

In: KSC-BC-2020-05
The Specialist Prosecutor v. Mr. Salih Mustafa

Before: **Trial Panel I**
Judge Mappie Veldt – Foglia, Presiding Judge
Judge Roland Dekkers
Judge Gilbert Bitti
Judge Vladimir Mikula, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Defence

Date: 15 February 2022

Language: English

Classification: Public redacted

**Public redacted version of Defence submission for the
review of the segregation and related measures of the Accused**

Specialist Prosecutor's Office

Mr. Jack Smith

Counsel for the Accused

Mr. Julius von Bóné

Victims' counsel

Anni Pues

I. The current stage of the proceedings

1. The defence requests that the submissions within this document will be treated by the panel even though they have been somewhat late filed. This was due to several circumstances concerning other filings that had priority and had to be taken care of as well as a mission that was ongoing. The defence was unable to file it therefore at an earlier moment.
2. The Accused, mr. Salih Mustafa, has been in segregation since the Panel so ordered 2 August 2021.
3. The defence notes that the SPO's case has been closed on 4th February 2022.
4. The last witnesses that had any protective measures were heard in November 2021.
5. As the SPO case has been closed and for a considerable amount of time the witnesses that were under the protective measures, there is in the view of the defence no point in maintaining the measures as imposed by the Panel.
6. The current situation of the proceedings is that there is to be ruled upon a Motion of the defence regarding Rule 130, which is the dismissal of any or all the charges.

II. Risk that the accused could disclose anything

7. The defence submits that there is no risk that anything could be disclosed that could in any way harm the proceedings. The proceedings have finished for the case of the SPO and one cannot simply maintain that the segregation, which is a very harsh measure for a detainee, [Redacted]. The Accused has in no manner any control over [Redacted].
8. The Panel should take into consideration [Redacted] and that therefore the segregation is becoming a never- ending situation for the Accused.

9. The defence is of the opinion that the fact that the segregation measures serve no point anymore in the current case of the Accused, it would be disproportionate to maintain measures for an entirely different purpose. A purpose other than the case of the Accused.

10. At the same time the defence is of the view that no specifics of issues have been indicated what possibly could be disclosed [Redacted].

11. The defence submits maintaining segregation measures would be disproportionate as the Accused has no indication whenever [Redacted] and in that manner they could remain in place for a very long time. The Accused has in no manner [Redacted].

12. The defence submits that [Redacted] can justify that the segregation measures are to be maintained.

13. The segregation regime is taking its toll on an individual, and it does certainly do so with the Accused.

III. Requests.

14. The defence request that the segregation measures will be terminated at the earliest possible date.

Word count: 544



Julius von Bóné
Defence Counsel

15 February 2022

At The Hague, the Netherlands