



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: Acting Specialist Prosecutor

Date: 8 February 2023

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**Public Redacted Version of 'Prosecution submissions for review of segregation
and other measures' filing F00246 dated 8 November 2021**

Specialist Prosecutor's Office

Alex Whiting

Counsel for the Accused

Julius von Bóné

Victims' Counsel

Anni Pues

A. INTRODUCTION

1. Pursuant to Articles 21 and 41 of the Law,¹ Rules 23(7) and 56(6) of the Rules,² Rule 43(3)(c) of the Rules of Detention,³ and in compliance with the order of the Trial Panel ('Panel'),⁴ the Specialist Prosecutor's Office ('SPO') hereby files its submissions on the segregation and other measures applied to Salih MUSTAFA ('Accused').
2. The Accused's continued segregation remains lawful and necessary. The communication regime in force fully complies with the Accused's rights under Article 8 of the European Convention on Human Rights ('ECHR').

B. SUBMISSIONS

3. On 2 August 2021, the Panel ordered that the Accused be segregated from other detainees.⁵ The Panel found this measure [REDACTED].⁶ In reaching this determination, the Panel considered it significant that [REDACTED].⁷ On 10 September 2021, the Panel maintained the Accused's segregation while modifying the relevant communication regime.⁸ No circumstances capable of changing these findings have intervened since the Decision Maintaining Segregation.
4. The SPO submits that the risk to witnesses, victims, and their families remains high, and is in fact elevated at this advanced stage of the proceeding. The majority of Prosecution witnesses continue to benefit from protective measures.⁹ [REDACTED].¹⁰

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). Unless otherwise indicated, all references to 'Rule(s)' are to the Rules.

³ KSC-BD-08/Rev1, 23 September 2020 ('Detention Rules').

⁴ Decision on Specialist Prosecutor's request for segregation and other measures, KSC-BC-2020-05/F00162, Confidential, 2 August 2021 ('Segregation Decision'), para.43.

⁵ Segregation Decision, KSC-BC-2020-05/F00162, para.43.

⁶ [REDACTED].

⁷ [REDACTED].

⁸ Decision on the Defence request for termination of imposed segregation and modification of other measures on Salih Mustafa, KSC-BC-2020-05/F00196, Confidential, 10 September 2021, ('Decision Maintaining Segregation') para.26.

⁹ Segregation Decision, KSC-BC-2020-05/F00162, para.20.

¹⁰ [REDACTED].

5. Delayed disclosure to the Defence of witness identities was granted on the finding that there exist objectively justifiable risks to the witnesses and their families.¹¹ The continued detention of the Accused is premised on the finding that there remains a risk that Accused may obstruct the progress of KSC proceedings by interfering with victims, witnesses, and their families.¹²

6. The identities of all Prosecution witnesses have now been disclosed to the Defence. The Accused has heard the testimonies of five Prosecution witnesses¹³ and has received the prior statements of all remaining witnesses. He is fully aware of the strength of the Prosecution's case and thus has increased motivation to obstruct the proceedings.

7. The SPO submits that the risk of unlawful disclosure of the identities and evidence provided by protected witnesses has increased during the progression of trial due to the following factors: (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED]; and (iv) [REDACTED]. These factors, considered in light of the advanced stage of the proceedings, demonstrate the importance of maintaining the segregation regime.

8. Under the current segregation and communication regime, the Accused receives meaningful human contact each day, daily visits by a Detention Officer, and visits by a Medical Officer.¹⁴ The Accused is permitted one phone call per day with authorised family members,¹⁵ and in addition up to ten visits per month with authorised family members, whether in-person, via video, or a combination thereof.¹⁶

¹¹ Segregation Decision, KSC-BC-2020-05/F00162, para.20.

¹² Segregation Decision, KSC-BC-2020-05/F00162, para.21.

¹³ W03593, W01679, W04600, W03594 and W04603

¹⁴ Segregation Decision, KSC-BC-2020-05/F00162, paras 27-29.

¹⁵ Second Monthly Registry Report on Segregation of the Accused with one confidential and ex parte Annex, KSC-BC-2020-05/F00240, Confidential, 20 October 2021 ('Registry Report'), para.12.

¹⁶ Registry Report, KSC-BC-2020-05/F00240, paras 17-18.

These safeguards ensure the rights of the Accused are upheld pursuant to Article 3 of the ECHR.¹⁷

9. In order to ensure the effectiveness of the segregation measures and the protection of witnesses, the Panel imposed restrictions on the Accused's communication.¹⁸ The Panel subsequently amended the restrictions in light of the schedule of hearings.¹⁹ These measures allow the Accused increased flexibility to communicate with his family and should be maintained for the protection of the Prosecution witnesses and effectiveness of the segregation measures.

C. RELIEF REQUESTED

10. For the foregoing reasons, the SPO requests the Panel to maintain the segregation and other measures imposed on the Accused in its previous decisions.

Word count: 733



Alex Whiting

Acting Specialist Prosecutor

Wednesday, 8 February 2023

At The Hague, the Netherlands.

¹⁷ ECtHR [GC], *Ramirez Sanchez v. France*, no. 59450/00, 4 July 2006, paras 131-135; ECtHR, *A.T. v. Estonia* (No. 2), no. 70465/14, 13 November 2018, para.79-83.

¹⁸ Segregation Decision, KSC-BC-2020-05/F00162, para.32.

¹⁹ Decision Maintaining Segregation, KSC-BC-2020-05/F00196, paras 22-23.