

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: 3 September 2021

Language: English

Classification: Public redacted

Public redacted version of Defence response to submissions made by other participants regarding the defence's 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 divulgation of information contained in the unredacted versions of disclosures of the case file in light of the upcoming Trial. The defence has submitted objections to the imposed measures and in addition has communicated the effect that it has upon the detainee. Therefore, the defence submitted that the segregation is to be terminated and modifications are required for the detainee, as these measures are too harsh.

2. On 1 September 2021 the SPO and Victims' counsel have filed their respective responses to the request. In addition, and on the same date, the Registry filed submissions regarding the feasibility of measures sought by the defence.

A. Segregation and meaningful human contact

3. It is reiterated that the segregation of the detainee is in itself experienced by the detainee as an extremely harsh measure. He has basically lost all contact with other detainees that have a similar background as himself.

4. At present, the detainee has no meaningful human contact with anybody in the Detention Unit. As explained, one can neither expect nor impose that meaningful human contact is to be established with people that are completely unrelated to the detainee, like the people who simply work and have other duties at the detention facility. These people do not mean anything to him. He only has such meaningful human contact with his direct family, that is his wife, his daughter and his son, and if possible, with eventually his brother or other direct family members.

5. He does not have meaningful human contact with the defence team. These contacts are on a professional level and not of any social level.

6. Books, television or a spiritual room do not provide any meaningful human contact. Such pass-time is not to be considered as meaningful human contact. There is nothing human in any of these, and there is nothing of contact in any of these.

7. The measure of segregation and the lack of meaningful human contact results in anger and disappointment of the detainee. But more than that, it distresses him at times, him becoming more pensive or worrying, becoming distracted and unable to concentrate on his case file, unable to concentrate on the preparation of the trial and it has faded his hope in justice as the measures impose in particular harsh restrictions on the contact that he has with his family.

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

9. The defence is of the opinion that even if the measures would remain in place, that the single meaningful contact that is currently in place, is to be extended to the fullest maximum as possible. The defence submits that the more he can speak with the current family members, the more meaningful these human contacts will be experienced and materialized.

10. The overall measures regarding [Redacted] visits with the family as well as telephone calls can simply be adjusted to a "normal level". That is for [Redacted] meetings until 4 pm in the afternoon and for telephone calls throughout the entire week until 8 pm. Telephone calls were earlier possible until 8 pm whereas [Redacted] meetings are usually not later than 4 pm.

11. To date, the detainee has had in the past 14 days only a couple of [Redacted] meetings (around 4) and has not had any telephone calls. The current regime on phone calls does simply not work in practice for him, as there is no real opportunity to call impulsively or when one worries. It really depresses him and deprives him of maintaining a normal family life.

12. The defence is of the opinion that it will lift up the spirit and the moral of the detainee, and will be good for his overall well-being.

B. Telephone calls in the weekend

13. For the detainee, his only “life-line” is to his family, and as the segregation measures are already having a toll on the detainee. Practical implementation issues, if any, should not play a role in the decision to restore the frequency of the calls nor the duration, simply because these have been in place before the 19 August as well.

14. The defence stresses that not all telephone calls actually have to be of a long duration, as sometimes it simply hearing the voice of a family member will be sufficient for the detainee to feel remarkably better considering the current circumstances.

15. Therefore, it is proposed to have at least one phone call a day of 40 minutes and a number of others for some shorter duration (15 to 20 minutes).

16. And as for the telephone calls, to enable him to make these during the entire weekend.

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. These measures are simple to modify, as these were in place before 19 August as well.

19. 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

20. The defence stands by its position that the [Redacted] meetings should be able to take place every other day. If the frequency of the [Redacted] meetings goes up to 20 then the entire meetings will be able to cover the month of September, in which the family is planning to

make in-person visits as well. Especially when court sessions are to start, the [Redacted] meetings will most probably take place more frequently in the weekends, and most probably the detainee will be able to reach his family via telephone until late in the evening (8 pm).

21. 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 will be at least more people involved than a (1) trainer or a (1) leader of such activity. It will enable human interactions with others. The defence welcomes any creativity from the detention unit and/or registry regarding this.

D. Swift decision on the issue by the Panel

22. Considering the situation of mr. Mustafa the defence seeks that a swift decision on the issue will be given by the Panel.

E. Conclusion

23. 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

3 September 2021

At The Hague, the Netherlands