



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 on the extension of the  
Accused's restrictions to communications', filing F00446 dated 1 July 2022**

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## A. INTRODUCTION

1. Pursuant to Articles 21 and 41 of the Law,<sup>1</sup> Rule 56(6) of the Rules,<sup>2</sup> and in compliance with the order of the Trial Panel ('Panel'),<sup>3</sup> the Specialist Prosecutor's Office ('SPO') hereby files its submissions on the necessity to maintain the restrictions already in place to Mr Salih MUSTAFA's ('Accused') communications.

2. These restrictions remain lawful and necessary for the protection of witnesses and their families. The imposed communication regime 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.<sup>4</sup> The Panel found this measure necessary to mitigate the risk that confidential information could be divulged by the Accused to other detainees, and to preserve the effectiveness of protective measures granted to a number of witnesses across different cases before the Kosovo Specialist Chambers ('KSC').<sup>5</sup> In reaching this determination, the Panel considered it significant that a risk of interferences with witnesses, victims, and their families was found to exist with respect to the Accused and all other detainees in the custody of the KSC.<sup>6</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> Confidential redacted version of Third decision on the review of the segregation regime imposed on Salih Mustafa, KSC-BC-2020-05/F00394/CONF/RED, Confidential, 25 April 2022 ('Third Segregation Decision'), para.23(e).

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

<sup>5</sup> Segregation Decision, KSC-BC-2020-05/F00162, paras 23-24.

<sup>6</sup> Segregation Decision, KSC-BC-2020-05/F00162, para.21.

4. On 10 September 2021, the Panel maintained the Accused's segregation while modifying the imposed communication regime.<sup>7</sup> On 18 February 2022, the Panel issued its Second decision on the review of the segregation regime and other measures imposed,<sup>8</sup> whereby it decided to extend the Accused's segregation within existing parameters.<sup>9</sup>

5. Finally, on 25 April 2022, the Panel discontinued, [REDACTED], the segregation of the Accused.<sup>10</sup> By the same decision, the Panel did not modify the restrictions imposed on the Accused to his communications outside of the Detention Facilities, which provide a further safeguard for the protection of witnesses and their families.<sup>11</sup>

6. The SPO submits that no circumstances capable of changing the Panel's findings on the existence of a risk of interferences with witnesses, victims, and their families<sup>12</sup> have intervened since the Third Segregation Decision. The risk to witnesses, victims, and their families remains high, and is in fact elevated at this stage of the proceeding, also considering that the segregation of the Accused has been discontinued. Maintaining the restrictions on communications would contribute to limiting the risks that protected information is divulged.

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<sup>7</sup> 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.

<sup>8</sup> Second Decision on the review of the segregation regime and other measures imposed on Salih MUSTAFA, KSC-BC-2020-05/F00323, Confidential, 18 February 2022 ('Second Segregation Decision').

<sup>9</sup> Decision on the Review of the segregation regime and other measures imposed on Salih MUSTAFA, KSC-BC-2020-05/F00262, Confidential, 19 November 2021, paras 19-21.

<sup>10</sup> Third Segregation Decision, KSC-BC-2020-05/F00394/CONF/RED, paras 16, 19, 23(a).

<sup>11</sup> Third Segregation Decision, KSC-BC-2020-05/F00394/CONF/RED, paras 18, 23(b)-(c).

<sup>12</sup> See Segregation Decision, KSC-BC-2020-05/F00162, para.21; Third Segregation Decision, KSC-BC-2020-05/F00394/CONF/RED, para.14.

7. Further, 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.<sup>13</sup>

8. The restrictions imposed on the Accused's communications are a fundamental tool to ensure the effectiveness of the protection of witnesses. Given the high risk that the Accused could reveal the identity of witnesses or other protected information, continuation of the restrictions currently in place to the Accused's communications is necessary and appropriate.

C. RELIEF REQUESTED

9. For the foregoing reasons, the SPO requests the Panel to maintain the restrictions already in place to the Accused's communications.

**Word count: 701**



**Alex Whiting**

**Acting Specialist Prosecutor**

Wednesday, 8 February 2023

At The Hague, the Netherlands.

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<sup>13</sup> See e.g. Tenth decision on review of detention, KSC-BC-2020-05/F00411, Confidential, 20 May 2022, paras 24-26.