



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-05

The Prosecutor v. Salih Mustafa

Before: Trial Panel I

Judge Mappie Veldt-Foglia, Presiding Judge

Judge Roland Dekkers

Judge Gilbert Bitti

Judge Vladimir Mikula, Reserve Judge

Registrar: Fidelma Donlon

Date: 20 October 2022

Language: English

Classification: Public

**Public Redacted Version of
Second decision on the review of Salih Mustafa's restrictions on contacts and
communications**

To be notified to:

Specialist Prosecutor

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Counsel for the Accused

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Registry

Registrar

Chief Detention Officer

Victims' Counsel

Anni Pues

TRIAL PANEL I (Panel), hereby renders this decision on the second review of Salih Mustafa's restrictions on contacts and communications.

I. PROCEDURAL BACKGROUND

1. On 2 August 2021, upon request of the Specialist Prosecutor's Office (SPO),¹ the Panel decided to segregate Salih Mustafa (Accused) as of 19 August 2021 [REDACTED] and to impose restrictions on his contacts and communications with the outside world (Segregation Decision).²
2. On 10 September 2021,³ 19 November 2021⁴ and 19 May 2022,⁵ the Panel made certain modifications to the restrictions on the Accused's contacts and communications.
3. On 25 April 2022, the Panel decided to discontinue the Accused's segregation [REDACTED], but maintained the restrictions on his contacts and communications.⁶

¹ KSC-BC-2020-05, F00133, Specialist Prosecutor, *Prosecution's request for segregation and other measures*, 11 June 2021, confidential and *ex parte*. A confidential redacted version was submitted on 14 June 2021, F00133/CONF/RED.

² KSC-BC-2020-05, F00162, Trial Panel I, *Decision on Specialist Prosecutor's request for segregation and other measures*, 2 August 2021, confidential and *ex parte*, para. 43(b)-(c). A confidential redacted version was issued on 18 August 2021, F00162/CONF/RED. The measures were extended on 19 November 2021 and 18 February 2022; see KSC-BC-2020-05, F00262, Trial Panel I, *Decision on the review of the segregation regime and other measures imposed on Salih Mustafa* (First Decision on Review of Segregation), 19 November 2021, confidential; F00323, Trial Panel I, *Second decision on the review of the segregation regime and other measures imposed on Salih Mustafa* (Second Decision on Review of Segregation), 18 February 2022, confidential.

³ KSC-BC-2020-05, F00196, Trial Panel I, *Decision on the Defence request for termination of imposed segregation and modification of other measures on Salih Mustafa*, 10 September 2021, confidential, paras 22-23, 26.

⁴ First Decision on Review of Segregation, paras 19-20, 22(b).

⁵ KSC-BC-2020-05, Transcript of Hearing, 19 May 2022, confidential, p. 4403, line 16 to p. 4404, line 10.

⁶ KSC-BC-2020-05, F00394, Trial Panel I, *Third decision on the review of the segregation regime imposed on Salih Mustafa* (Third Decision on Review of Segregation), 25 April 2022, strictly confidential and *ex parte*, paras 18, 19, 23(a)-(b). A confidential redacted version was issued on the same day, F00394/CONF/RED.

4. On 20 June 2022, the Panel closed the evidentiary proceedings in the present case.⁷
5. On 20 July 2022, the Panel decided to extend the restrictions on the Accused's contacts and communications currently in place, subject to the same conditions as set out in the Segregation Decision and any subsequent amendments thereto (Decision on Review of Contacts Restrictions).⁸ The Panel also set out a calendar for the Registry to file the forthcoming reports and the Parties and Victims' Counsel to file, if they so wished, a response to these reports.⁹
6. On 15 September 2022, the Presiding Judge declared the case closed at the end of the hearing on closing statements.¹⁰
7. On 22 July, 26 August and 5 October 2022, the Registrar filed the "Eleventh Monthly Registry Report on the Communications Regime for the Accused"¹¹ (Eleventh Report), the "Twelfth Monthly Registry Report on the Communications Regime for the Accused"¹² (Twelfth Report) and the "Thirteenth Monthly Registry Report on the Communications Regime for the Accused"¹³ (Thirteenth Report), pursuant to the timeframe set out in the Decision on Review of Contacts Restrictions.¹⁴

⁷ KSC-BC-2020-05, F00439, Trial Panel I, *Decision on the closing of the evidentiary proceedings and related matters*, 20 June 2022, public.

⁸ KSC-BC-2020-05, F00455, Trial Panel I, *Decision on the review of Salih Mustafa's restrictions on contacts and communications*, 20 July 2022, confidential.

⁹ First Restrictions Review Decision, para. 16.

¹⁰ Transcript of Hearing, 15 September 2022, p. 4859, line 15.

¹¹ KSC-BC-2020-05, F00461, Registrar, *Eleventh Monthly Registry Report on the Communications Regime for the Accused*, 22 July 2022, confidential.

¹² KSC-BC-2020-05, F00467, Registrar, *Twelfth Monthly Registry Report on the Communications Regime for the Accused*, 26 August 2022, confidential, with Annex 1, confidential and *ex parte*, and Annex 2, confidential and *ex parte*.

¹³ KSC-BC-2020-05, F00484, Registrar, *Thirteenth Monthly Registry Report on the Communications Regime for the Accused*, 5 October 2022, confidential.

¹⁴ Segregation Decision, para. 43(d).

8. On 11 October 2022, the SPO filed the “Second Prosecution submissions on the extension of the Accused’s restrictions to communications”.¹⁵

9. The Defence did not make any submissions.

II. SUBMISSIONS

A. SPO

10. The SPO submits that, despite the closure of the case against the Accused, the restrictions on his communications, together with court-ordered protective measures and the detention of the Accused, remain necessary to protect the witnesses, victims and their families, from interference, retaliation or intimidation.¹⁶ Maintaining the restrictions on communications would also contribute to limiting the risks that protected information is divulged.¹⁷ Moreover, these continue to be necessary given that the Accused may still obstruct the progress of the proceedings before the Specialist Chamber.¹⁸

11. Finally, referring to the most recent Registry reports on the matter, the SPO submits that the current restrictions regime is working in preventing the unlawful disclosure of confidential information, while equally providing the Accused with meaningful contacts with his family.¹⁹

12. The SPO therefore requests the Panel to maintain the existing restrictions on the Accused’s communications.²⁰

¹⁵ KSC-BC-2020-05, F00485, Specialist Prosecutor, *Second Prosecution submissions on the extension of the Accused’s restrictions to communications* (SPO Submissions), 11 October 2021, confidential.

¹⁶ SPO Submissions, para 5.

¹⁷ SPO Submissions, para. 5.

¹⁸ SPO Submissions, para. 6.

¹⁹ SPO Submissions, para. 7.

²⁰ SPO Submissions, para. 8.

B. REGISTRAR

13. In the Eleventh Report, the Registrar submits that, during the reporting period (21 June – 22 July 2022), the Accused had [REDACTED] telephone calls²¹ and [REDACTED] video visits,²² and that no unauthorised disclosure was identified either during the calls, or during the visits.²³ The Registrar reports that [REDACTED].²⁴ The Registrar also reports that [REDACTED].²⁵ Lastly, [REDACTED].²⁶

14. In the Twelfth Report, the Registrar submits that, during the reporting period (23 July – 26 August 2022), the Accused had [REDACTED] telephone calls,²⁷ [REDACTED] visits,²⁸ and in-person visits with [REDACTED].²⁹ No unauthorised disclosure was identified either during the calls, or during the visits.³⁰

15. In addition, the Registrar reports that, [REDACTED].³¹ [REDACTED].³²

16. Lastly, the Registrar reports that, [REDACTED].³³

17. In the Thirteenth Report, the Registrar submits that, during the reporting period (27 August – 5 October 2022), the Accused had [REDACTED] telephone calls³⁴ and [REDACTED] video visits [REDACTED].³⁵ No unauthorised disclosure was identified either during the calls, or during the visits.³⁶ [REDACTED].³⁷

²¹ Eleventh Report, para. 16.

²² Eleventh Report, para. 19.

²³ Eleventh Report, paras 16, 21.

²⁴ Eleventh Report, paras 12-15.

²⁵ Eleventh Report, para. 21.

²⁶ Eleventh Report, paras 22-23.

²⁷ Twelfth Report, para. 14.

²⁸ Twelfth Report, para. 17.

²⁹ Twelfth Report, para. 18.

³⁰ Twelfth Report, paras 14, 19.

³¹ Twelfth Report, para. 20; Annex 2 to Twelfth Report, p. 2.

³² Annex 1 to Twelfth Report, paras 2-5; Annex 2 to Twelfth Report, pp. 4-5.

³³ Twelfth Report, para. 21.

³⁴ Thirteenth Report, para. 12.

³⁵ Thirteenth Report, para. 19.

³⁶ Thirteenth Report, paras 12, 15, 21.

³⁷ Thirteenth Report, paras 22-23.

18. Furthermore, the Registrar indicates that, [REDACTED].³⁸ [REDACTED].³⁹ [REDACTED].⁴⁰ As a result, the Registrar requests that the Panel modify the terms of the Segregation Decision, to authorise the Accused's forthcoming [REDACTED] according to the above described practice, as needed and in these specific circumstances.⁴¹

III. APPLICABLE LAW

19. The Panel notes Article 8 of the European Convention on Human Rights, Article 22(2) of the Constitution of the Republic of Kosovo, Articles 3(2), 23(1), 40(2) and (6), and 41(6)(b)(ii) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office and Rules 9(5), 56(3) and 116(4)(d) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (Rules).

IV. ANALYSIS

20. The Panel recalls the circumstances underlying its decision to impose restrictions on the Accused's contacts and communications with the outside world, namely that there is a risk that he would unlawfully disclose the identities of protected witnesses in the present case.⁴² While the Panel discontinued the Accused's segregation on 25 April 2022, [REDACTED] and stressed that the risk of unlawful divulgence of confidential information related to witnesses remained unchanged.⁴³

³⁸ Thirteenth Report, paras 14-15.

³⁹ Thirteenth Report, para. 15.

⁴⁰ Thirteenth Report, para. 15.

⁴¹ Thirteenth Report, paras 15-16.

⁴² Segregation Decision, paras 21, 23-24, 32.

⁴³ Third Decision on Review of Segregation, para. 21.

21. The Panel considers that the circumstances relied upon when imposing the restrictions on the Accused's contacts and communications have not changed. It notes in particular that, even though the Panel has declared the case closed, the fears expressed by witnesses testifying in these proceedings and the possibility of threats and intimidation have not cease with the completion of their testimonies.⁴⁴ Moreover, in the most recent decision on the review of detention, the Panel concluded that there continues to be a risk that the Accused will obstruct the progress of the Specialist Chamber's proceedings by interfering with victims and witnesses and/or their families.⁴⁵

22. The Panel also notes that the Accused has had [REDACTED] (telephone calls, video visits and in-person visits),⁴⁶ [REDACTED] during the reporting period.⁴⁷

23. The Panel has taken note in this regard of [REDACTED]. The Panel considers that [REDACTED].⁴⁸ The Panel notes in particular that [REDACTED].⁴⁹ The Panel also notes that [REDACTED] within the communication and contacts regime adopted by the Panel.⁵⁰ In the Panel's view, [REDACTED].

24. The Panel lastly takes note of the fact that [REDACTED]⁵¹ and that the Defence has made no further submissions on the continuation of the restrictions.

25. In light of the above, the Panel finds that the restrictions on the Accused's contacts and communications currently in place remain necessary and proportionate and shall therefore be maintained, subject to the exception set out in the paragraph below.

⁴⁴ Second Decision on Review of Segregation, para. 18.

⁴⁵ KSC-BC-2020-05, F00482, Trial Panel I, *Twelfth decision on review of detention*, 20 September 2022, confidential, para. 19. A public redacted version was issued on the same day, F00482/RED.

⁴⁶ Eleventh Report, paras 16, 19; Twelfth Report, paras 14, 17, 18; Thirteenth Report, paras 12, 19.

⁴⁷ Eleventh Report, paras 12-15; Twelfth Report, para. 20; Thirteenth Report, para. 14.

⁴⁸ Annex 1 to Twelfth Report, para. 5.

⁴⁹ Annex 1 to Twelfth Report, para. 5.

⁵⁰ See also Thirteenth Report, paras 14-15 and paragraph 26 below.

⁵¹ Eleventh Report, para. 23; Twelfth Report, para. 21; Thirteenth Report, para. 23.

26. The Panel notes that the Accused has [REDACTED].⁵² The Panel notes in this regard [REDACTED].⁵³ The Panel reiterates that it considers [REDACTED].⁵⁴

27. Consequently, the term set out in the Segregation Decision that [REDACTED],⁵⁵ is maintained with the caveat that the Panel has authorised the above-described practice [REDACTED].

28. Furthermore, the Panel orders the Registrar to submit its forthcoming reports by **Friday, 4 November 2022** (Fourteenth Report), **Friday, 2 December 2022** (Fifteenth Report) and **Tuesday, 10 January 2023, at 16.00 hours** (Sixteenth Report). The Parties and Victims' Counsel may respond to the Fourteenth Report and Fifteenth Report pursuant to Rule 76 of the Rules. For the Sixteenth Report, the Panel decides to shorten the time limit for responses pursuant to Rule 9(5)(a) of the Rules, as set out below.

V. DISPOSITION

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

- a. **DECIDES** to extend the restrictions on the Accused's contacts and communications currently in place, subject to the same conditions as set out in the Segregation Decision and any subsequent amendments thereto, including in paragraphs 26-27 of the present decision;

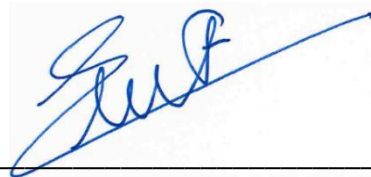
⁵² Thirteenth Report, para. 14.

⁵³ Thirteenth Report, para. 15.

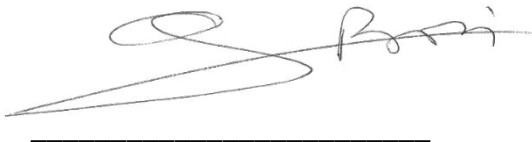
⁵⁴ KSC-BC-2020-05, CRSPD93, 7 October 2022, confidential.

⁵⁵ Segregation Decision, p. 18, para. 37.

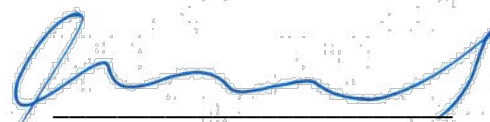
- b. **ORDERS** the Registry to submit reports to the Panel, the Parties and Victims' Counsel by **Friday, 4 November 2022, Friday, 2 December 2022 and Tuesday, 10 January 2023, at 16.00 hours;**
- c. **ORDERS** the SPO to make submissions on whether the current restrictions shall be extended further by **Thursday, 12 January 2023, at 16.00 hours** and to include therein its response to the Sixteenth Report, if any;
- d. **ORDERS** Victims' Counsel to respond to the Sixteenth Report, if she so wishes, by **Thursday, 12 January 2023, at 16.00 hours;** and
- e. **ORDERS** the Defence to respond, if it so wishes, to the Sixteenth Report, the above-mentioned SPO submissions and Victims' Counsel's submissions, if any, by **Monday, 16 January 2023, at 16.00 hours.**



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Thursday, 20 October 2022

At The Hague, the Netherlands.