



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 December 2022

Language: English

Classification: Public

**Public redacted version of
Decision on lifting Salih Mustafa's restrictions on contacts and communications
with the outside world**

To be notified to:

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Registry

Registrar

Chief Detention Officer

Victims' Counsel

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TRIAL PANEL I (Panel), hereby renders this decision on lifting Salih Mustafa's restrictions on contacts and communications with the outside world.

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) as of 19 August 2021 from the other accused persons in the Specialist Chamber's (SC) detention facilities 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 respectively, the Panel made certain modifications to the restrictions on Mr Mustafa's contacts and communications.
3. On 25 April 2022, the Panel decided to discontinue Mr Mustafa's segregation on [REDACTED] with immediate effect, but maintained the restrictions on his contacts and communications with the outside world.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*, 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*, 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 20 June 2022, the Panel closed the evidentiary proceedings in the present case.⁷
5. On 20 July and 20 October 2022, respectively, the Panel decided to extend the restrictions on Mr Mustafa's contacts and communications, subject to the same conditions as set out in the Segregation Decision and any subsequent amendments thereto.⁸
6. On 15 September 2022, the Presiding Judge declared the case closed at the end of the hearing on closing statements.⁹
7. On 20 October 2022, the Panel decided to extend the restrictions on Mr Mustafa's contacts and communications and set out a calendar for the Registry to submit monthly reports.¹⁰
8. On 4 November and 2 December 2022, respectively, the Registry filed its latest reports to the Panel, Parties and Victims' Counsel.¹¹
9. On 16 December 2022, the Panel pronounced in open court the judgment against Mr Mustafa, convicting him for war crimes and sentencing him to 26 years of imprisonment.¹² At the hearing, the Panel lifted *proprio motu* the restrictions on

⁷ KSC-BC-2020-05, F00439, Trial Panel I, *Decision on the closing of the evidentiary proceedings and related matters*, 20 June 2022, public.

⁸ KSC-BC-2020-05, F00455, Trial Panel I, *Decision on the review of Salih Mustafa's restrictions on contacts and communications*, 20 July 2022, confidential (First Decision on Review of Restrictions on Contacts and Communications); F00486, Trial Panel I, *Second decision on the review of Salih Mustafa's restrictions on contacts and communications* (Second Decision on Review of Restrictions on Contacts and Communications), 20 October 2022, confidential.

⁹ Transcript of Hearing, 15 September 2022, p. 4859, line 15.

¹⁰ Second Decision on Review of Restrictions on Contacts and Communications.

¹¹ KSC-BC-2020-05, F00488, Registrar, *Fourteenth Monthly Registry Report on the Communications Regime for the Accused* (Fourteenth Registry Report), 4 November 2022, confidential, with two confidential and *ex parte* annexes; F00490, Registrar, *Fifteenth Monthly Registry Report on the Communications Regime for the Accused* (Fifteenth Monthly Registry Report), 2 December 2022, confidential.

¹² KSC-BC-2020-05, F00494, Trial Panel I, *Trial Judgment*, 16 December 2022, confidential.

Mr Mustafa contacts and communications with effect on Wednesday, 21 December 2022 at noon.¹³

II. APPLICABLE LAW

10. The Panel notes Article 8 of the European Convention on Human Rights (ECHR), 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(3), 75(2) and 116(4)(d) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (Rules).

III. ANALYSIS

11. The present decision offers the written reasons for terminating the restrictions of Mr Mustafa's contacts and communications with the outside world, as required by Rule 75(2) of the Rules.

12. At the outset, the Panel recalls the general principles guiding the assessment of the compatibility of restrictions on contacts and communications with Article 8 of the ECHR. In particular, pursuant to Article 8(2) of the ECHR, the measures put in place must be: (i) "in accordance with the law"; (ii) necessary and (iii) proportionate to the legitimate aim pursued.¹⁴

¹³ Transcript of Hearing, 16 December 2022, p. 4883, lines 13-19.

¹⁴ Segregation Decision, paras 16-17, with accompanying references.

13. The Panel has been restricting Mr Mustafa's contacts and communications with the outside world in accordance with the applicable law before the SC for reasons set out first in the Segregation Decision and further detailed in subsequent decisions.¹⁵

14. The aim of protecting the witnesses and victims in this case and their families remains of paramount importance to the Panel, even after the pronouncement of the judgment which imposed a custodial sentence on Mr Mustafa. That being said, while the risk persists that Mr Mustafa may interfere with victims and witnesses, and/or their families,¹⁶ sufficient measures remain in place, which provide adequate safeguards against this risk. These include: (i) the continued imprisonment of Mr Mustafa, following his sentencing; (ii) the default passive monitoring of all non-privileged telephone conversations, the supervision of all non-privileged in-person and video visits, as well as the security controls in place for all non-privileged correspondence;¹⁷ (iii) the protective measures regime in place to protect witnesses and victims participating in the proceedings; and (iv) the continuous obligation of Mr Mustafa not to divulge any identifying information of the protected witnesses or any other confidential information contained in the case file or any other proceedings before the SC to anyone outside of his defence team.¹⁸ The Panel's conviction is further strengthened by the recent Registry's submissions, suggesting that no unauthorised disclosure of confidential information by Mr Mustafa to the

¹⁵ Segregation Decision, para. 31; First Decision on Review of Restrictions on Contacts and Communications, paras 11-12; Second Decision on Review of Restrictions on Contacts and Communications, para. 21.

¹⁶ See, *inter alia*, KSC-BC-2020-05, F00489, Trial Panel I, *Thirteenth decision on review of detention*, 18 November 2022, confidential, para. 19. A public redacted version was issued on the same day, F00489/RED.

¹⁷ Article 17 of Registry Practice Directions on Detention. Visits and Communications, 23 September 2020, KSC-BD-09-Rev1.

¹⁸ Segregation Decision, para. 43(f).

outside world was identified either during the calls or during the visits while restrictions on contacts and communications were in place.¹⁹

15. Regarding the proportionality of such restrictions, the Panel also recalls that in the context of the present proceedings, Mr Mustafa has been segregated from other detainees for over 8 months (from 19 August 2021 until 25 April 2022), and that his contacts and communications with the outside world have so far been restricted for a total duration of over 16 months (from 19 August 2021 until the present time). The combined effect of detention in segregation and restrictions of Mr Mustafa's contacts and communications with the outside world represents a considerable limitation of his rights to privacy and family life. With the passage of time, such a limitation becomes less proportionate. The Panel considers that, at this stage of proceedings, and considering the availability of other safeguards in place, the restrictions of Mr Mustafa's contacts and communications are no longer proportionate to the legitimate aim pursued.

¹⁹ Fifteenth Monthly Registry Report, paras 14, 19; Fourteenth Registry Report, paras 14, 19; KSC-BC-2020-05, F00484, Registrar, *Thirteenth Monthly Registry Report on the Communications Regime for the Accused*, 5 October 2022, confidential, para. 12; F00467, Registrar, *Twelfth Monthly Registry Report on the Communications Regime for the Accused*, 26 August 2022, confidential, with two strictly confidential and *ex parte* Annexes, paras 14, 19; F00461, Registrar, *Eleventh Monthly Registry Report on the Communications Regime for the Accused*, 22 July 2022, confidential, paras 16, 21; F00438, Registrar, *Tenth Monthly Registry Report on the Communications Regime for the Accused*, 20 June 2022, confidential, paras 10, 12, 17; F00409, Registrar, *Ninth Monthly Registry Report on Segregation of the Accused*, 13 May 2022, confidential, with one confidential and *ex parte* Annex, paras 15, 16, 19, 24; F00384, Registrar, *Eighth Monthly Registry Report on Segregation of the Accused*, 13 April 2022, confidential, with two confidential and *ex parte* annexes, paras 17, 21; F00351, Registrar, *Seventh Monthly Registry Report on Segregation of the Accused*, 18 March 2022, confidential, with two confidential and *ex parte* annexes, paras 16, 20; F00322, Registrar, *Sixth Monthly Registry Report on Segregation of the Accused*, 18 February 2022, confidential, with two confidential and *ex parte* annexes, paras 16, 20; F00293, Registrar, *Fifth Monthly Registry Report on Segregation of the Accused*, 20 January 2022, confidential, with one confidential and *ex parte* annex, paras 19, 23; F00284, Registrar, *Fourth Monthly Registry Report on Segregation of the Accused*, 17 December 2021, confidential, with one confidential and *ex parte* annex, paras 19, 23; F00254, *Third Monthly Registry Report on Segregation of the Accused*, 16 November 2021, confidential, with one confidential and *ex parte* annex, paras 16, 21; F00240, *Second Monthly Registry Report on Segregation of the Accused*, 21 October 2021, confidential, with one confidential and *ex parte* annex, paras 13, 18; F00210, *First Monthly Registry Report on Segregation of the Accused*, 20 September 2021, confidential, with one confidential and *ex parte* annex, paras 12, 17.

16. In light of the above, the Panel finds that the current restrictions on Mr Mustafa's contacts and communications shall be lifted effective **Wednesday, 21 December 2022, at noon**, and that the Registry shall take any necessary steps to this effect.

IV. DISPOSITION

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

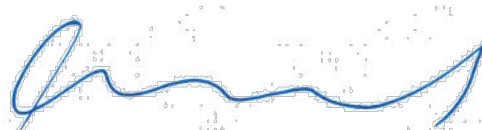
- a. **RECALLS** its decision of 16 December 2022, to lift *proprio motu* the restrictions on Mr Mustafa's contacts and communications with the outside world currently in place, effective **Wednesday, 21 December 2022, at noon**; and
- b. **ORDERS** the Registry to take all necessary steps to implement the present decision.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Tuesday, 20 December 2022

At The Hague, the Netherlands.