



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE TRIAL CHAMBER

Case No.: STL-13-04/I/TC

Before: Judge David Re, Presiding
Judge Janet Nosworthy
Judge Micheline Braidy
Judge Walid Akoum, Alternate Judge

Registrar: Mr. Daryl Mundis, Registrar

Date: 11 October 2013

Original language: English

Type of document: Confidential

THE PROSECUTOR

v.

HASSAN HABIB MERHI

**ORDER TO THE DEFENCE OFFICE REGARDING
ASSIGNMENT OF COUNSEL TO HASSAN HABIB MERHI**

Office of the Prosecutor:
Mr. Norman Farrell

The Accused:
Mr. Hassan Habib Merhi

Defence Office:
Mr. François Roux



PROCEDURAL HISTORY

1. On 17 October 2011, the Pre-Trial Judge seized the Trial Chamber with the issue of whether to initiate proceedings against Mr. Salim Jamil Ayyash, Mr. Mustafa Amine Badreddine, Mr. Hussein Hassan Oneissi and Mr. Assad Hassan Sabra *in absentia*.¹ On 25 October 2011, the Head of the Defence Office unilaterally assigned duty counsel to the four Accused pursuant to Rules 57 (D) (ii)-(iii) of the Rules of Procedure and Evidence.²
2. On 27 October 2011, the Trial Chamber requested clarification regarding this assignment, specifically with respect to the application of Rule 57 (D) (iii) in the absence of consultation with the four Accused and their agreement to the assignment of counsel.³ On 28 October 2011, the Defence Office clarified that it had not consulted the four Accused and that the duty counsel did not represent them directly, but were assigned to protect the four Accused's rights in the context of the *in absentia* proceedings.⁴ Accordingly, on 2 November 2011, the Trial Chamber found that the Head of the Defence Office was not empowered to utilise Rules 57 (D) (ii)-(iii) to assign duty counsel.⁵ However, the Trial Chamber authorised the eight assigned persons to take part in the *in absentia* hearing as 'representatives of the Defence Office' (that is, not to represent the Accused individually).⁶
3. On 1 February 2012, the Trial Chamber decided to proceed against the four Accused *in absentia*.⁷ The following day, and after receiving a request by the Pre-Trial Judge under Rule 105 *bis* (B), the Head of the Defence Office assigned counsel to the four Accused pursuant to Rule 57 (D) (viii).⁸

¹ STL, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, Case No. STL-11-01/I, Order to Seize the Trial Chamber Pursuant to Rule 105*bis*(A) of the Rules of Procedure and Evidence in Order to Determine Whether to Initiate Proceedings *In Absentia*, 17 October 2011.

² STL-11-01/I/TC, Nomination des Conseils de Permanence en Vertu de l'Article 57(D)(ii) et (iii) du Règlement de Procédure et de Preuve, 25 octobre 2011. The version of Rules 57 (D) (ii)-(iii) in effect at that time read as follows: 'The Head of the Defence Office shall...(ii) identify on the list mentioned in Rule 59(B) counsel who are available to act as "duty counsel" for assignment to a suspect, for assignment to an accused for the purpose of the initial appearance conducted in accordance with Rule 98 or for any other urgent matter; (iii) in consultation with the suspect or accused and with his agreement, assign such duty counsel'.

³ STL-11-01/I/TC, Order for Clarification from the Defence Office, 27 October 2011.

⁴ STL-11-01/I/TC, Réponse à l'Ordonnance de la Chambre de Première Instance de 27 octobre 2011, 28 octobre 2011.

⁵ STL-11-01/I/TC, Decision Relating to the Assignment of 'Duty Counsel' by the Head of Defence Office, 2 November 2011 (Decision on Duty Counsel), paras 7-8.

⁶ Decision on Duty Counsel, para. 11.

⁷ STL-11-01/I/TC, Decision to Hold Trial *In Absentia*, 1 February 2012.

⁸ STL-11-01/I/PTJ, Commission d'Office de Conseils aux fins de la procédure par défaut tenue en application de l'article 106 du règlement, 2 février 2012. The text of Rule 57 (D) (viii) of the prior version of the Rules now appears in Rule 57 (D) (ix).

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4. On 31 July 2013, the Pre-Trial Judge confirmed an indictment and issued an arrest warrant against Mr. Hassan Habib Merhi for his alleged role as a co-conspirator with the four Accused in the attack of 14 February 2005.⁹ The indictment was made public on 10 October 2013 after the President of the Special Tribunal issued an order under Rule 76 (E) to effect service of the indictment in an alternative manner.¹⁰
5. At 18.59 on Thursday 10 October 2013, the Head of the Defence Office addressed an email to the judges of the Trial Chamber, copied to the President of the Tribunal and the Pre-Trial Judge, informing the Trial Chamber that he would assign ‘*ad hoc*’ lead counsel for Mr. Merhi on Monday 14 October 2013 unless the Trial Chamber issued an order preventing him from doing so. The Prosecutor was not copied on the email.¹¹

DISCUSSION

6. In the email of 10 October 2013, the Head of the Defence Office referred to a confidential ‘*note verbale*’ dated 7 August 2013 that he had addressed to the Trial Chamber. That document, however, was addressed to the Presiding Judge. The Trial Chamber received a copy of it on 11 October 2013.
7. The proceedings against Mr. Merhi are currently at that stage under Rule 76 (E) during which service of the indictment is being effected in ‘an alternative manner, including procedures of public advertisement’. If, within thirty days starting from the advertisement, Mr. Merhi is not under the Tribunal’s authority, the Pre-Trial Judge, acting pursuant to Rule 105 *bis* (A), ‘shall ask the Trial Chamber to initiate proceedings *in absentia*’. Rule 105 *bis* (B) provides that ‘after the Trial Chamber ensures that the requirements of Rule 106 have been met, the Pre-Trial Judge shall request the Head of the Defence Office to assign Counsel to the accused who fails to appoint one...’. None of the preconditions for the appointment of counsel under Rule 106 have yet occurred.
8. The Trial Chamber has already ruled that neither the Statute nor the Rules expressly authorises the Head of the Defence Office to assign counsel for accused persons, in the manner

⁹ STL, *Prosecutor v. Merhi*, Case No. STL-13-04/I/PTJ, Redacted Version of the Decision Relating to the Examination of the Indictment of 5 June 2013 Issued Against Mr Hassan Habib Merhi of 31 July 2013, 31 July 2013.

¹⁰ STL-13-04/I/PRES, Order pursuant to Rule 76 (E) with confidential and *ex parte* Annexes, 10 October 2013.

¹¹ Email from the Head of the Defence Office to the Judges of the Trial Chamber, 10 October 2013, 18.59.

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foreshadowed, before a decision is made under Rule 106 (A), or alternatively the accused has appeared in person pursuant to Rule 98 (B).

9. The Trial Chamber is yet to hear submissions from the Defence Office, the Prosecutor, the Registrar, or Mr. Merhi himself or his own counsel of choice, or from any other interested party as to whether the Head of the Defence Office has the power to appoint counsel in the manner envisaged, and at this stage of proceedings. Proper legal submission is required before the Trial Chamber can decide this issue.
10. As noted above, the Trial Chamber has already ruled against the Head of the Defence Office appointing counsel for accused persons before the time specified in Rule 106 (A) and Rule 105 *bis* (B). The Trial Chamber wishes to preserve the *status quo* to enable it to control any proceedings that may be referred to the Chamber under Rule 105 *bis* (A). The Head of the Defence Office's intended order directly affects the work of the Trial Chamber and any decision that it may have to make under that Rule. For this reason, and because the Head of the Defence Office informed it after the close of business on Thursday 10 October 2013 that he was intending to issue his order appointing *ad hoc* lead counsel on Monday 14 October 2013 – unless the Trial Chamber ordered him not to – the Trial Chamber is reluctantly compelled to issue this order to preserve the *status quo* pending proper legal submissions from any organ of the Tribunal that may have an interest in this matter.
11. This order shall remain confidential for the moment, but the Trial Chamber is minded to make it public as soon as possible, unless cogent reasons exist for it to remain confidential.

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ORDER DATED 17 OCTOBER 2013**DISPOSITION****FOR THESE REASONS** the Trial Chamber:

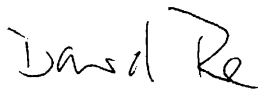
- (i) Orders the Head of the Defence Office not to assign Defence counsel to represent the Accused Hassan Habib Merhi pending the resolution of any decision by the Trial Chamber pursuant to Article 22 (2) and Rule 106, or proceedings under Rule 98, or further order by the Trial Chamber before then; and
- (ii) Requests the Prosecutor and the Head of the Defence Office to make any formal submissions on these issues by Friday 25 October 2013.

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

Leidschendam

The Netherlands

11 October 2013



Judge David Re, Presiding

Judge Janet Nosworthy

Judge Micheline Braidy