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SPECIAL TRIBUNAL FOR LEBANON المحكمة الخاصة بلبنان TRIBUNAL SPÉCIAL POUR LE LIBAN

THE PRE-TRIAL JUDGE

Case No.:	**STL-11-01/PT/PTJ**
The Pre-Trial Judge:	**Judge Daniel Fransen**
The Registrar:	**Mr. Daryl Mundis**
Date:	**9 August 2013**
Original language:	**English**
Classification:	**Confidential**

THE PROSECUTOR
v.
SALIM JAMIL AYYASH
MUSTAFA AMINE BADREDDINE
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA

DECISION ON THE DEFENCE FOR HUSSEIN HASSAN ONEISSI'S REQUEST FOR RECONSIDERATION AND CERTIFICATION OF "THE DECISION ON ISSUES RELATED TO THE INSPECTION ROOM AND CALL DATA RECORDS" DATED 18 JUNE 2013

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I. INTRODUCTION

1. In this decision the Pre-Trial Judge rules on a request from the Defence for Mr. Oneissi seeking leave to apply for the reconsideration of — and for certification to appeal — discrete elements of the Decision on Issues Related to the Inspection Room and Call Data Records[1] (respectively the "Oneissi Defence", the "Request"[2], the "Decision" and the "CDR" or "CDRs").

2. Since this decision deals with two separate issues, they are dealt with in turn.

II. PROCEDURAL BACKGROUND

3. On 18 June 2013, the Pre-Trial Judge rendered the Decision.

4. On 25 June 2013, the Oneissi Defence filed the Request.

5. On 3 July 2013, the Prosecution responded to the Request (the "Response").[3]

III. REQUEST TO SEEK RECONSIDERATION OF THE DECISION

A. Submissions

1. The Oneissi Defence's Request

6. The Oneissi Defence recalls that at paragraph 83(7) of the Decision, the Pre-Trial Judge ruled that:

> The Defence shall be able to retrieve data from the network drive for storage and use on the Defence network within the Tribunal's premises in Leidschendam. However, no such data shall be removed from the premises of the Tribunal, except in exceptional circumstances and with prior authorisation of a Judge or Chamber (such restriction shall apply *inter alia* but shall not be limited to USB keys, laptops, and expedition by email).

7. According to the Oneissi Defence, the Pre-Trial Judge's ruling undermines its capacity to prepare effectively for the trial.[4] The Oneissi Defence submits that the Decision, which compels the Parties to keep certain information in the premises of the Special Tribunal

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[1] STL, *Prosecutor* v. *Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Decision on Issues Related to the Inspection Room and Call Data Records, Confidential, 18 June 2013. All further references to filings and decisions relate to this case number unless otherwise stated.
[2] The Defence for Hussein Hassan Oneissi Request for Reconsideration and Certification of "The Decision on Issues Related to the Inspection Room and Call Data Records" Dated 18 June 2013, Confidential, 25 June 2013.
[3] Prosecution Response to Oneissi Defence Request for Reconsideration and Certification of the "Decision on Issues Related to the Inspection Room and Call Data Records", Confidential, 3 July 2013.
[4] Request, para. 9.

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for Lebanon (the "Tribunal"), limits the "independence of an advocate in the exercise of his professional obligations" by preventing him from having the elements of his case in his office.[5] The Decision effectively limits Defence Counsel to working on the case only when physically present within the premises of the Tribunal, since the CDRs "are at the heart of the Prosecutor's evidence".[6] Furthermore, the Oneissi Defence avers that the confidentiality of information would be better guaranteed by its use within counsel's own offices rather than in the Tribunal where all the Parties share the same premises[7].

8. Second, the Oneissi Defence notes that the Decision also serves to prevent counsel from examining materials with experts freely employed,[8] and that the Oneissi Defence has in fact engaged the services of a company offering expert telecommunications advice, whose experts are not based in The Netherlands (the "Company"). Seeking leave before removing information from the premises of the Tribunal for transmission to the experts would therefore "be the rule rather than the exception",[9] all the more so as the Oneissi Defence's telecommunications investigations and analysis become progressively extensive and frequent.[10]

9. Moreover, the Oneissi Defence argues that any concerns regarding the use to which information removed might be put are alleviated by the confidentiality undertakings that all the personnel in the employ of the Company have agreed to and signed.[11] The same personnel have also been notified of the judicial consequences in case of any breaches of their confidentiality obligations, and are therefore aware of Rules 60*bis* of the Rules of Procedure and Evidence (the "Rules") which regulates contempt proceedings.[12]

10. The Oneissi Defence recognises that at the time he rendered the Decision, the Pre-Trial Judge may not have been aware that they had engaged the services of experts outside of The Netherlands, a fact that may have impacted on his reasoning.[13] The Oneissi Defence concludes by asserting that the Pre-Trial Judge imposed the mechanism described at

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[5] *Id.*, para. 10
[6] *Id.*, para. 11.
[7] *Id.*, para. 12.
[8] *Id.*, para. 13.
[9] *Id.*, para. 14.
[10] *Id.*, para. 15.
[11] *Id.*, para. 16.
[12] *Id.*, para. 17.
[13] *Id.*, para. 18.

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paragraph 83(7) of the Decision without giving the Defence the opportunity to make submissions on it.[14]

11. For these reasons, the Oneissi Defence submits that the Decision "may result in an injustice" if it is not reconsidered.[15]

2. <u>The Prosecution's Response</u>

12. The Prosecution opposes the Request and submits that the Request should be denied,[16] since the Oneissi Defence limits itself to demonstrating an inconvenience[17] rather than the showing of injustice *prima facie* — as required by Rule 140 of the Rules — and which involves prejudice.[18]

13. With respect to the "independence of an advocate" argument, the Prosecution avers that the Oneissi Defence's submissions are misleading, and that the "generalized concerns [...] do not rise to the level of significance required,"[19] since an advocate's independence does not require an independent workspace outside of the Tribunal's premises.[20] In any event, the information retrieval mechanism provided for in paragraph 83(7) of the Decision "reasonably balances the need to protect sensitive information with the Parties' need for outside expert assistance to prepare for trial."[21]

14. The Prosecution disagrees with the Oneissi Defence's claims regarding the information retrieval mechanism,[22] notes that the Oneissi Defence omits to cite legal authority to support this argument, and argues that limitations on access to information have been authorised at other international tribunals.[23] Moreover, the Prosecution characterises as "unsubstantiated" the Oneissi Defence's submission that its preference to work off-site is partly premised on privacy concerns, which the Prosecution notes "do not demonstrate

[14] *Id.*, para. 19.
[15] *Id.*, para. 20.
[16] Response, para. 16.
[17] *Id.*, para. 4.
[18] *Id.*, para. 16, relying on STL, *Prosecutor* v. *Ayyash et al.*, Case No. STL-11-01/PT/AC/R176*bis*, Decision on Defence Requests for Reconsideration of the Appeals Chamber's Decision of 16 February 2011, 18 July 2012, para. 24.
[19] *Id.*, para. 6.
[20] *Ibid.*
[21] *Id.*, para. 7.
[22] *Id.*, para.11.
[23] *Id.*, para. 8.

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injustice" in any event.[24] With respect to the Oneissi Defence's claim that the Decision will result in delays, the Prosecution views this as speculative.[25]

15. In particular, the Prosecution points out that the Decision "does not require the Defence to repeatedly seek permission to transmit data to the same external experts in the piecemeal fashion described" and that "the Pre-Trial Judge may order the Defence to file a single application for authorisation to transmit data to the external experts retained."[26]

16. Contrary to the claim of the Oneissi Defence, the Prosecution considers that the Oneissi Defence was in fact given the opportunity to make submissions on the information retrieval mechanism established by the Decision, such that its right to be heard was not infringed.[27]

B. Discussion

17. Rule 140 of the Rules[28] provides that "[a] Chamber may, *proprio motu* or at the request of a Party with leave of the Presiding Judge, reconsider a decision, other than a Judgement or sentence, if necessary to avoid injustice." The Pre-Trial Judge is competent to rule on requests for leave to seek reconsideration, and also to rule on their merits.[29]

18. Rule 140 of the Rules provides that only the Parties can apply for reconsideration. Mr. Oneissi being a Party to the proceedings pursuant to Rule 2 of the Rules, the Pre-Trial Judge is satisfied that the Oneissi Defence has the necessary standing.

19. The Pre-Trial Judge provided the principles of interpretation applicable to Rule 140 of the Rules in the Decision of 29 March 2012.[30] They are as follows:

a) The object and purpose of Rule 140 of the Rules is to give Chambers a discretionary power to reconsider decisions in order to avoid an injustice, consistent with the

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[24] *Id.*, para. 10.
[25] *Id.*, para. 11.
[26] *Id.*, paras 12-13.
[27] *Id.*, para. 15.
[28] Pursuant to Rule 97 STL RPE, Rule 140 STL RPE applies *mutatis mutandis* to proceedings before the Pre-Trial Judge.
[29] Decision on the Prosecution's Request for Partial Reconsideration of the Pre-Trial Judge's Order of 8 February 2012, 29 March 2012 ("Decision of 29 March 2012"), para. 12; *see also* Decision Relating to the Prosecution Request for Reconsideration of the Decision of 5 April 2012, 4 May 2012 ("Decision of 4 May 2012"), para. 10 STL, *Prosecutor* v. *Ayyash et al.*, Case No. STL-11-01/PT/TC, Decision Authorising the Baddredine and the Oneissi Defence to file a Request for Reconsideration, 15 May 2012, ("Decision of 15 May 2012"), para. 9.
[30] Decision of 29 March 2012, paras 20 *et seq.*

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requirement of fairness of the proceedings, which is one of the overarching principles of both the Statute and the Rules.[31]

b) A Chamber's power to reconsider its decisions is, however, subject to strict limitations, and recourse to reconsideration should be limited in order to ensure the certainty and finality of the Tribunal's judicial decisions. In order to avoid injustice, reconsideration is an exceptional measure that is available only in particular circumstances.[32]

20. Rule 140 of the Rules provides that a Party moving for reconsideration shall first seek leave from the Presiding Judge; failure to do so will result in the rejection of the application.[33]

21. When deciding on requests for leave to seek reconsideration, the Presiding Judge should confine his review to an analysis of whether the request for reconsideration is manifestly unfounded. A request is not manifestly unfounded if (i) the application is duly reasoned, and (ii) the reasons adduced by the submitting Party show, *prima facie*, that failure to reconsider a decision may result in an injustice. Leave to seek reconsideration may only be granted if the application is not manifestly unfounded, frivolous or aimed at circumventing the Rules.[34]

22. The Pre-Trial Judge recalls that the Appeals Chamber has expressly stated that the party seeking reconsideration must show that the decision concerned "has resulted in an injustice" and that "[w]hat constitutes an injustice is of course dependent on the specific circumstances. At a minimum, it involves prejudice."[35]

23. As a preliminary matter, the Pre-Trial Judge notes the Oneissi Defence's claim that it did not have the opportunity to make sufficient submissions before the Decision was rendered. This is incorrect. The so-called information extraction mechanism was elaborated via the working group meetings, at which the Parties and other relevant participants were invited to address the various matters associated with the CDRs and the inspection room, and how to resolve them. Furthermore, the Defence made consolidated submissions on the

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[31] *Id.*, para. 22.
[32] *Id.*, paras 23, 24.
[33] *Id.*, para. 25.
[34] *Id.*, paras 30, 31.
[35] STL, *Prosecutor* v. *Ayyash et al.*, Case No. STL-11-01/PT/AC/R176*bis*, Decision on Defence Requests for Reconsideration of the Appeals Chamber's Decision of 16 February 2011, 18 July 2012, para. 24.

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inspection room, the CDRs, on aspects of the 'Z:\ Drive', and on the need for an enhanced information extraction mechanism in particular.[36] The Oneissi Defence was therefore not deprived of the opportunity to make its submissions before the Decision was rendered.

24. Having examined the Parties' submissions, the Pre-Trial Judge considers that the reasons adduced in the Request do not show how, *prima facie*, failure to reconsider the Decision may result in an injustice. This is because nothing in the Decision prevents any Defence team from filing a general request for authorisation to transfer information off the premises of the Tribunal. Indeed, such authorisation — subject to conditions designed to ensure the security of the information concerned — has already been accorded.[37] The Pre-Trial Judge approved a request "to transfer additional information to the [expert] as may be necessary without the need for further authorisation".[38]

25. Consequently, the Pre-Trial Judge finds that the Request does not meet the requirements of Rule 140 of the Rules for leave to seek reconsideration of paragraph 83(7) of the Decision, and denies this part of the Request.

IV. The Request to Certify the Decision for Appeal

A. Submissions

1. The Oneissi Defence's Request

26. The Oneissi Defence seeks certification of the Decision pursuant to Rule 126(C) of the Rules "on the basis that the Pre-Trial Judge erred by finding that the relevant time period for which the Defence is entitled to CDRs in raw and SQL format is the period from 1 January 2003 until 1 October 2005"[39] and recalls that at paragraph 52 of the Decision, the Pre-Trial Judge specified that:

> This determination is subject to two caveats, however. First, the Pre-Trial Judge has previously determined that the Prosecution is not obliged to perform analyses or to create work products which are not in its custody or control, possession or actually known to it. The Prosecution cannot disclose or allow the inspection of materials that it does not have. Where

[36] Decision, para. 74 *et seq*. *See* Additional Defence Submissions Regarding the Prosecution's Inspection Room and Call Data Records on the "Z Drive", confidential with confidential annexes A-B, 28 March 2013, paras 12-20.
[37] Decision on Urgent Defence Requests Regarding the Extraction of Information from the Inspection Room, Confidential, 25 July 2013.
[38] *Id.*, Disposition.
[39] Request, para. 26.

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the Prosecution is not in possession of CDRs or analysis of Raw Data in [a "structured query language" or] SQL format falling within the relevant time period, it cannot be required to provide them.[40]

27. The Oneissi Defence recalls earlier joint submissions made by the Defence that the "entirety of the telephone records in the possession of the Prosecution is material to the preparation of the defence against the charges in the Indictment; and that raw data provided on the Z drive in raw form must also be complemented by the uploading of the same data in the SQL database in the Inspection Room".[41] As such, the Pre-Trial Judge erred by holding that where the Prosecution is not in possession of CDRs or analysis of raw data in SQL format falling within the relevant time period, it cannot be required to provide them.[42]

28. Because of these putative errors, the Oneissi Defence argues that the Decision presents an issue "which would be significant enough to warrant immediate resolution by the Appeals Chamber",[43] namely, the temporal scope of the CDRs to be made available to the Defence in SQL format, and what the Prosecution is required to provide in SQL format.[44]

29. The Oneissi Defence avers that the issue of the temporal scope of the CDRs to which the Defence has access in SQL format "significantly affects the fair and expeditious conduct of the proceedings"[45] because the Prosecution's case relies mainly on inferences drawn from circumstantial evidence that "rely on [...] but a portion of the CDRs in [the Prosecution's] possession."[46] Absent access to the remainder of the CDRs in the Prosecution's possession — that the Prosecution does not intend to rely on at trial — the Defence "is severely limited in its ability to challenge the inferences made by the Prosecutor and offer other possible inferences or deductions that could provide alternative theories to the Prosecutor's case."[47] This lack of access to all the CDRs in SQL format "significantly affects the fair and expeditious conduct of the proceedings to the Defence's detriment."[48]

30. Furthermore, the Oneissi Defence submits that the issue of the temporal scope of the CDRs to which the Defence is entitled in SQL format "warrants immediate resolution by the

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[40] Footnote omitted.
[41] Request, para. 30. Footnotes omitted.
[42] *Id.*, para. 27.
[43] *Id.*, para. 28.
[44] *Id.*, para. 29.
[45] *Id.*, para. 32. Emphasis omitted.
[46] *Id.*, para. 33. Footnote omitted.
[47] *Id.*, para. 34.
[48] *Ibid.*

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Appeals Chamber"[49] as "it is an urgent matter that should be resolved by the Appeals Chamber as soon as possible."[50] Failure to do so would deprive the Defence of the opportunity to effectively prepare for trial.[51] The Oneissi Defence claims that it has satisfied the requirements for granting certification.[52]

2. <u>The Prosecution's Response</u>

31. The Prosecution opposes the Oneissi Defence's request for certification to appeal the Decision. The Prosecution considers that the Oneissi Defence has not demonstrated how resolving the issue of the relevant time period for which CDRs should be provided in SQL format would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, as required by Rule 126(C) of the Rules.[53] Instead, the Oneissi Defence makes speculative arguments that fall short of the requirements for certification.[54]

32. Furthermore, the Prosecution considers that the Oneissi Defence has not established how the circumstantial nature of the Prosecution's case means that the relevant time period for the CDRs in SQL format must be extended. It has therefore failed to show how the relevant time period determined in the Decision limits the Defence's ability to challenge the Prosecution's case, or to identify alternative case theories.[55]

33. Moreover, for the Prosecution, the Oneissi Defence is silent on how the resolution of this issue would affect the fair and expeditious conduct of the proceedings. The Prosecution avers that this silence is because "the Pre-Trial Judge's decision to limit access to the CDRs from the relevant time period and to material that is already in the possession of the Prosecution positively promotes the expeditiousness of the proceedings."[56]

34. In sum, the Prosecution submits that Oneissi Defence has not established how the Decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or outcome of the trial, and should be denied.[57] Since the Oneissi Defence

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[49] *Id.,* para. 35.
[50] *Id.,* para. 36.
[51] *Ibid.*
[52] *Id.,* para. 37.
[53] Response, paras 17, 18 & 21.
[54] *Id.,* para. 18.
[55] *Id.,* para. 19.
[56] *Id.,* para. 20.
[57] *Id.,* para. 21.

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has not satisfied the first of the two cumulative requirements of Rule 126(C) of the Rules, the Prosecution declines to address the second requirement.[58]

B. Discussion

35. Pursuant to Rule 126(C) of the Rules, the certification of a decision for appeal is subject to two cumulative criteria[59]: firstly, that the decision concerned must involve an issue that *would significantly*[60] affect the fair and expeditious conduct of the proceedings or the outcome of the trial (the "significance requirement"); and secondly, that its immediate resolution by the Appeals Chamber may advance the proceedings (the "urgency requirement").[61]

36. The Appeals Chamber has itself described the cumulative requirements of Rule 126(C) of the Rules as a "high threshold", and has clarified that:

> not all interlocutory decisions [...] are subject to automatic appeal. [...] [O]nly those decisions that fulfil the *stringent* requirements of Rule 126(C) [...] may be challenged before the Appeals Chamber before final judgment. Certification must necessarily be the exception.[62]
>
> [C]ertification 'requirements are strict and a Chamber must take great care in assessing them.'[63]

37. Neither the Pre-Trial Judge nor the Trial Chamber retain any discretion to grant certification; once it is satisfied that the two cumulative requirements of Rule 126(C) of the Rules are met, the Pre-Trial Judge or Chamber "must certify the decision for appeal with respect to that issue."[64] The standard for certification must be properly applied, and the specific issue or issues requiring immediate resolution by the Appeals Chamber must be identified clearly.[65]

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[58] *Ibid.*
[59] STL, *Prosecutor* v. *Ayyash et al.*, Case No. STL-11-01/PT/AC/AR126.1, Corrected Version, Decision on Defence Appeals Against Trial Chamber's Decision on Reconsideration of the Trial *In Absentia* Decision, 1 November 2012 ("1 November 2012 Decision on Appeal"), para. 9.
[60] *See* STL, *Prosecutor* v. *Ayyash et al.*, Case No. STL-11-01/PT/AC/AR126.2, Decision on Appeal Against Pre-Trial Judge's Decision on Motion by Counsel for Mr Badreddine Alleging the Absence of Authority of the Prosecutor, 13 November 2012 ("13 November 2012 Decision on Appeal"), para. 13, where the Appeals Chamber itself placed this emphasis on the words "*would significantly*".
[61] 13 November 2012 Decision on Appeal, para. 14.
[62] 1 November 2012 Decision on Appeal, para. 8 (emphasis added). *See also* Case No. STL-11-01/PT/AC/AR90.2, Decision on Defence Appeals Against Trial Chamber's "Decision on Alleged Defects in the Form of the Amended Indictment", 5 August 2013 ("5 August 2013 Decision on Appeal").
[63] 5 August 2013 Decision on Appeal, para. 7, citing 13 November 2012 Decision on Appeal, para. 15.
[64] 13 November 2012 Decision on Appeal, para. 12.
[65] 5 August 2013 Decision on Appeal, paras 6-7.

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38. Thus, in order to grant certification to appeal an issue, the Pre-Trial Judge must be satisfied that the two cumulative requirements of Rule 126(C) of the Rules have been met in respect of the issue(s) raised. In this case, the issues which the Oneissi Defence seeks certification to appeal are the Pre-Trial Judge's determination of the relevant time period — namely 1 January 2003 to 1 October 2005 — for which the Defence should be granted access to CDRs in SQL format and, if the Pre-Trial Judge erred in this regard, whether or not the Pre-Trial Judge erred further by holding that where the Prosecution is not in possession of CDRs in SQL format falling within the relevant time period, it cannot be required to provide them in SQL format.

39. As for the significance requirement — namely whether the resolution of the issues on appeal would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial — the Pre-Trial Judge finds that indeed they would. Since the Prosecution's case relies on circumstantial evidence and inferences drawn in large part from the CDRs in its possession, the question of what CDRs in raw and SQL formats the Defence must have access to, as well as the modalities of that access, are important issues whose resolution would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial. To the extent that the Decision determined these issues — which are likely to have an impact on the evidence made available to the Defence — they raise two issues which the Defence can properly litigate before the Appeals Chamber.

40. While there is some merit in the Prosecution's response that the Oneissi Defence's argument is speculative — namely, that access to more data in SQL format *could* (as opposed *would*) have an effect on the proceedings — the Pre-Trial Judge considers that the Oneissi Defence being limited to making this argument should not serve to deprive it of being granted to raise the issues before the Appeals Chamber.

41. As for the urgency requirement — namely whether the immediate resolution by the Appeals Chamber of the issues may advance the proceedings — the Pre-Trial Judge is satisfied that this requirement is likewise met. Should the Appeals Chamber determine that the temporal scope of 1 January 2003 to 1 October 2005 must be extended as requested by the Oneissi Defence, then the provision of the materials to the Defence to which it would consequently be entitled would, by definition, be necessary for it to prepare effectively for trial. In earlier but related pleadings, the Prosecution has alluded to the potentially significant

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amount of time that it may take to upload further CDRs into SQL format.[66] If, during subsequent proceedings before the Trial or Appeals Chambers, it is established that the Pre-Trial Judge did indeed err in his determination of the relevant time period for providing CDRs in SQL format, it is difficult to see how such a finding would *not* — at that later stage — significantly adversely affect the advancement of the proceedings.

42. The foregoing analysis applies *mutatis mutandis* to the consequential issue of whether the Prosecution can be required to provide CDRs in SQL format falling within the relevant time period, but that it does not possess in SQL format.

43. Resolving these issues during the pre-trial phase of the proceedings would either clarify definitively that the Pre-Trial Judge did not err and that the Defence is in receipt of all CDRs in SQL format it requires for trial, or it would correct the Pre-Trial Judge's putative errors and allow the Parties to rectify their case preparation before trial. The Pre-Trial Judge is therefore satisfied that the immediate resolution by the Appeals Chamber of the issues now may advance the proceedings.

44. It follows that, having met the requirements of Rule 126(C) of the Rules, the Oneissi Defence's request for certification to appeal the Decision must be granted.

V. <u>CONFIDENTIALITY</u>

45. The Oneissi Defence filed its Request confidentially because the Decision it contests is so classified;[67] the Prosecution also filed its Response confidentially.

46. The Pre-Trial Judge recalls that he has consistently sought to uphold the principle of transparency in these proceedings, save for in those circumstances where a degree of confidentiality is necessary.[68] In this context, however, the finalisation of a public redacted version of the Decision itself, as well as the filings related to it, is pending.[69] The classification of this decision and its filings shall therefore remain confidential, pending the Pre-Trial Judge's resolution of that other matter to which it is related.

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[66] Prosecution Response to the Defence Submissions Regarding the Prosecution's Inspection Room and Call Data Records, Confidential, 22 March 2013, paras 1, 20.
[67] Request, para. 38.
[68] Decision, para. 101 *et seq.*
[69] Prosecution Submissions Pursuant to the Pre-Trial Judge's 18 June 2013 Decision on Issues Related to the Inspection Room and Call Data Records, Confidential, 25 June 2013, paras 17-18.

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VI. DISPOSITION

FOR THESE REASONS,

THE PRE-TRIAL JUDGE,

PURSUANT TO Rules 97, 126 (C) and 140 of the Rules,

DENIES the Oneissi Defence leave to file a request for reconsideration of the Decision;

GRANTS the Oneissi Defence's request to certify the Decision for appeal in respect of the issues of whether the Pre-Trial Judge's determination of (1) the relevant time period — namely 1 January 2003 to 1 October 2005 — for which the Defence should be granted access to CDRs in SQL format was correct; and (2) if so, where the Prosecution is not in possession of CDRs in SQL format falling within the relevant time period, whether it can be required to provide them in SQL format; and

ORDERS that this decision, and its filings, shall remain confidential until further order.

Done in Arabic, English and French, the English version being authoritative.

Leidschendam, 9 August 2013.

Daniel Fransen
Pre-Trial Judge

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