



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

**In:** KSC-BC-2020-05  
**Specialist Prosecutor v. Salih Mustafa**

**Before:** **Trial Panel I**  
Judge Mappie Veldt-Foglia, Presiding  
Judge Roland Dekkers  
Judge Gilbert Bitti  
Judge Vladimir Mikula, Reserve

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor

**Date:** 1 September 2021

**Language:** English

**Classification:** Confidential

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**SPO response to the Defence request for termination of segregation and  
modification of other measures**

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**Specialist Prosecutor's Office**

Jack Smith

**Counsel for the Accused**

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**Victims' Counsel**

Anni Pues

## A. INTRODUCTION

1. Pursuant to the Trial Panel's ('Panel') order,<sup>1</sup> the Specialist Prosecutor's Office ('SPO') hereby responds to the Defence Request.<sup>2</sup>
2. Segregation of Salih MUSTAFA ('Accused') should be maintained. The other measures in place also fully comply with the Accused's rights under Article 8 of the European Convention on Human Rights ('ECHR'). The SPO, nonetheless, defers to the Registry and Panel regarding the feasibility of any additional contacts, provided that any such contacts do not compromise the framework set forth in the Panel's decision on segregation, especially with regard to the monitoring of communications.<sup>3</sup>

## B. SUBMISSIONS ON THE REQUESTED TERMINATION OF THE ACCUSED'S SEGREGATION

3. On 2 August 2021, the Panel ordered that the Accused be segregated from other detainees. The Panel found this measure necessary to mitigate the risk that confidential information could be divulged by the Accused to other detainees and to preserve the effectiveness of protective measures granted to a number of witnesses across different cases before the Kosovo Specialist Chambers ('KSC').<sup>4</sup> In reaching this determination, the Panel considered it significant that a risk of interferences with witnesses, victims, and their families has been found to exist with respect to the Accused and all the other detainees in the custody of the KSC.<sup>5</sup>

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<sup>1</sup> Order for submissions by the Registrar on the "Defence request for termination of imposed segregation and modification of other measures on Salih Mustafa" and varying the time limits for responses and replies, KSC-2020-BC-05/F00173, 30 August 2021.

<sup>2</sup> Defence request for termination of imposed segregation and modification of other measures on Salih Mustafa, KSC-BC-2020-05/F00172, 27 August 2021 ('Request').

<sup>3</sup> See Decision on Specialist Prosecutor's request for segregation and other measures, KSC-BC-2020-05/F00162, 2 August 2021 ('Segregation Decision'), paras 34 and 37.

<sup>4</sup> Segregation Decision, KSC-BC-2020-05/F00162, paras 23-24.

<sup>5</sup> Segregation Decision, KSC-BC-2020-05/F00162, para.21.

To date, these circumstances have not changed, and the Accused's segregation remains necessary.

4. Before ordering the Accused's segregation, the Panel sought detailed information from the Registry on what measures could be implemented to mitigate the risk of confidential information being divulged.<sup>6</sup> It then carefully reviewed the compatibility of the proposed measures with applicable human rights' law and the Kosovo Constitution,<sup>7</sup> and ordered the adoption of a segregation regime which is fully compatible with the applicable legal and human rights standards.<sup>8</sup>
5. The Defence does not contest the existence of the risks identified by the Panel, nor the legality of the segregation. Rather, it contends that separation from the other inmates deprives the Accused of meaningful human contact,<sup>9</sup> which the Defence defines as contact with 'someone that is, in some way or another, close to him or is of similar or the same background.'<sup>10</sup> In the Defence's submissions, contacts with prison staff is insufficient, as '[o]ne cannot expect that a detainee will socialise with someone who has absolutely no relation to him.'<sup>11</sup>
6. The Defence's interpretation of 'meaningful human contact' does not reflect the standards set by the European Court of Human Rights ('ECtHR'). In *Rohde v. Denmark*, the ECtHR found that a regime of complete isolation from other inmates did not entail a violation of Article 3 of the ECHR, because the applicant had, *inter*

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<sup>6</sup> Segregation Decision, KSC-BC-2020-05/F00162, paras 7-11.

<sup>7</sup> Segregation Decision, KSC-BC-2020-05/F00162, paras 12-15, 27-29.

<sup>8</sup> Segregation Decision, KSC-BC-2020-05/F00162, paras 27-28.

<sup>9</sup> Request, KSC-BC-2020-05/F00172, paras 2-5.

<sup>10</sup> Request, KSC-BC-2020-05/F00172, para.3.

<sup>11</sup> Request, KSC-BC-2020-05/F00172, para.3.

*alia*, access to a television, books, outdoor exercise, and had contacts with his counsel, family members, as well as prison and medical staff.<sup>12</sup>

7. The Accused is currently allowed to have meetings, either in-person or through a remote connection, with his wife, son, and daughter.<sup>13</sup> He has access to a television, sports and recreation facilities, a library, and a spiritual room. Regular human contact, in addition to that with his family members, is ensured through teacher-led art classes, visits by the Chief Detention Officer, Detention Officers, and the Medical Officer.<sup>14</sup> Finally, the Accused has regular meetings with his defence team, which includes at least two Kosovar-Albanians with whom the Accused can communicate in his own language.
8. These measures sufficiently mitigate the negative effects that separation from other inmates could have on the Accused, who is allowed to have contacts with a variety of individuals, including family members and other people speaking his own language. Thus, while a regime of separation from the other inmates may be undesirable to the Accused, it is a necessary measure in full compliance with Article 3 of the ECHR.

#### C. SUBMISSIONS ON THE MODIFICATION OF THE COMMUNICATIONS REGIME

9. The current regime of communication sufficiently guarantees the Accused's right to respect for his family life, enshrined in Article 8 of the ECHR. The SPO, however, defers to the Registry and Panel regarding any assessment on the feasibility of any additional contacts, consistent with the framework set forth in the Panel's decision on segregation.<sup>15</sup>

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<sup>12</sup> ECtHR, *Rhode v. Denmark*, no. 69332/01, Judgment, 21 July 2005, paras 93, 97.

<sup>13</sup> A final determination of the relatives with whom the Accused may have contacts is currently pending before the Panel.

<sup>14</sup> Segregation Decision, KSC-BC-2020-05/F00162, para.7.

<sup>15</sup> See Decision on Specialist Prosecutor's request for segregation and other measures, KSC-BC-2020-05/F00162, 2 August 2021 ('Segregation Decision'), paras 34 and 37.

D. RELIEF REQUESTED

10. Based on the foregoing, the SPO requests the Panel to deny the request to terminate the Accused's segregation.

**Word count: 873**



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**Jack Smith**

**Specialist Prosecutor**

Wednesday, 1 September 2021

At The Hague, the Netherlands.