



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

**Language:** English

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**Public Redacted Version of 'Second Prosecution submissions on the extension of the Accused's restrictions to communications', filing F00485 dated 11 October 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 on Mr Salih MUSTAFA's ('Accused') communications.

2. The existing regime ordered by the Panel is still necessary for the protection of witnesses, victims, and their families. It is also lawful and fully compliant with the Accused's rights under Article 8 of the European Convention on Human Rights ('ECHR'). It should therefore remain in place.

## B. SUBMISSIONS

3. On 2 August 2021, the Panel ordered segregation of the Accused from other detainees,<sup>4</sup> and extended the application of this regime in its two subsequent decisions dated 10 September 2021, and 18 February 2022.<sup>5</sup> These decisions were premised primarily on the Panel's determination concerning the existence of a significant risk of interference with witnesses, victims, and their families, and on the need to prevent the divulgence of confidential information related to these persons.<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> Decision on the review of Salih MUSTAFA's restrictions on contacts and communications, KSC-BC-2020-05/F00455, *Confidential*, 20 July 2022 ('Review Decision on Communications'), para.16(c).

<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> 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; 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>6</sup> Segregation Decision, KSC-BC-2020-05/F00162, paras 21, 23-24, 32; Decision Maintaining Segregation, KSC-BC-2020-05/F00196, para.19; Second Segregation Decision, KSC-BC-2020-05/F00323, paras 18-20, 22.

4. On 25 April 2022, the Panel discontinued, [REDACTED], the segregation of the Accused,<sup>7</sup> but decided to maintain communication restrictions arguing that they were necessary for the protection of witnesses and their families.<sup>8</sup> The same reasons were invoked in the most recent Review Decision on Communications whereby it was decided to keep the regime unchanged,<sup>9</sup> despite the conclusion of the evidentiary proceedings in the case.<sup>10</sup>

5. Despite the closure of the case against the Accused,<sup>11</sup> the serious risk to witnesses, victims, and their families remains. Together with court-ordered protective measures and the detention of the Accused,<sup>12</sup> restrictions on communications constitute the third essential pillar of protection in this case to prevent the Accused or his supporters from taking steps to interfere with, retaliate against, or intimidate those who cooperated with the court. In this context, in the absence of segregation and given the high risk that the Accused could reveal the identities of witnesses or other protected information, maintaining the communications restrictions is a necessary and proportionate measure to limit the risk of divulgence of confidential information.

6. Continuation of this measure is also necessary as the Accused may still obstruct the progress of KSC proceedings, including possible appeals proceedings in this case, by interfering with victims, witnesses, and their families.<sup>13</sup>

7. Analysis of the most recent Registry Report,<sup>14</sup> makes it apparent that the current communication regime is working, preventing the unlawful disclosure of confidential information<sup>15</sup> and, at the same time, providing the Accused with meaningful contacts

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<sup>7</sup> Third Segregation Decision, KSC-BC-2020-05/F00394/CONF/RED, paras 16, 19, 23(a).

<sup>8</sup> Third Segregation Decision, KSC-BC-2020-05/F00394/CONF/RED, paras 18, 21, 23(b)-(c).

<sup>9</sup> Review Decision on Communications, KSC-BC-2020-05/F00455, paras 11-12.

<sup>10</sup> Review Decision on Communications, KSC-BC-2020-05/F00455, para.12

<sup>11</sup> Transcript of the trial hearing, KSC-BC-2020-05, 15 September 2022, T.4859.

<sup>12</sup> Public Redacted version of Twelfth decision on review of detention, KSC-BC-2020-05/F00482/RED.

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

<sup>14</sup> Thirteenth Monthly Registry Report on the Communications Regime for the Accused, KSC-BC-2020-05/F00484, 5 October 2022, Confidential ('Thirteenth Registry Report')

<sup>15</sup> Thirteenth Registry Report, KSC-BC-2020-05/F00484, paras 12, 15, 21.

with his family.<sup>16</sup> It is also worth noting that, during the reporting period, (i) the Accused has not filed any complaints concerning the application of the existing communication restrictions;<sup>17</sup> and (ii) his physical or mental condition have not deteriorated.<sup>18</sup>

C. RELIEF REQUESTED

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

**Word count: 752**



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**Alex Whiting**

**Acting Specialist Prosecutor**

Wednesday, 8 February 2023

At The Hague, the Netherlands.

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<sup>16</sup> Thirteenth Registry Report, KSC-BC-2020-05/F00484, paras 12-16, 18-19.

<sup>17</sup> Thirteenth Registry Report, KSC-BC-2020-05/F00484, para.22.

<sup>18</sup> Thirteenth Registry Report, KSC-BC-2020-05/F00484, para.23.