

**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:****1 April 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 ON 'MERHI DEFENCE REQUEST
RELATING TO HOLDING CONFIDENTIAL MEETINGS
AND THE PUBLIC NATURE OF THE PROCEEDINGS'**

Office of the Prosecutor:

Mr. Norman Farrell, Mr. Graeme Cameron
& Mr. Alexander Milne

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 Larochelle

Counsel for Mr. Assad Hassan Sabra:

Mr. David Young, Mr. Guénaël Mettraux
Geoffrey Roberts



1. Counsel for Mr Hassan Habib Merhi, on 11 March 2014, filed ‘Merhi Defence Request Relating to Holding Confidential Meetings and the Public Nature of the Proceedings’. The motion complains about judicial case management mechanisms employed by the Trial Chamber—and by extension those of those Appeals Chamber—in holding two meetings with counsel for Mr Merhi in February 2014 on the issue of their preparation for trial.
2. Counsel ask the Trial Chamber (1) to make public the minutes of two meetings held between counsel for Mr Merhi and the Trial Chamber on 14 and 21 February 2014; (2) not to hold further meetings; and, (3) to order that any further such meetings be held publicly.¹ The Prosecution did not respond to this motion.²
3. Counsel for Mr Merhi have reiterated arguments that they had already made in a motion challenging the form of the indictment, stating that the Trial Chamber has effectively deprived them of the pre-trial phase of the proceedings.³ Why these are repeated here is unclear.
4. Substantively, the motion alleges that the Trial Chamber was incompetent to hold meetings relating to trial preparations before 25 February 2014, that is, the date Defence counsel nominate as being when the Trial Chamber formally assumed the functions of the Pre-Trial Judge by virtue of Rule 70 (C) of the Rules of Procedure and Evidence.⁴ The Trial Chamber does not understand this argument; it issued its decision joining the cases of *Prosecutor v. Hassan Habib Merhi* with the case of *Prosecutor v. Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi, and Assad Hassan Sabra* on 11 February 2014. Rule 70 (C) provides that in cases of joinder ‘the Trial Chamber, in consultation with the Pre-Trial Judge, may perform any of the Pre-Trial Judge’s functions in Rules 89 (A)-(D), (F), 90 (A) (iv), 91 and 94. Rule 95 may be wholly or partly dispensed with’.
5. As of 11 February 2014 the two cases were joined and the Trial Chamber had the full discretion to perform any of the Pre-Trial Judge’s functions. And Rule 130 provides:

(A) The Trial Chamber, after hearing the parties, may give directions on the conduct of the proceedings as necessary and desirable to ensure a fair, impartial, and expeditious trial. These may include *inter alia* orders relating to disclosure and directions to the Parties regarding communication between Parties and witnesses.

¹ STL-11-01/T/TC, Requête de la Défense de M. Merhi Relative à la Tenue de Réunions Confidentielles et à la Publicité des Procédures’, 11 March 2014 (‘Merhi Defence request’).

² E-mail to Trial Chamber Legal Officer of 17 March 2014.

³ Merhi Defence request, para. 18.

⁴ Merhi Defence request, para. 18.

(B) Rules that govern proceedings before the Pre-Trial Judge, except for those under Rules 93, 117 and 118, shall apply *mutatis mutandis* to proceedings before the Trial Chamber after submission of the file to the Trial Chamber.

6. The Trial Chamber may give any direction necessary and desirable to ensure a fair, impartial, and expeditious trial—this of course includes directions on meeting, where appropriate. Rule 126 (B) also states that motions should be oral, rather than in writing, thus supporting the contention that meetings with the Trial Chamber may be an appropriate forum to discuss trial preparations.

7. Out of court meetings with counsel are a normal function of judicial case management. The Trial Chamber, sometimes represented by the Presiding Judge, like the Pre-Trial Judge and the President of the Special Tribunal on behalf of the Appeals Chamber, according to the circumstances, has convened meetings with counsel for different Accused in the presence of counsel for the Prosecution, or vice-versa.⁵ Meetings with specific Defence counsel or the Prosecution are always held in the presence of a representative from the opposing Party—either the Prosecution or relevant Defence counsel—except when the matter under discussion is *ex parte*. No discussion on the substance of the evidence or on the merits of the case occurs in such administrative meetings.

8. In the circumstances of a joinder application made by the Prosecutor in the weeks before the commencement of trial, the Trial Chamber stressed that it was concerned that counsel for Mr Merhi had sufficient resources to deal with their pre-trial preparations. The Trial Chamber thus held three meetings with counsel for Mr Merhi in the presence of Prosecution counsel—on 8 January 2014 as an introductory meeting, and then, after joinder, on 14 and 21 February 2014. Representatives of the Registrar attended the three meetings—and the Defence Office attended the first and third meetings. The third meeting was interpreted into Arabic, English and French by the Special Tribunal’s Court Languages Services Section and its Court Management Services Section made a record of meeting; the minutes were subsequently circulated to those who attended. This record has been made public.⁶

9. The Defence motion complains that the meetings were ‘secret’ and ‘*ex-parté*’. But they were neither. The meetings were not held in a public court session, but suggesting that such meetings should be is impractical and misunderstands the function of judicial case management in between court hearings. An informal meeting can be arranged at short notice and, where necessary, in

⁵ For instance, legal officers of the Trial Chamber have been having informal meetings with counsel for the Accused who filed requests for orders for cooperation with Lebanon, aiming at expediting these requests and ensuring their effective implementation. These meetings resulted in rewording and prioritizing several requests, which were eventually, at least in part, successful. Other meetings have been held with counsel on other matters, but without complaint, from Defence counsel, the Prosecution or indeed counsel for Mr Merhi.

⁶ STL-11-01/T/TC, Minutes of Proceedings dated 21 February 2014, 31 March 2014.

chambers. Court sessions require pre-planning and consume resources including expenditure on contract interpreters.

10. Nor were these meetings held *ex parte*, as alleged. Although counsel for the other Accused were not specifically invited to attend the meetings, they could have attended if they so wished. But none did. As they were relevant *only* to the trial preparations of counsel for Mr Merhi, only counsel for Mr Merhi were asked to attend. Inviting other counsel to attend a meeting irrelevant for their own purposes would have wasted their time.

11. The purpose of these meetings was for the Trial Chamber to ensure that counsel for Mr Merhi had sufficient legal staff, language assistance and assistance from Prosecution and other Defence counsel in effectively identifying the material most relevant for their trial preparations. The Trial Chamber, as is clear from the wording of its decision of 25 February 2014,⁷ was not interested in seeing this evidence, or even in considering its scope—it was merely attempting to ensure that counsel for Mr Merhi had sought and received the necessary assistance to be able to properly discharge their duties.

12. The Trial Chamber must ensure that Mr Merhi is receiving a fair and expeditious trial; this includes the effectiveness of his legal representation. The Trial Chamber cannot see how any prejudice to Mr Merhi could possibly flow from this, nor can it understand how holding such meetings could not advance the interests of a fair and expeditious trial, as mandated by Article 16 (4) of the Statute of the Special Tribunal.

13. Counsel for Mr Merhi also requested the Trial Chamber not to hold further meetings with them. This somewhat unusual request must be rejected; the Trial Chamber is duty-bound to take all measures necessary—including holding meetings—under Rule 130 if and when necessary to ensure a fair trial. It cannot, in the abstract, abdicate its responsibilities for the foreseeable future, thus risking prejudice to the Accused should the need for meetings arise.

14. The Trial Chamber has stated before that the Parties must be collegial in conducting themselves before the Special Tribunal. In this context, it has also stressed that it welcomes a practical approach to the management of the trial.⁸ The formalistic approach reflected by the motion does not seem to promote the conduct of the case, nor reflect any legal principle restricting the Trial Chamber's discretion for managing its proceedings.

⁷ STL-11-01/T/TC, Decision on Trial Management and Reasons for Decision on Joinder, 25 February 2014, para. 101.

⁸ STL-11-01/T/TC, Reasons for Decision on Reconsideration or Certification of the Deadline for Certain Evidentiary Motions (Merhi), 31 March 2014.

15. The Trial Chamber is puzzled that its intentions and the normal principles of judicial case management could be so thoroughly misunderstood as to lead to filing this lengthy motion. The Trial Chamber has been working with the Parties and other relevant organs of the Special Tribunal to ensure appropriate and fair preparation of trial proceedings for counsel for Mr Merhi, both before and after the joinder. This has included requesting the Registry and the Defence Office to provide available resources additional to those originally envisaged⁹ and issuing easily modifiable administrative timelines,¹⁰ while reassuring counsel for Mr Merhi that they can always raise matters with the Trial Chamber.¹¹ The Trial Chamber has also carefully attempted not to over-burden counsel with formal meetings and rulings, instead selecting an informal approach. Nonetheless, the Trial Chamber considers its duty to ensure a fair trial, which includes effective representation for all Accused, as paramount.

16. It was also unnecessary to file a motion asking that the meeting's minutes be made public. This could have been done more effectively by informally asking; and none of the participants objected to the minutes being made public. The first two meetings were not minuted by Registry officials because they were informal meetings meant to facilitate liaison and cooperation between the Parties. This somewhat perplexing motion is without merit and is therefore dismissed.

⁹ Transcript of 12 February 2014, p. 8, line 12 - p. 15, line 10 and p. 99, line 23 – p. 115, line 1.

¹⁰ Transcript of 4 March 2014, p. 41.

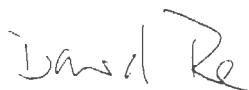
¹¹ Transcript of 12 February 2014, pp. 4–7.

DISPOSITION

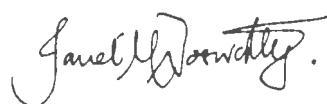
FOR THESE REASONS, the motion is dismissed.

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

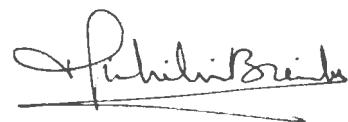
1 April 2014,
Leidschendam,
The Netherlands



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

