

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

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

Registrar: Dr Fidelma Donlon

Filing Participant: Defence

Date: 27 August 2021

Language: English

Classification: Public redacted

**Public Redacted version of Defence request for
termination of imposed segregation and
modification of other measures on Salih Mustafa**

Specialist Prosecutor

Mr. Jack Smith

Counsel for the Accused

Mr. Julius von Bóné

Victims' Counsel

Anni Pues

I. Introduction

1. The Trial Panel has by its decision of 2 August 2021 ordered the implementation of a number of measures. The central purpose of the imposed measures is, in short, to avoid the risk of divulgence of information contained in the unredacted versions of disclosures of the case file in light of the upcoming Trial. The defence submits objections to the imposed measures and in addition wants to communicate the effect that it has upon the detainee. Therefore, it is submitted that the segregation is to be terminated and modifications are required for the detainee, as these measures are too harsh.

A. Segregation and meaningful human contact

2. The segregation of the detainee is in itself experienced by the detainee as an extremely harsh measure. In fact, he does not have any contact anymore with other detainees who are from the same country. It is obvious that Mr. Mustafa has no "social or Kosovo background connection" whatsoever to any other person in the detention center and the segregation itself is therefore experienced as an extremely harsh measure.

3. Having meaningful human contact with anybody means that someone can relate to someone that is, in some way or another, close to him or is of similar or the same background. One cannot expect (nor impose) that someone will have any meaningful human contact with the Chief Detention officer or the Medical officer. These people are there to carry out a function, and do not have anything in common with the detainee and therefore such meaningful human contact does not in any manner materialize. To forcefully ask from the detainee to have such meaningful human contact is simply an abstract and pure theoretical idea. One cannot expect that a detainee will socialize with someone who has absolutely no relation to him.

4. Apart from this, the Chief detention officer, or anyone on his behalf, has a different function. To the detainee he is simply an officer that he cannot trust or have confidence in, as this person is acting in an entirely different capacity. The Chief detention officer is both the same person who can implement restrictions on him, and at the same time be a person

in which one suddenly should have the confidence to have human contact with him. The same counts very much the same for the medical officer. The detainee wonders: “what does the Panel expect: that he will confine to them the worries that he has about the situation of his wife, the worries that he as a father has about his children”. These people are simply strangers to him and there is no level of confidence whatsoever between Mustafa or any of these officers. One cannot impose to trust another either.

5. At this stage, the defence finds that the segregation is simply too harsh a measure. The effect of the current measure is that he has at this point no meaningful human contact, nor will that be established through these officers.

6. The defence submits that the measure of segregation is to be terminated. The detainees wishes that the measures are lifted, and go back to a situation that was in place before 19 August 2021, the day that these measures were implemented.

7. The defence is of the opinion that if any measures of this kind, that is the segregation, is implemented, then the detainee has to have some kind of “compensation” in human contact with people that he indeed can relate to. Mr. Mustafa does not speak English to a level that he can in fact have meaningful human contact. Neither do the detention officers or medical officers, or other detention officers in general have any proficiency in Albanian at an acceptable level to establish some kind of social contact with him, and that means something to him. They are both people that he cannot relate to in any manner. Apart from the language aspect, a meaningful human contact (a word that is not defined or described by the Panel) can simply not be established. The panel can equally not impose on the detainee to do so with people that mean nothing to him or have no connection whatsoever to him.

8. Moreover, the segregation itself has it's effects on him personally. He has become extremely agitated and irritated, and angry about the imposition of these measures. These measures have been implemented as of 19 August 2021, and after a week of these measures counsel find it difficult to actually properly prepare the trial phase of the case, as these measures are overwhelmingly present in any conversation. In order to have meaningful

conversations and preparations, a lot of time is lost simply because of the negative feelings that have been created due to the implementation of the measures.

9. Counsel finds him at times depressed about the fact that he is unable to speak on normal occasions with his family. It is something so basic.

B. Telephone calls

10. The situation regarding the telephone calls is also not good. The telephone call restrictions are equally too harsh. They have to be modified in a manner that becomes acceptable for Mr. Mustafa to communicate with his close family relations (currently 3 people).

11. The current measures that are in place amount to 1 call a day for a maximum of 30 minutes. And this is only on weekdays.

12. The defence submits that this regime of phone calls must be modified. One phone call a day is simply not enough and it is a too short time.

13. Counsel can clearly see and experience that this has a very negative effect on the detainee. He is simply unable to talk to his wife or children at moments that he wants. The detainee explains this as follows: "I have a rough night of sleep and in the morning I want to speak to my son and hear his voice"; "In the evening I want to be able to speak to my wife in order to find out how her day was at work"; "or in the daytime I want to speak with my daughter in order to find how she is preparing for her exams". By simply limiting the amount of phone calls to a single phone call a day, this puts severe strains on the normal daily contact that the detainee can have during the day.

14. This measure, the defence submits must be therefore modified to a normal frequency of phone calls. Each of these phone calls does not necessarily have to take half an hour. Simply hearing one's voice can make the detainee comfortable. The defence submits that the

telephone-call-measures therefore must be modified to an unlimited amount during the day. Once again, the defence wishes to stress that not all these calls take 30 minutes.

15. For the detainee, it is his only “life-line” to his family, and as the segregation measures are already having a toll on the detainee, at least these telephone calls must be modified to a normal level. And with normal the defence means simply that he can call multiple times during the day, whenever that fits the detainee, when he has worries, or simply wants to share that he had a difficult night of sleep. On such occasion, a phone call home can really make a difference for him. This is usually in the morning, sometime in the afternoon during breaks of work or school, and in the evening when people are coming home from either work, school, study or wherever.

16. The defence submits that the telephone calls should be able to take place during weekdays as well in the weekends. This is usual the time when people are having free from work, school or study. Not to be able to speak to them for 2 days is really a lot for him, and especially activities of the children are undertaken in those days. So it is obvious that mr. Mustafa wants to know about it as he has always been (as many parents) involved with the activities of the children. It is therefore important that in the weekend telephone communications can take place as well.

17. The defence submits that it makes no sense to exclude the weekends for any reason of having telephone calls between the detainee and his close relatives. In fact, there is no particular justification in the reasoning of the decision why these weekend days have to be excluded from the telephone calls. They have nothing to do with the overall purpose of why these measures were imposed in the first place.

18. The defence submits that the telephone measures that are currently in place take a toll on the mental health of the detainee. The detainee becomes very angry, agitated and irritated and truly feels abandoned by the justice system. He clearly feels that “they are trying to break me”. Counsel is of the opinion that he can clearly experience the extreme difficulty that the detainee has regarding these measures in particular. We do not need any specialized

examination for this to understand and see how it clearly effects the person. And it certainly effects the manner in which the defence is able to work with the detainee on the case material. It has a double negative effect.

19. As these telephone measures are simple to modifyt, the defence seeks that the telephone call measures are restored to the normal regime as it was before the detainee was segregated. And that telephone calls during the weekends be permitted.

20. The defence strongly believes that this modification is simple and will have a better effect on the overall well-being of the detainee. They should be implemented as soon as possible. Lastly, as measures such as segregation are already harsh, the more the Panel should seek to implement measures that are good for the overall well-being of a detainee.

C. [Redacted] meetings / visits with family

21. Currently visits (whether in-person or via [Redacted]) are limited to 10 such visits per month.

22. The defence seeks that these visits will be expanded to 20 visits per month at least.

23. A general month has at least 30 days and in the current circumstances that means every three days such visit.

24. The defence submits that for the same reasons as above, the modification would mean every other day. It is the expectation of the defence counsel that this is good for the well-being of the detainee, and in addition that defence can work well with the detainee, without the person being so irritated by the effect that the measures (especially the segregation) have on him.

25. Especially if the telephone calls and visits combined will be taken into account, there will be more meaningful human contact between the detainee and his close relatives. Once again it is stressed that the meaningful human contact as established in the current regime, does simply not materialize. The best human contact that the detainee can have, is simply with his family, and not with people to whom the detainee has no connection in any manner whatsoever.

26. Apart from the above modifications, possibly some more sports or other activities can be organized for the detainee. Such activities should not be done one-on-one, but more in a manner that there is at least more people involved than a (1) trainer or a (1) leader of such activity. It will enable human interactions with others. Those others do not have to necessarily be other detainees of the KSC unit. Playing football alone or with one single person is obviously not good, but the detention center can probably find creative ways to enable better human contact than the current situation that is implemented.

D. Swift decision on the issue by the Panel

27. Considering the situation of Mr. Mustafa the defence seeks that a swift decision on the issue will be given by the Panel. Counsel is of the view that if it took another week the situation might further deteriorate. Mr. Mustafa's well-being is to be a concern of the Panel and of the SPO as well, and the defence entrusts that SPO will react as swiftly to the present document as possible. The SPO did so with the List of contacts and that is appreciated by the defence.

E. Conclusion

28. The defence submits that the segregation of the detainee is to be terminated. If not, the measures regarding telephone and visits are to be modified as proposed by the defence, and lastly that these phone calls and visits can take place in the weekends.

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Julius von Bóné
Defence Counsel

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At The Hague, the Netherlands