

**THE TRIAL CHAMBER**

Case No: STL-11-01/T/TC

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

Registrar: Mr Daryl Mundis

Date: 11 February 2014

Original language: English

Classification: Public

DECISION ON THE JOINDER OF CASES STL-11-01 AND STL-13-04

(Extract from Official Public Transcript of Hearing on 11 February 2014, page 92, line 4 to page 96, line 3)

On the 18th of December, 2013, the Prosecution filed an application before the Pre-Trial Judge asking him to refer to the Trial Chamber under Rule 89(E) of the Tribunal's Rules of Procedure and Evidence the question of the possible joinder of the cases of Prosecutor versus Ayyash, Badreddine, Oneissi, and Sabra, and that of the Prosecutor against Hassan Habib Merhi.

On the 30th of December, the Prosecution also filed a joinder application before the Trial Chamber. This was a mere 17 days before the scheduled opening of the Ayyash trial, which was scheduled to commence on the 16th of January this year.

On the 2nd of January, 2014, the Pre-Trial Judge referred the issue of joinder to the Trial Chamber, thus giving it the jurisdiction to decide the joinder application. Counsel for three of the accused in the Ayyash case filed written submissions and counsel for Mr. Merhi, that's Mr. Aouini, filed his submissions on the 30th of January.

Today, Tuesday, the 11th of February, we heard extensive submissions from the Prosecutor and counsel for the Defence and the Head of the Defence Office on this issue.

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The Trial Chamber, having now read and heard the submissions, has reached a decision in relation to the Prosecution's joinder application.

The short procedural background is that on the 5th of June, 2013, the Prosecutor submitted to the Pre-Trial Judge an indictment and supporting material alleging Hassan Habib Merhi's involvement in the events of the 14th of February, 2005. In July 2013, the Pre-Trial Judge confirmed the indictment and issued an arrest warrant against Mr. Merhi.

On the 25th of November, 2013, after unsuccessful attempts had been made in Lebanon to apprehend Mr. Merhi and serve a copy of the indictment and the arrest warrant, the Pre-Trial Judge referred to the Trial Chamber the issue of whether it could proceed to try him in absentia.

On the 20th of December, 2013, the Trial Chamber decided that the case against Mr. Merhi should proceed to trial in absentia, and on that same day, the Head of the Defence Office appointed Mr. Mohamed Aouini as lead counsel for Mr. Merhi. Two co-counsel were appointed on the 30th of December, and as of 14th of January, 2014, his Defence team was constituted.

Counsel for Mr. Merhi have not opposed the joinder application, as they have written in their written submissions, "providing that the absent accused can benefit from the same rights and guarantees as in the case of a separate trial." They asked that they be given adequate time and facilities to prepare an effective defence and have also asked for "a pre-trial phase before an independent Judge." None of the counsel for the other four accused, that is, for Mr. Ayyash, Badreddine, Oneissi, or Sabra, made written submissions opposing the joinder.

No one has submitted any legal reason to the Trial Chamber as to why the two cases should not be joined and tried together.

The two indictments relate to the same case. Both indictments allege a conspiracy related to the explosion in Beirut on the 14th of February, 2005, involving the five accused. The victims in both cases are the same. The alleged crime is the same. The pre-trial briefs already filed by the Prosecutor are very similar, and the overwhelming majority of the witnesses on the Prosecution's witness list and its exhibit list are common to both cases.

The Prosecutor, Mr. Farrell, in the hearing today said that 99 per cent of the evidence is common to both cases.

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To date, since the Trial Chamber started hearing evidence on the 23rd of January in the Ayyash case, only 15 Prosecution witnesses out of some 540 on its witness list have been called to testify in the Ayyash case. The statements of 65 others have thus been admitted into evidence under Rule 155. The evidence of most of the statements admitted into evidence and the witnesses so far called to testify has been uncontested by the four Defence counsel.

The Trial Chamber is unaware of any issue of possible conflict of defences that would cause serious prejudice and prevent the Merhi case from being joined to the Ayyash case. Running the two cases relating to the same incident, on the other hand, would have a major negative impact on the Tribunal's resources. The Prosecution, the Legal Representative for the Victims, and counsel for Mr. Merhi agree that a joint trial would minimize the trauma and hardship to victims and witnesses and any risk of loss of witnesses for a second trial, as it would prevent them from being called multiple times. The Registrar made submissions in the court today in which he referred to the massive financial cost the Tribunal would incur if it had to run simultaneous or consecutive trials in two cases.

In these circumstances, the interests of justice must favour joining the two cases.

The Trial Chamber has therefore decided that the two cases should be joined and tried on the same indictment.

Each accused in joint proceedings is entitled to a fair trial, with the respect of all rights enshrined in the Statute and, in particular, the right to have adequate time and facilities to prepare their defence.

The Trial Chamber, in taking this decision, believes that joining the two proceedings would actually better protect the rights of all five accused persons to a fair and expeditious trial, but provided that certain measures are taken to minimize the risk of any prejudice after joinder.

Unfortunately, we could only make this decision at this very late stage and only after the Ayyash trial had actually started, for the reasons I outlined earlier in the brief procedural history. We are of the view it would not have been in the interests of justice to have delayed either the opening statements or the calling of evidence in the Ayyash case to decide on the issue of joinder. We also emphasize that we understand the complex situation facing counsel for Mr. Merhi and, to a certain extent, counsel for the four accused in the Ayyash case. Having made this decision, we will now hear submissions from the parties as to how to proceed.

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We will issue a reasoned decision as soon as practicable on both the decision to join the two cases and how we will proceed over the coming months, including the length and the conditions of any adjournment of the newly joined case.

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