



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE PRE-TRIAL JUDGE

Case No.: **STL-11-01/T/PTJ**

The Pre-Trial Judge: **Judge Daniel Fransén**

The Registrar: **Mr. Daryl Mundis**

Date: **16 January 2014**

Original language: **English**

Classification: **Public**

THE PROSECUTOR

v.

**SALIM JAMIL AYYASH
MUSTAFA AMINE BADREDDINE
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA**

DECISION ON THE REQUEST BY COUNSEL FOR MR. ONEISSI FOR RECONSIDERATION OR CERTIFICATION OF THE “DECISION ON THE ONEISSI DEFENCE’S REQUEST FOR DISCLOSURE REGARDING A COMPUTER”

Office of the Prosecutor:
Mr. Norman Farrell

Counsel for Mr. Salim Jamil Ayyash:
Mr. Eugene O’Sullivan

Legal Representative of Victims:
Mr. Peter Haynes

Counsel for Mr. Mustafa Amine Badreddine:
Mr. Antoine Korkmaz

Counsel for Mr. Hussein Hassan Oneissi:
Mr. Vincent Courcelle-Labrousse

Counsel for Mr. Assad Hassan Sabra:
Mr. David Young



I. INTRODUCTION

1. In this decision, the Pre-Trial Judge declares that he is not competent to decide on the request from Counsel for Mr. Hussein Hassan Oneissi (the “Oneissi Defence”)¹ to reconsider or to certify the decision rendered by the Pre-Trial Judge on 24 October 2013 (the “Decision”).²

II. PROCEDURAL BACKGROUND

2. On 24 October 2013, the Pre-Trial Judge issued the Decision in which he dismissed the Oneissi Defence’s request for an order requiring the Prosecution to disclose the documents and information in its custody or control relating both to a computer that belonged to Mr. Abu Adass, and to its chain of custody.

3. On 25 October 2013, the Pre-Trial Judge filed his Report pursuant to Rule 95 (the “Report”) and transferred the case file to the Trial Chamber, thereby seizing it of the *Ayyash et al.* case.³

4. On 31 October 2013, the Trial Chamber issued an order, noting that it was seised of the *Ayyash et al.* case on 25 October 2013, and that it received the case file on 28 October 2013.⁴

5. On 30 October 2013, the Oneissi Defence filed a request that the Pre-Trial Judge reconsider or certify the Decision for appeal (the “Request”). An addendum to the Request was filed on 4 November 2013.⁵

6. The Prosecution filed its response to the Request on 14 November 2013 (the “Response”).⁶

¹ STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, *Demande de réexamen et de certification aux fins d’appel de la « Decision on the Oneissi Defence’s Request for Disclosure Regarding a Computer »*, Confidential, 30 October 2013. All further references to filings and decisions relate to this case number unless otherwise stated.

² Decision on the Oneissi Defence’s Request for Disclosure Regarding a Computer, Confidential, 24 October 2013.

³ Corrected Version: The Pre-Trial Judge’s Report Prepared Pursuant to Rule 95 (A) of the Rules of Procedure and Evidence, Confidential, 25 October 2013. A public redacted version was filed on 11 December 2013.

⁴ STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/TC, Orders for Trial Preparation Following the Pre-Trial Conference of 29 October 2013, 31 October 2013.

⁵ *Addendum à la Demande de réexamen et de certification aux fins d’appel de la « Decision on the Oneissi Defence’s Request for Disclosure Regarding a Computer »*, Confidential, 4 November 2013.

III. SUBMISSIONS

7. The Oneissi Defence submits that the Rules of Procedure and Evidence (the “Rules”) do not provide guidance as to the determination of the competent Chamber to reconsider or certify decisions of the Pre-Trial Judge once the file in the case concerned is transferred to the Trial Chamber.⁷ However, given that the Decision was rendered while the Pre-Trial Judge still had jurisdiction over the case, the Oneissi Defence argues that it should be for the Pre-Trial Judge to address questions of reconsideration or certification, and not the Trial Chamber.⁸ In the alternative, the Oneissi Defence asks that the part of the Request regarding reconsideration be transferred to the President of the Trial Chamber and the question of certification be transferred to the Trial Chamber.⁹

8. The Request includes substantive submissions on reconsideration and certification of the Decision.¹⁰

9. The Prosecution responds that the Pre-Trial Judge has no authority to rule on the Request as the Trial Chamber is now seized of the case.¹¹ Moreover, matters related to disclosure are not subject to the exclusive jurisdiction of the Pre-Trial Judge.¹² The Prosecution also argues that the Pre-Trial Judge does not have jurisdiction to transfer the Request to the Trial Chamber, and further, that it is not for the Pre-Trial Judge to fix the Oneissi Defence’s procedural flaw of submitting the Request before the Pre-Trial Judge.¹³

10. The Prosecution Response includes substantive submissions opposing the requests for reconsideration or certification of the Decision.¹⁴

IV. DISCUSSION

11. As a preliminary matter, the Decision was rendered confidentially as it made reference to the confidential submissions of the Parties. In the Decision, the Pre-Trial Judge ordered the Parties to submit the redactions to the Decision within five days, failing which the

⁶ Prosecution Response to “*Demande de réexamen et de certification aux fins d’appel de la “Decision on the Oneissi Defence’s Request for Disclosure Regarding a Computer”*”, Confidential, 14 November 2013.

⁷ Request, para. 4.

⁸ *Id.*, para. 4.

⁹ *Id.*, para. 5.

¹⁰ *Id.*, paras 6-36.

¹¹ Response, paras 2, 6, 18.

¹² *Id.*, paras 2, 8.

¹³ *Id.*, paras 3, 9, 19.

¹⁴ *Id.*, paras 11-17, 20-24.

Decision shall be reclassified as public.¹⁵ The Pre-Trial Judge notes that no such proposals were made by the Parties and therefore orders it to be made public.

12. Concerning the substance of the Request, the Pre-Trial Judge must determine whether or not he is, at this stage of the proceedings, competent to rule on the substantive applications for reconsideration or certification contained in the Request.

13. The Pre-Trial Judge recalls that on 25 October 2013, he filed the Report, and determined that, as a result, he was no longer seised of the *Ayyash et al.* case.¹⁶ In the Report, the Pre-Trial Judge explained that he was no longer competent to hear pending and future requests in the *Ayyash et al.* case. The sole exceptions to this position are those matters that remain within the exclusive jurisdiction of the Pre-Trial Judge.¹⁷

14. Consistent with his determination in the Report,¹⁸ the Pre-Trial Judge considers that he is not competent to hear further requests or motions from the *Ayyash et al.* case, save for those matters within his exclusive jurisdiction. The Rules were designed so that the Pre-Trial Judge controls the pre-trial proceedings, preparing the Report and advancing the preparation of the case toward trial, and that, at the designated time, the Pre-Trial Judge transfers competence over the case to the Trial Chamber, which is thereafter seised of the proceedings.¹⁹

15. In this regard, the Pre-Trial Judge considers that there may be circumstances when a Chamber could review or modify decisions made by other judges or chambers in the course of proceedings.²⁰ Such could be the case at this Tribunal, given that the Statute and Rules structurally provide for two distinct phases and a transfer of jurisdiction from one chamber to

¹⁵ Decision, para. 40.

¹⁶ Report, para. 4.

¹⁷ *Id.*, See e.g., Rules 86, 92 and 93 STL RPE.

¹⁸ Report, para. 4.

¹⁹ Rule 95 STL RPE.

²⁰ ICTR, *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-I, Decision on Defence Motion for Reconsideration of the Decisions Rendered on 29 November 2001 and 5 December 2001 and for a Declaration of Lack of Jurisdiction, 28 March 2002, para. 20. “The Chamber that is seised with a particular case is empowered to make decisions relating to it. In some circumstances this will require varying or rescinding orders made by other judges or chambers. The determination as to when such action is necessary or appropriate lies with the Chamber that is making the decision.” See also, ICC, *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Case No. ICC-02/05-03/09, Decision on the Prosecution’s Applications for Lifting Redactions on Material Relating to Witnesses 307 and 484 Pursuant to Regulation 42 of the Regulations of the Court, 12 September 2012, para. 7; Decision on the “Prosecution’s Application for Variation of Protective Measures Pursuant to Regulation 42 of the Regulations of the Court by Lifting Certain Redactions Authorised Pursuant to Rule 81(4) of the Rules of Procedure and Evidence”, 13 July 2012, para. 7.

another during the normal progression of a given case.²¹ To this end, the Pre-Trial Judge also observes that the Trial Chamber has already pronounced on motions requesting the certification of a Pre-Trial Judge decision,²² and varying the protective orders of witnesses that were previously established by the Pre-Trial Judge.²³

16. Given that the Pre-Trial Judge has determined that he does not have jurisdiction to rule on the substance of the Request, he will not proceed to consider the arguments submitted therein.

V. DISPOSITION

FOR THESE REASONS,

THE PRE-TRIAL JUDGE,

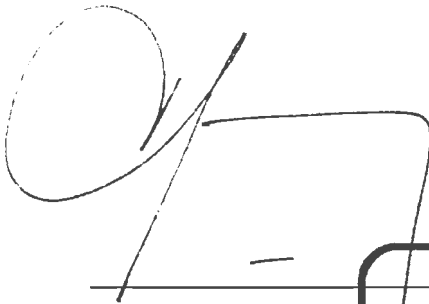
PURSUANT TO Rules 95 and 140,

ORDERS that the Decision be made public, and


DISMISSES the Request.

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

Leidschendam, 16 January 2014



Daniel Fransen
Pre-Trial Judge



²¹ See e.g., Rules 89, 91, 95 STL RPE; Art. 8(1) STL St.

²² STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/TC, Decision on the Prosecution's Request for Leave to Appeal the Pre-Trial Judge's Decision of 25 October 2013 Re SMS Messages, 11 December 2013.

²³ STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/TC, Decision on the Request of Legal Representative for Victims for a Variation of the Terms of the Protective Measures Granted to Three Victims Participating in the Proceedings, Confidential, 19 December 2013.