances of the case. Accordingly, 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 are among the factors that could be relevant for consideration.³¹

19. The Panel further notes that visiting a close relative in a critical condition has been accepted, under certain conditions, in the KSC and other jurisdictions, as a compelling humanitarian ground that might warrant temporary release.³²

²⁹ See ECtHR, *Lind v. Russia*, no. 25664/05, 6 December 2007, para. 94. See also KSC-BC-2020-07, F00604/RED, Trial Panel II, *Public Redacted Version of the Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds* ("Gucati Decision"), 9 May 2022, para. 11.

³⁰ See Gucati Decision, para. 11. See also ICTY, *Prosecutor v. Popović et al.*, IT-05-88-AR65.4, IT-05-88-AR65.5 and IT-05-88-AR65.6, Appeals Chamber, [*Decision on Consolidated Appeal Against Decision on Borovčanin's Motion for a Custodial Visit and Decisions on Gvero's and Miletić's Motions for Provisional Release During the Break in the Proceedings*](#), 15 May 2008, para. 6.

³¹ See Gucati Decision, para. 11. See also ECtHR, *Lind v. Russia*, no. 25664/05, 6 December 2007, para. 95. See also KSC-BC-2020-6, F00640/RED, Pre-Trial Judge, *Public Redacted Version of Third Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds*, 8 January 2022, para. 20.

³² Gucati Decision, para. 12; KSC-BC-2020-07, F00618/RED, Trial Panel II, *Public Redacted Version of Decision on Second Gucati Defence Request for Temporary Release on Compassionate Grounds*, 27 May 2022, para. 17; F00276, Pre-Trial Judge, *Decision on Veseli Defence Request for Modification of Decision KSC-BC-2020-06/F00271*, 11 May 2021, public. Similarly, ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Trial

20. Mr Thaçi is charged with six counts of crimes against humanity involving allegations of murder, enforced disappearance of persons, persecution, imprisonment, torture, and other inhumane acts.³³ Mr Thaçi is also charged with four counts of war crimes of murder, torture, cruel treatment, and illegal or arbitrary arrest and detention.³⁴ His continued detention has been found to be necessary.³⁵

21. That being said, the Panel notes that the SPO does not oppose a strictly supervised, fully custodial visit of one day and that both the SPO and the Registry set out a number of logistical measures and security conditions that they say would make such a visit feasible.³⁶

22. The Panel considers that the current medical condition of Mr Haxhi Thaçi combined with his age and the possibility that his medical condition may deteriorate in the next days constitute compelling considerations within the meaning of Rule 56(3). The Panel also accepts that Mr Thaçi's mother's condition continues to be grave.

23. For these reasons, the Panel finds that, on balance and in the present circumstances, the medical conditions of both Mr Haxhi Thaçi and Ms Thaçi and the possibility of further rapid decline amount to compelling humanitarian grounds justifying Mr Thaçi's temporary release for a custodial visit.

Chamber, [Decision on Pandurević's Motion for Provisional Release](#), 21 July 2008; *Prosecutor v. Strugar*, IT-01-42-A, Appeals Chamber, [Decision on the Renewed Defence Request Seeking Provisional Release on Compassionate Grounds](#), 15 April 2008; *Prosecutor v. Sainović et al.*, IT-05-87-A, Appeals Chamber, [Public Redacted Version of the Decision on Sreten Lukić's Second Motion for Provisional Release on Compassionate Grounds](#), 14 July 2010.

³³ F01323, Specialist Prosecutor, *Annex 1 to Prosecution further Submissions Pursuant to Decision F01229* ("Indictment"), 27 February 2023, *confidential*, para. 177.

³⁴ Indictment, para. 177.

³⁵ Detention Decision, para 35.

³⁶ SPO Response, paras. 1, 3; Registry Submissions, paras 19, 21, 23-24, 26, 31-33.

B. CONDITIONS OF CUSTODIAL VISIT

24. The Panel will now turn to the conditions to be imposed on Mr Thaçi's custodial visit.

25. The Panel recalls its previous findings: (i) that a risk continues to exist that Mr Thaçi may obstruct the progress of proceedings and/or commit further offences, and (ii) that imposing conditions in relation to Mr Thaçi's release would insufficiently mitigate these risks.³⁷ Therefore, in light of the security risks and logistics involved, the Panel considers that conditions falling short of those provided below would not sufficiently address the risks associated with the temporary release of Mr Thaçi.

26. The custodial visit shall last **one day only**, [REDACTED]. The custodial visit shall be carried out under the following conditions:

- a) Mr Thaçi's visit shall at all times be under the condition of secrecy. Mr Thaçi, his family members, and Counsel shall refrain from informing any third party of the visit. They shall make no press contacts or public statements in respect of this matter;
- b) The Registry is only to provide this decision to the SPO, to Mr Thaçi, and Mr Thaçi's Lead Counsel. Lead Counsel shall not inform team members beyond those specifically holding the position of Counsel until Mr Thaçi's return from Kosovo. Counsel shall not disclose to any third party (including other members of their team) the existence of the present decision and/or the temporary release of Mr Thaçi until his return. Lead Counsel shall ensure that other Counsel and members of his team do not, directly or indirectly, comment publicly on this matter and do not share information pertaining to this matter with the media;
- c) Should Mr Thaçi's presence on the territory of Kosovo become known, the Registrar is authorised to make any statement she deems necessary in that

³⁷ Detention Decision, paras 27, 32.

regard or take any action she deems necessary for reasons of security, including terminating the custodial visit;

d) Mr Thaçi's movements in Kosovo shall be limited to travel between the [REDACTED] in Kosovo and his parents' home located at [REDACTED]. [REDACTED];

e) At all times, without exception, Mr Thaçi shall remain in the custody of the Specialist Chambers and under escort. At no time shall Mr Thaçi be alone and Mr Thaçi shall remain in sight and within earshot of escorting officers at all times. The chief escorting officers may exercise their discretion and take any decision they deem necessary regarding the custodial visit on the basis of operational security, including prematurely terminating the visit;

f) During Mr Thaçi's visit at his parents' home, only those who currently reside at the home ([REDACTED], Mr Haxhi Thaçi, [REDACTED]), escort personnel, and required medical personnel shall be permitted on the property. However, the only individuals permitted to be present in the area or room where Mr Thaçi interacts with his mother and/or father are [REDACTED], escort personnel and required medical personnel;

g) Those medical personnel whose presence is necessary for Mr Haxhi Thaçi's and Ms Thaçi's care during Mr Thaçi's visit shall provide their personal details and copies of their identity documents to the Registry upon request;

h) During his visit, Mr Thaçi is not permitted to communicate with any person other than his mother, his father, [REDACTED], his Counsel, Mr Dastid Pallaska, and KSC escorting officers;

i) Mr Thaçi shall not have access to communication devices or any other means of communication, including pen and paper, other than as facilitated by the KSC;

- j) Mr Thaçi is not permitted to pass or receive items to or from any person without prior inspection and approval of the escorting officer(s);
- k) Mr Thaçi shall not have any contact whatsoever 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;
- l) Mr Thaçi shall not seek direct access to documents nor destroy evidence;
- m) Mr Thaçi shall not discuss his case with anyone, including the media, other than with his Counsel;
- n) Mr Thaçi shall comply strictly with any further order of the Panel varying the terms or terminating his custodial visit; and
- o) Any breach of the conditions provided herein by Mr Thaçi, his Counsel or his family shall result in the immediate termination of the temporary release.

27. The Panel considers that, given the urgent nature of the request and the present circumstances, the strict custodial conditions outlined above are necessary to outweigh any risks that Mr Thaçi may obstruct the progress of proceedings or commit further crimes.

28. The Panel is further satisfied that, under the present circumstances, **a period of one day**, [REDACTED], enables adequate time for Mr Thaçi to visit his father and his mother in their home, and is thus proportional to the grounds for which the temporary release is sought.

29. Should there be a need to amend any of the above conditions, the Parties or Registry shall seize the Panel immediately.

C. EXECUTION OF CONDITIONS

30. In the implementation of the above conditions, the Panel authorises the Registry to make final operational and security arrangements with external

partners and to notify any other authorities, including those in the Host State and Kosovo, as necessary for the implementation of this order.

31. The Panel recalls that all entities and persons in Kosovo shall cooperate with the KSC and shall comply without undue delay with any decision issued by the KSC or any request for assistance.

D. REPORTING OBLIGATIONS

32. Throughout the custodial visit, the Registry shall provide the Panel with regular updates via email or telephone calls. Such regular updates shall occur, at the very least, upon: (i) the transfer of Mr Thaçi to Kosovo; (ii) completion of any custodial visit to his parents' home; (iii) any breaches of the aforementioned conditions by Mr Thaçi or others; (iv) any early termination of the visit and reasons therefor; and (v) Mr Thaçi's return to the detention unit of the KSC in the Host State. The Registry shall file a report to the Panel on the implementation of this decision within 10 days of Mr Thaçi's return to the detention unit of the KSC.

V. DISPOSITION

33. For the above-mentioned reasons, the Panel hereby:

- a) **GRANTS** the Request in part, providing for one day of temporary release;
- b) **REJECTS** the remainder of the Request;
- c) **ORDERS** Mr Thaçi to comply with all conditions specified in paragraph 26, above;
- d) **ORDERS** Lead Counsel for the Thaçi Defence to refrain from informing any team members who do not hold the position of Counsel of the existence of the present decision and/or the temporary release of Mr Thaçi until Mr Thaçi has returned to The Hague;

- e) **ORDERS** Counsel for the Thaçi Defence not to disclose to any third party (including other team members) the existence of the present decision and/or the temporary release of Mr Thaçi until Mr Thaçi has returned to The Hague;
- f) **ORDERS** Lead Counsel for the Thaçi Defence to ensure that other Counsel and members of his team do not, directly or indirectly, comment publicly on this matter and do not share information pertaining to this matter with the media until Mr Thaçi has returned to The Hague;
- g) **INSTRUCTS** the Registry to implement Mr Thaçi's custodial visit under the conditions specified in paragraph 26, above;
- h) **INVITES** the Parties and/or the Registry to seize the Panel immediately should an amendment to the conditions in paragraph 26 be required;
- i) **AUTHORISES** the Registry to make arrangements with external partners for the implementation of this decision;
- j) **AUTHORISES** the Registry to notify any other authorities deemed necessary for the implementation of this decision;
- k) **REMINDS** authorities in Kosovo that they shall comply without undue delay with any decision issued by the KSC or any request for assistance;
- l) **ORDERS** the Thaçi Defence to provide to the Registry the particulars of the necessary medical personnel, if any, who will be present at Mr Thaçi's parents' home during Mr Thaçi's visit;
- m) **ORDERS** the Registry to provide updates and file a report as indicated in paragraph 32, above; and
- n) **ORDERS** the Thaçi Defence, the SPO and the Registry to file public redacted versions of the Request, SPO Response, Registry Submissions,

and Reply, after Mr Thaçi's return to the detention unit of the KSC, and within one week of that date.



Judge Charles L. Smith, III

Presiding Judge

Dated this Friday, 1 September 2023

At The Hague, the Netherlands.