



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE TRIAL CHAMBER

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

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

Registrar: Mr Daryl Mundis

Date: 15 January 2014

Original language: English

Classification: Public

PROSECUTOR

v.

HASSAN HABIB MERHI

ORDER ON VARYING TIME-LIMITS FOR SUBMISSIONS ON JOINDER

Office of the Prosecutor:
Mr Norman Farrell

Counsel for Mr Hassan Habib Merhi:
Mr Mohamed Aouini



1. On 31 July 2013, the Special Tribunal's Pre-Trial Judge confirmed a sealed indictment against Mr Hassan Habib Merhi in Case No. STL-13-04,¹ and made it public on 10 October 2013.² Having been seised with the issue on 25 November 2013,³ the Trial Chamber decided, on 20 December 2013, that the case against Mr Merhi should proceed to trial *in absentia*.⁴ On that same day, the Head of the Defence Office appointed Mr Mohamed Aouini, of the bar of Tunis, as lead counsel for Mr Merhi.⁵ Two experienced co-counsel were appointed on 30 December 2013,⁶ and, as of 14 January 2014, his Defence team was fully constituted.⁷

2. On 18 December 2013, the Prosecution filed a motion before the Pre-Trial Judge under Rule 89 (E) of the Rules of Procedure and Evidence to refer to the Trial Chamber for decision an application to join this case with that of *Prosecutor v. Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi and Assad Hassan Sabra* (STL-11-01), scheduled to commence trial on 16 January 2014.⁸ On 30 December 2013, counsel for Mr Merhi filed detailed submissions before the Pre-Trial Judge opposing the referral on joinder under Rule 89 (E), arguing that this was not possible under the Rule.⁹

3. On the same day, the Prosecution filed an application before the Trial Chamber, in the *Ayyash* case, to join the two cases under Rule 70.¹⁰ On 2 January 2014, the Pre-Trial Judge referred this matter to the Trial Chamber—as had been requested by the Prosecution on 18 December 2013.¹¹

4. The Defence response to the Prosecution motion on joinder was due, according to Rule 8, on 13 January 2014, or if 2 January 2014 were considered as the operative date for the time to run for a

¹ *Prosecutor v. Merhi*, STL-13-04/I/PTJ, Decision relating to the Examination of the Indictment of 5 June 2013 Issued against Mr. Hassan Habib Merhi, Confidential, 31 July 2013; Public Redacted Version dated 11 October 2013.

² STL-13-04/I/PTJ, Order on Partially Lifting the Confidentiality of the Indictment against Mr. Hassan Habib Merhi, 10 October 2013.

³ STL-13-04/I/PTJ, Order to Seize the Trial Chamber Pursuant to Rule 105bis(A) of the Rules of Procedure and Evidence in Order to Determine Whether to Initiate Proceedings *In Absentia*, 25 November 2013.

⁴ STL-13-04/I/TC, Decision to Hold Trial *In Absentia*, 20 December 2013.

⁵ STL-13-04/I/PTJ, Assignment of a Counsel for the *In Absentia* Proceedings Held Pursuant to Rule 106 of the Rules, 20 December 2013.

⁶ STL-13-04/I/PTJ, Commission d'Office de Co-Conseils, 30 December 2013.

⁷ Transcript of hearing, 14 January 2014, p. 9.

⁸ STL-13-04/I/PTJ, Prosecution Request for Rule 89(E) Referral of the Matter of Joinder, 18 December 2013.

⁹ STL-13-04/I/PTJ, Observations de la Défense relatives à la requête du Procureur aux fins de transfert à la Chambre de première instance de la question de la jonction.

¹⁰ *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, STL-11-01/PT/TC, Prosecution Motion for Joinder, 30 December 2013. See also STL-13-04/I/PTJ, Observations du Bureau de la Défense relatives à la requête du Procureur aux fins de transfert à la Chambre de Première Instance de la question de la jonction, 23 December 2013.

¹¹ STL-13-04/I/PTJ, Décision soumettant à la Chambre de Première Instance la question de la jonction d'instances, 2 January 2014.

response, on 16 January 2014. No formal written submission has been made to extend the deadline for filing a response.

5. On 14 January 2014, the Trial Chamber held a preliminary hearing on the issue of possible joinder. During this hearing, the Trial Chamber inquired of counsel for Mr Merhi, not about whether joinder should be allowed, but rather when he could reasonably file his submissions on the issue. Counsel for Mr Merhi gave the Trial Chamber several possible timelines—which included one month, one and a half months, and two months—submitting that he needed this time to read the material disclosed to him by the Prosecution under Rule 110 (A) before he could formulate his position on the Prosecution’s submissions on joinder.¹² Counsel, however, did not ask for an extension of time to a specific date, nor nominate from when he considered his request for extra time should commence to run. In the hearing, the Prosecutor argued that decisions on joinder are generally made on the basis of the allegations set out in the indictment, that defence counsel has already received the pre-trial brief, and that therefore there is no need for time to study the disclosure material;¹³ he conceded, however, that time might be needed for investigation into whether there’s a conflict in the defences.¹⁴

6. The Pre-Trial Judge, on 24 December 2013, ordered the Prosecution to immediately disclose to counsel for Mr Merhi all documents falling within its disclosure obligations in Rule 110 (A)—namely, copies of the material that accompanied the indictment when its confirmation was sought, and the statements of witnesses it intends to call at trial. The Prosecution was also ordered to file, by 8 January 2014, the materials required by Rule 91 (G)—these include its pre-trial brief and its witness and exhibit lists at trial.¹⁵ By 3 January 2014, the Prosecution had disclosed to Defence counsel all material under Rule 110 (A) (i) and (ii).¹⁶ On 8 January 2014, the Prosecution filed its pre-trial brief and its witness and exhibit lists relating to the case against Mr Merhi.¹⁷ These are substantially the same as those filed in the *Ayyash* case.

7. The issue of joinder is a legal one. Although it impacts upon the time reasonably required by Defence counsel to prepare their case at trial, this latter issue can be dealt with separately if joinder is ordered. If joinder is ordered, the Trial Chamber will make the necessary adjournment orders and allow

¹² See, for instance, transcript of hearing, 14 January 2014, pp. 14, 16, 21-23, 25.

¹³ Transcript of hearing, 14 January 2014, p. 18.

¹⁴ Transcript of hearing, 14 January 2014, p. 19.

¹⁵ STL-13-04/I/PTJ, Order Relating to Disclosure of the Material Referred to in Rule 110(A) of the Rules and Other Material in the Proceedings, 24 December 2013.

¹⁶ Transcript of hearing, 14 January 2014, p. 20.

¹⁷ STL-13-04/PT/PTJ, Prosecution’s Submission Pursuant to the Pre-Trial Judge’s Order of 24 December 2013, with confidential Annexes, 8 January 2014.

counsel for Mr Merhi the time reasonably required to prepare for trial. The Trial Chamber does not consider it necessary, or even realistic, that Defence counsel should read all of the material disclosed under Rule 110 (A) before formulating his submissions on the essentially legal issue of joining for trial the indictments of accused persons charged in separate cases with committing crimes alleged in the same incident.

8. The Trial Chamber acknowledges that counsel for Mr Merhi requires a reasonable extension of the normal fourteen-day period for responding to motions, and that it would benefit from receiving properly reasoned submissions on the subject. In varying the date for counsel to file his submissions, the Trial Chamber has to balance a number of considerations, including Mr Merhi's right to a fair trial, which in turn includes his having effective legal representation, Article 21 (1) of the Special Tribunal's Statute that requires the Trial Chamber to 'confine the trial ... proceedings strictly to an expeditious hearing of the issues raised by the charges' and 'shall take strict measures to prevent any action that may cause unreasonable delay', and the Special Tribunal's resources in potentially running two trials in respect of the same indicted subject matter and charges. In view of the advanced state of the *Ayyash* case—commencing trial on 16 January 2014—the Trial Chamber must act therefore expeditiously in fixing a date for receiving submissions on this issue of possible joinder.

9. In reaching its conclusion on the appropriate extension of time, the Trial Chamber has also considered that: (i) a decision on joinder is primarily based on the factual allegations contained in the indictment and related submissions, as would also be the case in *Lebanon*,¹⁸ and it does not therefore require an analysis of or submissions on the supporting material of the case,¹⁹ much less an extensive analysis; (ii) counsel for Mr Merhi has received the Prosecution's pre-trial brief and witness and exhibit lists; (iii) any potential unfairness to Mr Merhi—caused by a joinder and that may later emerge—could be cured by taking appropriate measures at trial, even by severing the proceedings at a later stage if that were the only way to avoid injustice; and (iv) counsel for Mr Merhi has 'extensive experience in international criminal law, notably before the International Criminal Tribunal for Rwanda',²⁰ where the Rules relating to joinder, trial preparation and procedure are substantially similar to those of the Special Tribunal.

¹⁸ See Article 240 of the Lebanese Code of Criminal Procedure, which only refers to a single felony or several related felonies in separate indictments as a basis for joinder.

¹⁹ Cf. ICTY, *Prosecutor v. Tolimir et al.*, IT-04-80-AR73.1, Decision on Radivoje Miletić's Interlocutory Appeal against the Trial Chamber's Decision on Joinder of Accused, 27 January 2006, para. 7; ICTY, *Prosecutor v. S. Milosevic*, IT-99-37-AR73, IT-01-50-AR73, IT-01-51-AR73, Reason for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, 18 April 2002, paras 19-21.

²⁰ Defence Office Press Release of 23 December 2013 (<http://www.stl-tsl.org/en/media/press-releases/defence-office-press-release-counsel-assigned-to-represent-the-rights-and-interests-of-the-accused-hassan-habib-merhi>).

10. In these circumstances the Trial Chamber considers that a fair and reasonable period would be fourteen working days from the date on which the actual deadline for filing submissions fell (namely, from 13 January 2014), that is, one full month after the Prosecution filed its motion for joinder on 30 December 2013, and more than five weeks from Mr Aouini's effective appointment as lead counsel for Mr Merhi. This is also more than three weeks after the filing of the Prosecution's pre-trial brief and its witness and exhibit lists.

11. The Trial Chamber confirms that, shortly after the filing of written submissions in this case, it will hold a joint hearing in the two cases to hear any further oral submissions on joinder.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

VARIES the time for counsel for Hassan Habib Merhi to file any response to the Prosecution motion for joinder to Friday 31 January 2014.

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

Leidschendam

The Netherlands

15 January 2014

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

