



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: 31 January 2023

Language: English

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Public Redacted Version of 'Prosecution submissions on segregation pursuant to Oral Order', filing F00366 dated 28 March 2022

Specialist Prosecutor's Office

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Dr Fidelma Donlon

Counsel for Victims

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1. The Specialist Prosecutor's Office ('SPO') hereby files submissions in accordance with the Oral Order.¹ The Panel requested submissions on the following matters:

'First, the measures that could be taken to increase the time of meaningful human contact for the accused while maintaining his segregation from other detainees of the Kosovo Specialist Chambers; second, on measures in order to mitigate the risk of divulgation of confidential information if the measure of segregation was to be discontinued; and third, what measures are in place for the protection of witnesses in case of unlawful divulgation of their identity.'

2. In relation to the first and second questions identified by the Panel, the SPO defers to the Registry, which is best placed to advise on measures which could be taken within the Detention Unit. Nonetheless, in relation to the second question, the SPO observes that while a range of active and passive monitoring regimes exist which could, to some extent, mitigate the risk of such information being directly divulged to external non-privileged contacts,² it would appear that, were segregation to end, there would not be any effective means of preventing such information from being divulged to fellow detainees, and potentially thereafter further disseminated.

3. With respect to the third question posed by the Panel, the SPO coordinates closely with the Registry on protection matters. Any unauthorised disclosure of confidential information requires an individualised case-by-case assessment of the level of risk, and the specific circumstances of the individual witness. A range of possible responses exist which may encompass increased monitoring, the provision of additional security advice, on-site security enhancement measures, or rapid extraction to a secure location and, potentially, referral to the Witness Protection Programme. Any such measures can only be taken with the cooperation and consent of the individual concerned. [REDACTED].

¹ Transcript of Hearing dated 22 March 2022, p.2585.

² Registry Submissions Pursuant to Trial Panel I's Order (F00136), 1 July 2021, KSC-BC-2020-05/F00146.

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Tuesday, 31 January 2023

At The Hague, the Netherlands.