



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: Fidelma Donlon

Date: 20 July 2022

Language: English

Classification: Public

**Public Redacted Version of
Decision on the review of Salih Mustafa's restrictions on contacts and
communications**

To be notified to:

Specialist Prosecutor

Jack Smith

Counsel for the Accused

Julius von Bóné

Registry

Registrar

Chief Detention Officer

Victims' Counsel

Anni Pues

TRIAL PANEL I (Panel), hereby renders this decision on the review of Salih Mustafa's restrictions on contacts and communications.

I. PROCEDURAL BACKGROUND

1. On 2 August 2021, upon request of the Specialist Prosecutor's Office (SPO),¹ the Panel decided to segregate Salih Mustafa (Mr Mustafa or Accused) as of 19 August 2021 [REDACTED] and to impose restrictions on his contacts and communications with the outside world (Segregation Decision).²
2. On 10 September 2021,³ 19 November 2021⁴ and 19 May 2022,⁵ the Panel made certain modifications to the restrictions on the Accused's contacts and communications.
3. On 25 April 2022, the Panel decided to discontinue the Accused's segregation [REDACTED], but maintained the restrictions on his contacts and communications.⁶

¹ KSC-BC-2020-05, F00133, Specialist Prosecutor, *Prosecution's request for segregation and other measures*, 11 June 2021, confidential and *ex parte*. A confidential redacted version was submitted on 14 June 2021, F00133/CONF/RED.

² KSC-BC-2020-05, F00162, Trial Panel I, *Decision on Specialist Prosecutor's request for segregation and other measures*, 2 August 2021, confidential and *ex parte*, para. 43(b)-(c). A confidential redacted version was issued on 18 August 2021, F00162/CONF/RED. The measures were extended on 19 November 2021 and 18 February 2022; see KSC-BC-2020-05, F00262, Trial Panel I, *Decision on the review of the segregation regime and other measures imposed on Salih Mustafa* (First Decision on Review of Segregation), 19 November 2021, confidential; F00323, Trial Panel I, *Second decision on the review of the segregation regime and other measures imposed on Salih Mustafa* (Second Decision on Review of Segregation), 18 February 2022, confidential.

³ KSC-BC-2020-05, F00196, Trial Panel I, *Decision on the Defence request for termination of imposed segregation and modification of other measures on Salih Mustafa*, 10 September 2021, confidential, paras 22-23, 26.

⁴ First Decision on Review of Segregation, paras 19-20, 22(b).

⁵ KSC-BC-2020-05, Transcript of Hearing, 19 May 2022, confidential, p. 4403, line 16 to p. 4404, line 10.

⁶ KSC-BC-2020-05, F00394, Trial Panel I, *Third decision on the review of the segregation regime imposed on Salih Mustafa* (Third Decision on Review of Segregation), 25 April 2022, strictly confidential and *ex parte*, paras 18, 19, 23(a)-(b). A confidential redacted version was issued on the same day, F00394/CONF/RED.

4. On 13 May 2022 and 20 June 2022, the Registrar filed the “Ninth Monthly Registry Report on Segregation of the Accused” (Ninth Report)⁷ and the “Tenth Monthly Registry Report on the Communications Regime for the Accused” (Tenth Report) respectively,⁸ pursuant to the timeframe set out in the Segregation Decision.⁹

5. On 20 June 2022, the Panel closed the evidentiary proceedings in the present case.¹⁰

6. On 1 July 2022, the SPO filed the “Prosecution submissions on the extension of the Accused’s restrictions to communications”.¹¹ The Defence did not make any submissions.

II. SUBMISSIONS

A. SPO

7. The SPO submits that the restrictions on Mr Mustafa’s contacts and communications remain lawful and necessary to protect the witnesses, victims and their families.¹² More specifically, the SPO submits that no circumstances have intervened that would change the Panel’s previous findings on the existence of a risk of interference with witnesses, victims and their families. This risk remains high and is elevated by the fact that the segregation of the Accused has been discontinued.¹³

⁷ KSC-BC-2020-05, F00409, Registrar, *Ninth Monthly Registry Report on Segregation of the Accused*, 13 May 2022, confidential, with Annex 1, confidential and *ex parte*.

⁸ KSC-BC-2020-05, F00438, Registrar, *Tenth Monthly Registry Report on Segregation of the Accused*, 20 June 2022, confidential.

⁹ Segregation Decision, para. 43(d).

¹⁰ KSC-BC-2020-05, F00439, Trial Panel I, *Decision on the closing of the evidentiary proceedings and related matters*, 20 June 2022, public.

¹¹ KSC-BC-2020-05, F00446, Specialist Prosecutor, *Prosecution submissions on the extension of the Accused’s restrictions to communications* (SPO Submissions), 1 July 2022, confidential.

¹² SPO Submissions, paras 2, 8-9.

¹³ SPO Submissions, paras 6-7.

Maintaining the restrictions on communications would contribute to limiting the risks that protected information is divulged.¹⁴

B. REGISTRAR

8. In the Ninth Report, the Registrar submits *inter alia* that, during the reporting period (13 April – 13 May 2022), Mr Mustafa had [REDACTED] telephone calls, [REDACTED] video visits, and in-person visits [REDACTED].¹⁵ No unauthorised disclosure was identified either during the calls, or during the visits.¹⁶ [REDACTED].¹⁷

9. In the Tenth Report, the Registrar submits that, during the reporting period (13 May – 20 June 2022), Mr Mustafa had [REDACTED] telephone calls, [REDACTED] video visits, and in-person visits with [REDACTED].¹⁸ No unauthorised disclosure was identified either during the calls, or during the visits.¹⁹ [REDACTED].²⁰

III. APPLICABLE LAW

10. The Panel notes Article 8 of the European Convention on Human Rights, Article 22(2) of the Constitution of the Republic of Kosovo, Articles 3(2), 23(1), 40(2) and (6), and 41(6)(b)(ii) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office and Rules 9(5), 56(6) and 116(4)(d) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (Rules).

¹⁴ SPO Submissions, para. 6.

¹⁵ Ninth Report, paras 13-26.

¹⁶ Ninth Report, paras 15, 16, 19, 24.

¹⁷ Ninth Report, para. 28.

¹⁸ Tenth Report, paras 8-17.

¹⁹ Tenth Report, paras 10, 12, 17.

²⁰ Tenth Report, paras 18-19.

IV. ANALYSIS

11. The Panel recalls the circumstances underlying its decision to impose restrictions on the Accused's contacts and communications with the outside world, namely that there is a risk that he would unlawfully disclose the identities of protected witnesses in the present case.²¹ While the Panel discontinued the Accused's segregation on 25 April 2022, [REDACTED] and stressed that the risk of unlawful divulgence of confidential information related to witnesses remained unchanged.²²

12. The Panel considers that the circumstances relied upon when imposing the restrictions on the Accused's contacts and communications have not changed. Although the evidentiary proceedings in the present case have been closed, the Panel recalls that the fears expressed by witnesses testifying in these proceedings and the possibility of threats and intimidation have not cease with the completion of their testimonies.²³ Additionally, in its recent "Eleventh decision on review of detention", the Panel has found that there continues to be a risk that the Accused will obstruct the progress of the Specialist Chamber's proceedings by interfering with victims and witnesses and/or their families.²⁴

13. The Panel further notes that: (i) the Accused has had regular contact with [REDACTED] (telephone calls, video visits and in-person visits);²⁵ (ii) [REDACTED];²⁶ (iii) [REDACTED];²⁷ and (iv) the Defence has made no submissions on the continuation of the restrictions.

²¹ Segregation Decision, paras 21, 23-24, 32.

²² Third Decision on Review of Segregation, para. 21.

²³ Second Decision on Review of Segregation, para. 18.

²⁴ KSC-BC-2020-05, F00454, Trial Panel I, *Eleventh decision on review of detention*, 20 July 2022, confidential, para. 19. A public redacted version was issued on the same day, F00454/RED.

²⁵ Ninth Report, paras 13-25; Tenth Report, paras 8-17.

²⁶ Ninth Report, para. 28; Tenth Report, para. 18.

²⁷ Tenth Report, para. 19.

14. In light of the above, the Panel finds that the restrictions on the Accused's contacts and communications currently in place remain necessary and proportionate and shall therefore be maintained.

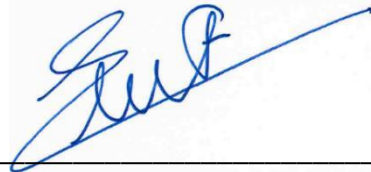
15. In order to decide on the basis of the most recent information from the Registrar on the enforcement of the restrictions on the Accused's contacts and communications and their eventual effects on the Accused, the Panel deems it necessary to modify the reporting period set out in paragraph 41 of the Segregation Decision. Accordingly, the Panel orders the Registrar to submit its forthcoming reports by **Friday, 22 July 2022** (Eleventh Report), **Friday, 26 August 2022** (Twelfth Report) and **Wednesday, 5 October 2022, at 16.00 hours** (Thirteenth Report). The Parties and Victims' Counsel may respond to the Eleventh Report and Twelfth Report pursuant to Rule 76 of the Rules. For the Thirteenth Report, the Panel decides to shorten the time limit for responses pursuant to Rule 9(5) of the Rules, as set out below.

V. DISPOSITION

16. For the above-mentioned reasons, the Panel hereby:

- a. **DECIDES** to extend the restrictions on the Accused's contacts and communications currently in place, subject to the same conditions as set out in the Segregation Decision and any subsequent amendments thereto;
- b. **ORDERS** the Registry to submit reports to the Panel, the Parties and Victims' Counsel by **Friday, 22 July 2022, Friday, 26 August 2022 and Wednesday, 5 October 2022, at 16.00 hours**;
- c. **ORDERS** the SPO to make submissions on whether the current restrictions shall be extended further by **Tuesday, 11 October 2022, at 16.00 hours** and to include therein its response to the Thirteenth Report, if any;

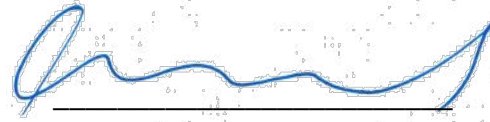
- d. **ORDERS** Victims' Counsel to respond to the Thirteenth Report, if she so wishes, by **Tuesday, 11 October 2022, at 16.00 hours**; and
- e. **ORDERS** the Defence to respond, if it so wishes, to the Thirteenth Report, the above-mentioned SPO submissions and Victims' Counsel's submissions, if any, by **Friday, 14 October 2022, at 16.00 hours**.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Wednesday, 20 July 2022

At The Hague, the Netherlands.