



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA 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

Date: 31 January 2023

Language: English

Classification: **Public**

**Public Redacted Version of "Submissions of the Registry Pursuant to the Oral
Order Regarding the Segregation of the Accused", filing F00367,
dated 28 March 2022**

Specialist Prosecutor's Office

Alex Whiting

Counsel for the Accused

Julius von Bóné

Registry

Chief Detention Officer
Head of Witness Protection
and Support Office

Victims' Counsel

Anni Pues

I. INTRODUCTION

1. Pursuant to Trial Panel I's Oral Order,¹ the Registrar makes the following submissions in relation to the segregation of Mr Salih Mustafa ('the Accused').

II. PROCEDURAL HISTORY

1. In line with the Segregation Decision,² the Registry has submitted regular reports to Trial Panel I ('the Panel') on the enforcement of the segregation regime and the system of communications restrictions, as well as their effects on the Accused.³

2. Following the submission of the Seventh Report, the Panel ordered the Specialist Prosecutor's Office ('SPO') and the Registry to make submissions on the following: "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

¹ KSC-BC-2020-05, In Court – Oral Order, 22 March 2022 Transcript, confidential ('Oral Order'), page 2585, lines 1-12.

² 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 issued on 18 August 2021, F00162/CONF/RED, para. 43(d). *See also* F00176, Decision on the 'Registry Report and Submissions Regarding Segregation Decision (F00162)', 1 September 2021, confidential; F00196, Decision on the Defence Request for Termination of Imposed Segregation and Modification of Other Measures on Salih Mustafa, 10 September 2021, confidential ('Decision on Request for Termination of Segregation'); F00262, Decision on the Review of the Segregation Regime and Other Measures Imposed on Salih Mustafa, 19 November 2021, confidential ('Decision on Review of the Segregation Regime'); F00323, Second Decision on the Review of the Segregation Regime and Other Measures Imposed on Salih Mustafa, 18 February 2022, confidential.

³ F00164, Registry Report on Implementation of the Segregation Decision (F00162), 19 August 2021, confidential; F00210, First Monthly Registry Report on Segregation of the Accused, confidential with one confidential and *ex parte* Annex, 20 September 2021 ('First Report'); F00240, Second Monthly Registry Report on Segregation of the Accused, confidential with one confidential and *ex parte* Annex, 20 October 2021 ('Second Report'); F00254, Third Monthly Registry Report on Segregation of the Accused, confidential with one confidential and *ex parte* Annex, 16 November 2021 ('Third Report'); F00284, Fourth Monthly Registry Report on Segregation of the Accused, confidential with one confidential and *ex parte* Annex, 17 December 2021 ('Fourth Report'); F00293, Fifth Monthly Registry Report on Segregation of the Accused, confidential with one confidential and *ex parte* Annex, 20 January 2022 ('Fifth Report'); F00322, Sixth Monthly Registry Report on Segregation of the Accused, confidential with two confidential and *ex parte* Annexes, 18 February 2022 ('Sixth Report'); F00336, Registry Interim Report Related to the Accused in Segregation, 7 March 2022, confidential; F00351, Seventh Monthly Registry Report on Segregation of the Accused, confidential with two confidential and *ex parte* Annexes, 18 March 2022 ('Seventh Report').

Kosovo Specialist Chambers; second, on measures in order to mitigate the risk of divulgence 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 divulgence of their identity”.⁴

III. SUBMISSIONS

3. The Registrar, advised by the Chief Detention Officer and the Head of the Witness Protection and Support Office (‘WPSO’), has analysed the questions posed by the Panel and submits the following information.

A. MEANINGFUL HUMAN CONTACT TIME TO DATE

4. Throughout the Accused’s segregation, special attention has been paid to ensuring the Accused has an opportunity for meaningful human contact for more than two hours per day. [REDACTED],⁵ [REDACTED].⁶ [REDACTED].

5. [REDACTED]. [REDACTED].

6. Since the submission of the Seventh Report, [REDACTED]. In addition, since that submission, the Panel has confirmed that an additional immediate family member of the Accused may be added to his list of authorised visitors and callers.⁷

B. MEASURES TO INCREASE MEANINGFUL HUMAN CONTACT TIME

7. The Registry has assessed the measures that could be taken to increase the time of meaningful human contact for the Accused while maintaining his segregation from other Specialist Chambers (‘SC’) Detainees, [REDACTED].

⁴ See Oral Order, fn. 1.

⁵ [REDACTED]; [REDACTED].

⁶ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

⁷ 23 March 2022 Transcript (private session), page 2602, lines 17-19.

(i) Within the [REDACTED]

8. Throughout the Accused's segregation, DMU staff have identified a variety of activities that may be of interest to the Accused and proactively engaged additional person(s) to participate, [REDACTED]. [REDACTED].
9. In addition, DMU staff have informed the Accused that additional activities are available to him, [REDACTED]. [REDACTED].
10. [REDACTED]. This will offer an additional opportunity for the Accused to engage in recreational activities with DMU staff and/or Detention Officers in the fresh air.
11. It is also feasible for the DMU to sustain an increase in the duration and number of the Accused's actively monitored telephone calls with authorised family members. In total, [REDACTED], the DMU can accommodate [REDACTED], within the currently authorised time periods.⁸ This would increase the duration [REDACTED].⁹

(ii) [REDACTED]

12. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].¹⁰
13. [REDACTED].¹¹
14. In terms of other means of increasing meaningful human contact, the Registrar is exploring the possibility of facilitating the Accused's participation in recreational activities [REDACTED], subject to arrangements necessary for the maintenance of safety, security and good order.¹² [REDACTED].¹³ [REDACTED]. [REDACTED].

⁸ The Accused 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. *See Segregation Decision, para. 37; Decision on Request for Termination of Segregation, para. 23.* The Accused is also permitted two (2) additional telephone calls per week with authorised family members, of 15 minutes each, on weekdays and during working hours only. *See Decision on Review of the Segregation Regime, para. 20.*

⁹ *See id.*

¹⁰ [REDACTED].

¹¹ [REDACTED]; [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

C. MEASURES TO MITIGATE RISK OF DIVULGATION OF CONFIDENTIAL INFORMATION

15. Pursuant to Rule 56(6) of the Rules, the Panel may, either *proprio motu* or upon request, rule on conditions of detention and related matters for the purposes of protecting witnesses or victims, confidential information, or the integrity of the proceedings, including by imposing necessary and proportionate restrictions on the communications of a Detainee.

16. The Registry has previously outlined the capabilities and options for monitoring a Detainee's non-privileged telephone conversations, visits (both video and in-person), and correspondence.¹⁴ This includes both active and passive monitoring, urgent security measures, as well as the general restrictions in place at the SC Detention Facilities in respect of all Detainees that are regulated in the Rules of Detention and relevant practice directions and instructions.¹⁵ Such capabilities and options for monitoring the Accused's non-privileged telephone calls, visits, and correspondence with external parties could be also implemented when the Accused is not in segregation.

17. [REDACTED].

D. MEASURES FOR THE PROTECTION OF WITNESSES IN CASE OF UNLAWFUL DIVULGATION

18. Pursuant to Article 34(8) of the Law, WPSO, on behalf of the Registrar, is responsible for implementing court ordered or otherwise necessary protective measures, security arrangements, and other appropriate assistance for witnesses and others who are at risk on account of testimony given by witnesses.

19. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

20. [REDACTED]. [REDACTED].

¹⁴ Registry Feasibility Submissions, paras 35-54.

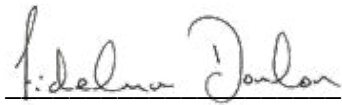
¹⁵ Rules of Detention, KSC-BD-08-Rev1, 23 September 2020, public (unless otherwise indicated, all references to 'Detention Rule' are to the Rules of Detention); Practice Direction on Visits and Communications, KSC-BD-09-Rev1, 23 September 2020, public; Practice Direction on Counsel Visits and Communications, KSC-BD-10-Rev1, 23 September 2020, public; Practice Direction on Media Communications, KSC-BD-28, 23 September 2020, public.

21. [REDACTED].

IV. CLASSIFICATION

22. This filing is submitted as confidential pursuant to Rule 82(4) of the Rules.

Word count: 1271

A handwritten signature in cursive script, reading "Fidelma Donlon", written over a horizontal line.

Dr Fidelma Donlon

Registrar

Tuesday, 31 January 2023

At The Hague, the Netherlands