

**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:** 28 February 2014

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

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

**DECISION AND OBSERVATIONS ON INSPECTION OF PROSECUTION'S  
EXPERT REPORTS****Office of the Prosecutor:**

Mr Norman Farrell, Mr Graeme Cameron  
& Mr Alexander Milne

**Victims' Legal Representatives:**

Mr Peter Haynes, Mr Mohammad F. Mattar  
& Ms. Nada Abdelsater-Abusamra

**Counsel for Mr Salim Jamil Ayyash:**

Mr Eugene O'Sullivan, Mr Emile Aoun  
& Mr Thomas Hannis

**Counsel for Mr Mustafa Amine Badreddine:**

Mr Antoine Korkmaz, Mr John Jones  
& Mr Iain Edwards

**Counsel for Mr Hassan Habib Merhi:**

Mr Mohamed Aouini, Ms Dorothée Le Fraper  
du Hellen & Mr Jad Khalil

**Counsel for Mr Hussein Hassan Oneissi:**

Mr Vincent Courcelle-Labrousse, Mr Yasser  
Hassan & Mr Philippe Laroche

**Counsel for Mr Assad Hassan Sabra:**

Mr David Young, Mr Guénaél Mettraux  
& Mr Geoffrey Roberts



## INTRODUCTION

1. On 12 February 2014, after issuing its order joining the cases of *Prosecutor v. Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi, and Assad Hassan Sabra* and *Prosecutor v. Hassan Habib Merhi*,<sup>1</sup> the Trial Chamber ordered the Prosecution to file a notice updating the Trial Chamber on any requests by counsel for Mr Merhi to inspect certain expert reports by 18 February 2014.<sup>2</sup> These were expert reports that the Prosecution did not intend to use as evidence at trial. The Prosecution did so,<sup>3</sup> explaining that it would disclose to counsel for Mr Merhi any reports listed in a Notice filed before the Pre-Trial Judge on 25 September 2012,<sup>4</sup> but that it was yet to receive any request from Defence counsel for the documents under Rule 110 (B) of the Special Tribunal's Rules of Procedure and Evidence. The Prosecution added that it had disclosed 152 extraneous reports to the counsel for the four Accused in the *Ayyash* case by 6 December 2012.<sup>5</sup>

2. Counsel for Mr Merhi, instead of directly requesting the Prosecution to provide them the reports they required, filed a 'request' before the Trial Chamber. Counsel stated that, in their view, the Prosecution Submission was premature, because they were not yet in a position to identify which reports were essential to the preparation of their case. They also submitted that the Trial Chamber was not seised with the pre-trial proceedings of the *Merhi* case. Despite this submission, however, they proceeded to request the Trial Chamber to reissue its invitation to the Prosecution and to declare that a decision on whether to include the inspection of these experts reports or not in a working plan was premature.<sup>6</sup> The Trial Chamber will do neither.

## DECISION

3. As made clear in its Decision on trial management and reasons for decision on joinder of 25 February 2014, upon issuing an order to join accused persons or crimes to an indictment, the Trial Chamber becomes seised of the joined case. That occurred on 11 February 2014.<sup>7</sup>

---

<sup>1</sup> *Prosecutor v. Ayyash, Badreddine, Oneissi, and Sabra*, STL-11-01/T/TC, and *Prosecutor v. Merhi*, STL-13-04/PT/TC, Joint Hearing, transcript of 11 February 2014, pp. 91-96.

<sup>2</sup> STL-11-01/T/TC, transcript of 12 February 2014, pp. 120-121.

<sup>3</sup> STL-13-04/PT/TC, Prosecution Submission on Inspection by the Merhi defence of Expert Reports Not Relied Upon, 18 February 2014.

<sup>4</sup> STL-11-01/PT/PTJ, Prosecution Updated Notice on Expert Reports, 25 September 2012, Annex D (confidential).

<sup>5</sup> STL-13-04/PT/TC, Prosecution Submission on Inspection by the Merhi defence of Expert Reports Not Relied Upon, 18 February 2014, para. 6.

<sup>6</sup> STL-13-04/PT/TC, Réponse de la Défense aux conclusions du Procureur sur l'inspection des rapports d'experts non utilisés, 24 February 2014.

<sup>7</sup> STL-11-01/T/TC and STL-13-04/PT/TC, Joint Hearing, transcript of 11 February 2014, pp. 91-96; Decision on trial management and reasons for decision on joinder, 25 February 2014, para. 16.

4. After joinder, Rule 70 (C) allows the Trial Chamber, upon consulting with the Pre-Trial Judge, to start exercising this jurisdiction. Further, Rules 130 and 131 provide the Trial Chamber with the jurisdiction necessary to make orders such as those relating to the inspection of expert reports that will not be used at trial.
5. The Trial Chamber has already expressed its concern that the Parties should only bring matters of *inter partes* disclosure to the Trial Chamber's attention where reasonable attempts to resolve any issues have failed.<sup>8</sup> This was not such a case. The Prosecution has provided the information necessary for Defence counsel to decide whether they wish to inspect or receive those expert reports. All they have to do is to inform the Prosecution. This is not yet a matter requiring the Trial Chamber's intervention.
6. Further, the Trial Chamber has decided—after counsel for Mr Merhi filed their response—that a working plan under Rule 95 is unnecessary.<sup>9</sup> Submissions on the topic of a working plan are thus now irrelevant.
7. In this context, the Trial Chamber also expresses its concern that counsel for Mr Merhi have thus far complained in the court-room about matters that should have been resolved between the Parties, such as those relating to disclosure and the pre-trial brief, without first contacting their opposing counsel for the Prosecution.<sup>10</sup> This practice is not to be encouraged and should stop.
8. Counsel assigned to act for an accused person must be proactive in obtaining the information necessary to prepare an effective defence, if necessary, by relying on the dedicated Defence Office. The Trial Chamber expects counsel to actively seek out information that would assist the Defence by contacting the Prosecution and Registry directly and, only when this fails, seeking redress with the Trial Chamber.

---

<sup>8</sup> STL-11-01/T/TC, transcript of 12 February 2014, pp. 4-7.

<sup>9</sup> STL-11-01/T/TC, Decision on trial management and reasons for decision on joinder, para. 89.

<sup>10</sup> For example, in a status conference before the Pre-Trial Judge on 31 January 2014, counsel for Mr Merhi complained that they had not yet received the pre-trial brief in French (filed on 8 January 2014) and argued that this was posing some difficulties (STL-13-04/PT/PTJ, transcript of 31 January 2014, pp. 42-43), despite having refused the Registrar's offer of a language assistant, and having stated that two of the three counsel could read the document in English. Moreover, in court, counsel drew the Prosecution's attention to the fact that the pre-trial brief had two footnotes referring to non-existent information (STL-13-04/PT/PTJ, transcript of 31 January 2014, p. 43 and again in STL-11-01/T/TC, transcript of 12 February 2014, p. 59). In another example, during a hearing before the Trial Chamber counsel stated they were unaware of whether the evidence disclosed by the Prosecution in the *Ayyash* case would be the same as that in the *Merhi* case (STL-11-01/T/TC, transcript of 12 February 2014, p. 59); upon questioning by the Trial Chamber as to whether they had asked the Prosecution, counsel stated 'it's up to him to say: "Okay, this evidence in the two cases is equivalent." It's not for us to provide an answer to such a question, in our submission' (STL-11-01/T/TC, transcript of 12 February 2014, p. 60). Further, counsel for Mr Merhi stated that as of 12 February 2014 they had not obtained access to the confidential filings in the *Ayyash* case (STL-11-01/T/TC, transcript of 12 February 2014, pp. 115-116). All of these matters should have been dealt with outside of the court-room by first conferring with Prosecution counsel.

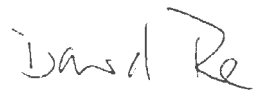
**DISPOSITION**

**FOR THESE REASONS**, the Trial Chamber:

**DISMISSES** the request and directs counsel for Mr Merhi to directly contact the Prosecution to receive or inspect the unused expert reports.

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

Leidschendam,  
The Netherlands  
28 February 2014



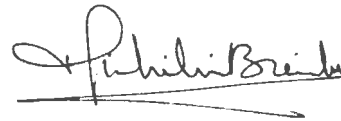
---

Judge David Re, Presiding



---

Judge Janet Nosworthy



---

Judge Micheline Braidy

