



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

**In:** KSC-BC-2020-05  
**The Prosecutor v. 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

**Filed by:** Dr Fidelma Donlon

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**Public Redacted Version of “Registry Submissions on the Feasibility of Measures Sought by the Defence Pursuant to Trial Panel I’s Oral Order”, filing F00255, dated 16 November 2021**

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## I. INTRODUCTION

1. Pursuant to the Oral Order<sup>1</sup> for submissions on the Defence's request for review of segregation and modification of other measures ('Request'),<sup>2</sup> the Registrar makes the following submissions to Trial Panel I ('the Panel') on the feasibility of the measures requested by the Defence.

## II. PROCEDURAL HISTORY

1. On 2 August 2021, the Panel issued a decision ('Segregation Decision')<sup>3</sup> on the Specialist Prosecutor's request for segregation and other measures, ordering the Registrar to segregate Mr Salih Mustafa ('Mr Mustafa') and restrict his contacts with the outside world. Mr Mustafa has been segregated since 19 August 2021, in accordance with the Segregation Decision.

2. On 27 August 2021, the Defence submitted a request<sup>4</sup> for termination of segregation and the modification of other measures ordered by the Panel in the Segregation Decision.

3. On 30 August 2021, the Panel requested submissions from the Registrar on the feasibility of the measures sought by the Defence.<sup>5</sup> The Registry filed such submissions on 1 September 2021.<sup>6</sup>

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<sup>1</sup> Oral Order, Transcript (Private Session), 11 November 2021, page 1501, lines 22-25, to page 1502, lines 1-5, confidential ('Oral Order').

<sup>2</sup> F00247, Defence submissions regarding review of the imposed segregation and of other measures on Salih Mustafa, 9 November 2021, confidential ('Request').

<sup>3</sup> F00162, Decision on Specialist Prosecutor's request for segregation and other measures, 2 August 2021, confidential and *ex parte* ('Segregation Decision'). A confidential, redacted version was submitted the same day, F00162/CONF/RED.

<sup>4</sup> F00172, Defence request for termination of imposed segregation and modification of other measures on Salih Mustafa, 27 August 2021, confidential.

<sup>5</sup> F00173, 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, 30 August 2021, confidential.

<sup>6</sup> F00179, Registry Submissions on the Feasibility of Measures Sought by the Defence Pursuant to Trial Panel I's Order (F00173), 1 September 2021, confidential.

4. On 10 September 2021, the Panel issued a decision partly granting the Defence's request and ordering the modification of certain measures in relation to Mr Mustafa's authorised telephone calls and visits.<sup>7</sup>
5. On 8 November 2021, the SPO made submissions on the continued segregation of Mr Mustafa and other measures ordered by the Panel.<sup>8</sup>
6. On 9 November 2021, the Defence submitted its Request<sup>9</sup> for termination of the segregation of Mr Mustafa and modification of other measures. In terms of modifications, the Defence requested: "10 extra telephone calls and 10 extra [REDACTED] meetings during the month of November"<sup>10</sup> and continuing into the future until the last day of testimony of a protected witness;<sup>11</sup> "at least one phone call a day of 40 minutes and a number of others for some shorter duration (15 to 20 minutes)";<sup>12</sup> and telephone calls "during the entire weekend".<sup>13</sup> The Defence also welcomed "any creativity from the detention unit and/or registry" regarding "some more sports or other activities" that can be organized for Mr Mustafa with more than one other person involved.<sup>14</sup>
7. On Thursday, 11 November 2021, the Panel issued an Oral Order requesting the Registrar to file submissions on "whether and to what extent the measures requested by the Defence are feasible" by Tuesday, 16 November 2021, at noon.<sup>15</sup>

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<sup>7</sup> F00196, Decision on the Defence Request for Termination of Imposed Segregation and Modification of Other Measures on Salih Mustafa ('Decision on Request for Termination of Segregation'), 10 September 2021, confidential, paras 23, 26.

<sup>8</sup> F00246, Prosecution submissions for review of segregation and other measures, 8 November 2021, confidential.

<sup>9</sup> Request, fn. 2, above.

<sup>10</sup> Id., para. 10.

<sup>11</sup> Id., paras 11-12.

<sup>12</sup> Id., para. 15.

<sup>13</sup> Id., para. 16.

<sup>14</sup> Id., para. 18.

<sup>15</sup> Oral Order, page 1502, lines 9-18.

### III. SUBMISSIONS

8. The Registrar, advised by the Chief Detention Officer, has conducted a thorough analysis of the feasibility of the measures requested by the Defence.

#### A. TELEPHONE CALLS

9. Mr Mustafa is currently permitted one (1) phone call per day with authorised family members, under active monitoring, for a maximum duration of 30 minutes per call. Calls are authorised from Monday to Friday during working hours, until 20:00 during hearing days, and between 10:00 and 17:00 on Saturdays and Sundays.<sup>16</sup> These restrictions are not applicable to privileged calls with Defence Counsel and his team or certain categories of special visitors.<sup>17</sup>

10. The Defence requests a modification of the Decision so that Mr Mustafa can have at least one (1) phone call per day of 40 minutes and a number of other phone calls of shorter duration (15 to 20 minutes each) in respect of family members he is authorized to contact under current measures.<sup>18</sup> The Defence also requests that Mr Mustafa be permitted to make telephone calls “during the entire weekend”.<sup>19</sup> In total, the Defence requests 10 extra phone calls during the month of November and that this regime continue until the last day of testimony of a protected witness.<sup>20</sup>

11. Having carefully considered [REDACTED] and the specific Request submitted by the Defence, it would be feasible for the Detention Management Unit (‘DMU’) to sustain an increase in the duration and number of actively monitored telephone calls, as described below.

12. It would be feasible for the DMU to sustain [REDACTED].

13. In addition, it would also be feasible for the DMU to facilitate [REDACTED].

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<sup>16</sup> Segregation Decision, para. 37; Decision on Request for Termination of Segregation, para. 23.

<sup>17</sup> Segregation Decision, para. 33. [REDACTED].

<sup>18</sup> Request, para 15.

<sup>19</sup> Id., para. 16.

<sup>20</sup> Id., paras 10-11.

14. [REDACTED].

#### B. VISITS

15. In accordance with the Segregation Decision, Mr Mustafa is currently permitted a maximum of 10 visits per month, whether in-person or via video or a combination thereof, under active monitoring (in addition to the recording of all visits).<sup>21</sup> During hearing days, visits are authorised until 20:00.<sup>22</sup> The allocated number of visits may also take place during weekend days.<sup>23</sup>

16. The Defence requests 10 extra video visits during the month of November and that this regime continue until the last day of testimony of a protected witness.<sup>24</sup>

17. Having carefully considered [REDACTED] and the specific Request submitted by the Defence, it would be feasible for the DMU to facilitate [REDACTED].

18. [REDACTED].

#### C. ACTIVITIES

19. Lastly, the Defence also welcomes “any creativity from the detention unit and/or registry” regarding “some more sports or other activities” that can be organized for Mr Mustafa with “more people involved than a (1) trainer or a (1) leader of such activity”.<sup>25</sup>

20. In accordance with the Segregation Decision<sup>26</sup> and the Rules of Detention<sup>27</sup>, special attention is being paid to ensuring that Mr Mustafa has an opportunity for

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<sup>21</sup> Segregation Decision, paras 34-35.

<sup>22</sup> Decision on Request for Termination of Segregation, para. 23.

<sup>23</sup> Id.

<sup>24</sup> Request, paras 10-11.

<sup>25</sup> Request, para. 18.

<sup>26</sup> Segregation Decision, para. 28.

<sup>27</sup> Rules of Detention, KSC-BD-08-Rev1, 23 September 2020, public, Detention Rule 42(1).

meaningful human contact for more than two (2) hours per day through a combination of different avenues and activities.<sup>28</sup>

21. Detention Officers and other DMU staff continue to proactively engage with the Accused. This is in addition to Mr Mustafa's telephone calls and visits [REDACTED].

22. [REDACTED]. [REDACTED]. [REDACTED].

23. The DMU continues, in addition to the measures set out above, to seek to identify creative ways of engaging additional person(s) in the activities currently offered to Mr Mustafa, as well as exploring additional avenues and services that may be offered.

#### IV. CONCLUSION

24. In sum, it would be feasible for the DMU to implement certain modifications to the measures ordered by the Panel,<sup>29</sup> as detailed at paragraphs 12-13, and 17 above. The Registrar stands ready to provide any additional information or clarifications required by the Panel in relation to this submission and to the feasibility of the measures requested by the Defence.

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<sup>28</sup> F00210, First Monthly Registry Report on Segregation of the Accused with one confidential and *ex parte* Annex, 20 September 2021, confidential; F00240, Second Monthly Registry Report on Segregation of the Accused with one confidential and *ex parte* Annex, 20 October 2021, confidential; F00254, Third Monthly Registry Report on Segregation of the Accused with one confidential and *ex parte* Annex, 16 November 2021, confidential.

<sup>29</sup> Segregation Decision, para. 43; Decision on Request for Termination of Segregation, para. 26.

V. CLASSIFICATION

25. This filing is submitted as confidential pursuant to Rule 82(4) of the Rules.<sup>30</sup>

**Word count: 1378**



**Dr Fidelma Donlon**

**Registrar**

Tuesday, 31 January 2023

At The Hague, the Netherlands

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<sup>30</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3, 2 June 2020 ('Rules').