

**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:** 9 November 2021

**Language:** English

**Classification:** Public redacted

---

**Public redacted version of Defence submissions regarding  
review of the imposed segregation and of other measures  
on Salih Mustafa**

---

**Specialist Prosecutor**  
Mr. Jack Smith

**Counsel for the Accused**  
Mr. Julius von Bóné

**Victims' Counsel**  
**Anni Pues**

## 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 Trial hearings. 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.

### A. Segregation and meaningful human contact

2. 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.

3. At present, the detainee has no meaningful human contact with anybody in the Detention Unit. Mustafa has no meaningful human contact with anybody in the detention center. He only has such meaningful human contact with his direct family, that is his wife, his daughter and his son. Other people that are working in the detention center have only meaningless human contact with him.

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

5. 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.

6. The measure of segregation and the lack of meaningful human contact still 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 hearings 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.

7. The defence submits that the measure of segregation is to be terminated. It is Mr. Mustafa's 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.

8. 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.

9. The defence submits that, should the measures not be lifted, that Mr. Mustafa will have an opportunity to increase the volume of telephone calls and [Redacted] meetings with his family.

10. 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. The defence submits an increase of the meetings with 10 extra telephone calls and 10 extra [Redacted] meetings during the month of November.

11. As for the month of December, the defence submits that due to the fact of the rescheduling of a witness, the volume of 10 extra telephone calls and 10 extra [Redacted] meetings with his family is to remain in place until the last protected witness has been heard. The expectation is that the last day of testimony of a protected witness will be 15 December.

12. The defence submits that as of the moment that the last protected witness has been heard, the segregation of Mr. Mustafa is to be terminated. Telephone calls and [Redacted] meetings should then be changed to the regular level as it was before the implementation of these measures.

**B. Telephone calls and [Redacted] meetings are as his only “life line”.**

13. For the detainee, his only “life-line” is to his family are the telephone calls and the [Redacted] meetings with his family. The segregation measures are already having a toll on the detainee.

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 strongly believes that an increase of the phone calls and [Redacted] meetings will have a better effect on the overall well-being of the detainee. Moreover, as the measures are implemented already over a period of nearly 3 months, the defence is of the view that the longer the measures remain in place, the more appropriate it is to increase his only possibility to communicate with his family. The longer the duration is of the measures, the more important it becomes for a detainee to have contact with the only people that he can have meaningful contact with. As explained in the above, meaningful human contact for him is only with his family members.

18. 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.

**C. Conclusion**

19. 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 and increased as proposed by the defence.

**Word count: 1020**



---

**Julius von Bóné**  
**Defence Counsel**

9 November 2021

At The Hague, the Netherlands