



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE PRE-TRIAL JUDGE

Case No.: **STL-13-04/I/PTJ**

The Pre-Trial Judge: **Mr Daniel Fransen**

The Registrar: **Mr Daryl Mundis**

Date: **25 November 2013**

Original language: **French**

Classification: **Public**

THE PROSECUTOR
v.
HASSAN HABIB MERHI

**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***

Office of the Prosecutor:
Mr Norman Farrell

Defence Office:
Mr François Roux

The Trial Chamber



I. The subject of the order

1. By way of this order, pursuant to Rule 105 *bis* (A) of the Rules of Procedure and Evidence (the “Rules”), the Pre-Trial Judge seizes the Trial Chamber for the purpose of ruling on the question of whether *in absentia* proceedings should be initiated against Mr Merhi (the “Accused”).

2. After reviewing the principal stages of the procedure (II) and the applicable law to the case at hand (III), the Pre-Trial Judge will set out the grounds for this order (IV).

II. Procedural background

3. On 5 June 2013, the Prosecutor issued an indictment against Mr Merhi (the “Indictment”).

4. On 24 June 2013, the Pre-Trial Judge was seized of the request by the Prosecution for confirmation of the Indictment.¹

5. On 31 July 2013, the Pre-Trial Judge confirmed the counts contained in the Indictment and authorised the indictment of Mr Merhi in connection with the attack of 14 February 2005 committed against Mr Rafic Hariri and other persons (the “Decision on the Indictment”).² The same day, the Pre-Trial Judge issued a national arrest warrant including a transfer and detention order (the “Arrest Warrant”) and an international arrest warrant including a transfer and detention request against the Accused.³ In order to facilitate the arrest of the Accused, at the request of the Prosecution, the Indictment, the Arrest Warrant and the Decision on the Indictment were kept confidential.

6. In the Arrest Warrant, the Pre-Trial Judge requested the competent authorities of the Lebanese Republic to search for and arrest the Accused, in any place where he might be found in the territory of the Lebanese Republic, and to detain and transfer him to the

¹ STL, *The Prosecutor v. Merhi*, Case No. STL-13-04/I/PTJ, Prosecution’s Submission of an Indictment for Confirmation and Order to Keep this Filing and its Annexes Confidential and Ex Parte; and Motion for an Arrest Warrant, Order for Transfer and Detention; and Order for Non-Disclosure, confidential and *ex parte*, 5 June 2013. Any further reference to filings or decisions relates to that case number unless otherwise indicated.

² Decision relating to the Examination of the Indictment of 5 June 2013 Issued Against Mr Hassan Habib Merhi, confidential, 31 July 2013. A confidential redacted version was filed on the same day and a public redacted version on 11 October 2013.

³ Warrant to Arrest Mr Hassan Habib Merhi and Order for Transfer and Detention, confidential, 31 July 2013; International Warrant to Arrest Mr Hassan Habib Merhi and Request for Transfer and Detention, confidential, 31 July 2013.

Headquarters of the Tribunal. He also requested the competent authorities of the Lebanese Republic to execute the Arrest Warrant at the earliest opportunity and to serve it, together with the Indictment, on the Accused in person.

7. On 6 August 2013, pursuant to Rules 76 (A) and 79 (D) of the Rules, the Registrar transmitted the Indictment, the Arrest Warrant and the related documents to the competent authorities of Lebanon, the State of which the Accused is a national and in whose territory he was last known to be residing.⁴ The Registrar called on the Lebanese authorities to serve the Indictment on Mr Merhi. He expressly requested the designated representative — the Acting Prosecutor General at the Court of Cassation of Lebanon, Judge Samir Hammoud (the “Prosecutor General”) — to inform the President of the Tribunal (the “President”) (by way of the Registrar) on 5 September 2013 at the latest, in the event that the Lebanese authorities had been unable to execute the Arrest Warrant (the “Order of the President”).⁵

8. On 6 September 2013, the Prosecutor General transmitted to the President, by way of the Registrar, a copy of the report indicating the steps that had been taken by the authorities of the Lebanese Republic in execution of the Arrest Warrant and noting that it had not been possible to arrest the Accused.⁶

9. On 16 September 2013, after having requested information from the Pre-Trial Judge, the Prosecutor and the Registrar, the President sought additional clarifications from the Prosecutor General.⁷

10. On 24 and 26 September, 3 and 4 October 2013, the Prosecutor General clarified a number of the questions raised by the President. He submitted a report on 3 October 2013 on the measures taken to locate Mr Merhi, stating that he had ordered that the search to locate him be continued.⁸

11. On 10 October 2013, pursuant to Rule 76 (E) of the Rules, taking note of the fact that the efforts undertaken by the authorities of the Lebanese Republic to execute the Arrest Warrant had not been successful and that reasonable attempts had been made to serve the Indictment and the Arrest Warrant on the Accused, the President issued an order requesting

⁴ Official record, Service of documents, 6 August 2013.

⁵ Cf. the procedural background of: STL, *The Prosecutor v. Merhi*, Case No. STL-13-04/I/PRES, Order Pursuant to Rule 76 (E) with confidential and *ex parte* Annexes, 10 October 2013, paras 5 and 6.

⁶ Order of the President, paras 15 and 16.

⁷ Order of the President, para. 17.

⁸ Order of the President, paras 18-20.

in particular the Registrar to take all necessary measures to transmit the text of an advertisement to the Lebanese authorities. He also ordered them to take all reasonable steps to notify the public of the existence of the Indictment and to call on the Accused to surrender to the Tribunal and requested that they submit a report on their efforts to those ends by 7 November 2013.⁹ On the same day, the Registrar sent a letter to the Prosecutor General at the Lebanese Court of Cassation requesting the publication of an advertisement in Arabic, English and French in five Lebanese newspapers in accordance with Rule 76 *bis* of the Rules (the “Registrar’s Letter of 10 October 2013”).¹⁰ Likewise on that date, the Tribunal issued a press release on its website relating to the indictment of Mr Merhi in the case of the attack of 14 February 2005.¹¹

12. Again on 10 October 2013, at the request of the Prosecution, the Pre-Trial Judge ordered the lifting of the confidentiality of the Indictment, subject to the redactions proposed by the Prosecution.¹²

13. On 11 October 2013, the President requested the Registrar to inform the Trial Chamber of the efforts undertaken to serve the Indictment on the Accused.¹³

14. On 14 October 2013, the Tribunal disseminated the transcript of an advertisement in Arabic, English and French as part of an advertisement campaign, the purpose of which was to inform the Accused of his rights and to encourage the public to provide any information concerning his possible whereabouts to the Lebanese authorities.¹⁴

15. On 21 October 2013, the President announced publicly that the Indictment had not been served on the Accused and that he had not been arrested. In the same statement, he also called on the Accused to appear before the Tribunal and to appoint lawyers who would be responsible for representing him in court.¹⁵

⁹ Order of the President, pp. 15-16.

¹⁰ Correspondence from the Registrar to the Prosecutor General, ref. EXT\SUP\LB\MJ\20131010_REG2404_ss, 10 October 2013.

¹¹ Press release, “STL Indicts Hassan Habib Merhi in 14 February 2005 Beirut Attack”, 10 October 2013.

¹² Order on Partially Lifting the Confidentiality of the Indictment Against Mr Hassan Habib Merhi, 10 October 2013.

¹³ Internal Memorandum, President’s Order pursuant to Rule 76 (E) follow-up, confidential, 11 October 2013.

¹⁴ Public Service Announcement by the Special Tribunal for Lebanon, 14 October 2013.

¹⁵ Statement of Judge Baragwanath, President of the Special Tribunal for Lebanon, 21 October 2013.

16. On 6 November 2013, the Prosecutor General filed a report¹⁶ in which he stated that, between 19 and 25 October 2013, the text of an advertisement informing the public of the identity of the Accused and the counts against him had been published in five Lebanese newspapers: three in Arabic,¹⁷ one in English¹⁸ and one in French,¹⁹ as requested in the Registrar's Letter of 10 October 2013.
17. On 11 November 2013, the Registrar transmitted to the Presiding Judge of the Trial Chamber a memorandum containing summaries of what had been published in the Lebanese and international press, extracts thereof and other documents. That memorandum was drafted at the request of the President.²⁰
18. On 14 November 2013, the President transmitted to the Pre-Trial Judge the report of the Prosecutor General of 6 November 2013.²¹
19. Likewise on 14 November 2013, the Pre-Trial Judge requested further information from the Registrar concerning the publication of the advertisement.²²
20. On the same day, the Head of Defence Office submitted to the Pre-Trial Judge an internal memorandum in which he expressed the view that the time period of 30 days for the placing of the advertisement could only start from the time that the competent authorities of a State have proceeded with its publication, in this case, between 20 and 25 October 2013 according to the report of the Prosecutor General of 6 November 2013.²³
21. On 21 November 2013, the Registrar responded to the request by the Pre-Trial Judge of 14 November 2013 for further information by providing five copies of the advertisements

¹⁶ Correspondence, Publication of notice and service of indictment, ref: Your letter No. EXT/SUP/LB/MJ/20131010-REG2404-SS dated October 2013 with annexes, confidential, 6 November 2013 (the "Report of the Prosecutor General of 6 November 2013").

¹⁷ Cf. the following newspapers: *An Nahar* on 25 October 2013, *As Safir* and *Al Mustaqbal* on 21 October 2013.

¹⁸ Cf. the following newspaper: *The Daily Star* on 21 October 2013.

¹⁹ Cf. the following newspaper: *L'Orient le Jour* on 19 and 20 October 2013.

²⁰ Internal Memorandum, ref.: JUD/CAS/HM/20131111_REG2469_um, Report on the steps undertaken by the Registry to advertise the Indictment against Mr Hassan Habib Merhi, 11 November 2013.

²¹ Internal Memorandum, *Case No. STL-13-04/I, Prosecutor v. Merhi* - Report from the Lebanese Acting Prosecutor General, 14 November 2013.

²² Internal Memorandum, *Complément d'information*, confidential, 14 November 2013.

²³ Internal Memorandum, *Case No. STL-13-04/I, The Prosecutor v. Merhi – Annonce publique de l'acte d'accusation*, ref. 3802.131114-5146, 14 November 2013.

disseminated in accordance with the Registrar's Letter of 10 October 2013 ("Further Information from the Registrar").²⁴

III. Applicable law

22. The provisions to be taken into consideration in the context this order are Rules 76 *bis* and 105 *bis* of the Rules.

23. Rule 76 *bis* of the Rules, which governs the procedure for the advertisement of the Indictment, is worded as follows:

In keeping with the President's order made under Rule 76 (E), a form of advertisement shall be transmitted by the Registrar to the authorities of any relevant State or entity for publication in newspapers and/or for broadcast via radio, television and/or other media, including the internet, providing notification to the public of the existence of an indictment and calling upon the accused to surrender to the Tribunal or in any case to submit to its jurisdiction. The advertisement shall invite any person with information as to the whereabouts of the accused to communicate that information to the Tribunal

24. Rule 105 *bis* of the Rules is entitled "Absence of the Accused from the Proceedings before the Pre-Trial Judge". At the present stage of the proceedings, only paragraph (A) of this provision specifically relating to referring a case to the Trial Chamber is relevant. It is worded as follows:

If, within a period of 30 calendar days starting from the advertisement referred to in Rule 76 *bis*, the accused is not under the Tribunal's authority, the Pre-Trial Judge shall ask the Trial Chamber to initiate proceedings *in absentia*.

IV. Statement of reasons

25. It should be noted that, to date, the Accused has not been arrested, nor has he appeared voluntarily before the Tribunal, nor is he in any other way under its jurisdiction. Furthermore, the Pre-Trial Judge has no knowledge that the Accused has contacted the Tribunal in any manner whatsoever.

26. The Pre-Trial Judge recalls that it is not for him to rule on whether the requirements to initiate proceedings *in absentia* mentioned in Rule 106 of the Rules have been met, nor whether it is appropriate to initiate such proceedings. Indeed, in accordance with Rule 105 *bis* (B) of the Rules, that responsibility is incumbent upon the Trial Chamber. However, the Pre-

²⁴ Internal Memorandum, ref. JUD\CHA\PT\20131121_REG2507_aj, Information on the Advertisement in the form of a Poster, 21 November 2013.

Trial Judge must ensure that the period of 30 calendar days mentioned in Rule 105 *bis* (A) of the Rules has elapsed in order to be able to seize the Trial Chamber so that it may rule on that matter. That time period is intended in particular to ensure that the Accused has sufficient time in which to be informed of the Indictment issued against him and, where appropriate, to obtain the necessary legal assistance in order to respond to the proceedings against him. Therefore it is incumbent upon the Pre-Trial Judge, as indicated above, to determine the precise moment at which that time period starts to run.

27. In this respect, the Pre-Trial Judge notes that, according to the text of Rule 105 *bis* of the Rules, that period takes effect starting from the placing of the advertisement referred to in Rule 76 *bis* of the Rules. However, according to that provision, the advertisement must take the form of a text “providing notification to the public of the existence of an indictment and calling upon the accused to surrender to the Tribunal” and “invit[ing] any person with information as to the whereabouts of the accused to communicate that information to the Tribunal.” That text must be published and/or broadcast, through the appropriate channels, in the States or States of which the Accused is a national or in whose territory he was last known to be residing, in this case Lebanon.

28. Given that, as can be seen in the procedural background of this order, the public has been informed on several occasions and at different intervals – notably by way of various statements, communications and advertisements – of the existence of the Indictment and the fact that the Accused must surrender to the Tribunal, the commencement of the period mentioned in Rule 105 *bis* of the Rules could be open to interpretation.

29. In point of fact, particulars informing the public of Mr Merhi’s indictment were published on the Tribunal website as of 10 October 2013 and were quoted by a number of Lebanese media outlets from that date. However, according to the Report of the Prosecutor General of 6 November 2013 and the Further Information from the Registrar, it was only between 19 and 25 October 2013 that the text of an advertisement was published in the Lebanese newspapers²⁵ in the form of a wanted notice showing photographs of the Accused and providing his surname, first name, date and place of birth, as well as the charges against him. This wanted notice also mentions that any person with information on the Accused could contact the Tribunal on the telephone numbers provided in that notice. The

²⁵ *Cf. supra* footnotes 17, 18 and 19.
Case No. STL-13-04/I/PTJ

requirements set forth by Rule 105 *bis* (A) of the Rules were only met therefore as of 25 October 2013.

30. As a consequence, in keeping with the spirit of Rule 105 *bis* of the Rules and of the rights of the Accused, the Pre-Trial Judge considers that 25 October 2013 should be considered as the starting date of the period provided for by that provision which, moreover, is the more favourable date for the Accused. The period of 30 days set forth by Rule 105 *bis* (A) of the Rules therefore expired on Sunday, 24 November 2013. As a consequence, as of that date, the Pre-Trial Judge has good cause to seize the Trial Chamber so that it may determine whether *in absentia* proceedings should be initiated against the Accused.

31. With this in mind, so that it may determine that issue with full knowledge of the facts, the Trial Chamber must be able to have all the relevant documents in this regard and notably those which are cited in support of this order. The Pre-Trial Judge consequently calls on the Registrar to transmit those documents to the Trial Chamber whilst respecting their confidential status, where appropriate.

V. Disposition

FOR THESE REASONS,

Pursuant to Rules 76 *bis* and 105 *bis* (A) of the Rules,

THE PRE-TRIAL JUDGE,

NOTES THAT the period set forth in Rule 105 *bis* of the Rules has elapsed;

SEIZES the Trial Chamber so that it may determine whether proceedings *in absentia* should be initiated against Mr Hassan Habib Merhi; and

CALLS ON the Registrar to transmit to the Trial Chamber, as soon as possible, the documents cited in support of this order, whilst respecting their confidential status where appropriate.

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

Leidschendam, 25 November 2013

[stamp]

[signature]

Daniel Fransen
Pre-Trial Judge

