



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

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: 2 May 2014

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

ORDER VARYING DECISION ON DISCLOSURE OF LIST OF STUDENT INFORMATION

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. Dorothee Le Fraper
du Hellen & Mr. Jad Khalil

Counsel for Mr. Hussein Hassan Oneissi:

Mr. Vincent Courcelle-Labrousse, Mr. Yasser
Hassan & Mr. Philippe Larochele

Counsel for Mr. Assad Hassan Sabra:

Mr. David Young, Mr. Guénaél Mettraux
& Mr. Geoffrey Roberts



1. The Defence of Mr Hussein Hassan Oneissi has sought access to certain information held by the Prosecution relating to the identity of students who attended a Lebanese university between 2003 and 2006. The Trial Chamber, in a decision on 9 April 2014, found that the period of 2004 and 2005 was material to Defence preparations for trial, and ordered the Prosecution to provide Defence counsel with access to (1) the list of students attending the university for 2004 and 2005 and (2) information identifying any student enrolled at the university in 2006 whose telephone number appears in an annex to the Defence motion.¹

2. The Prosecution subsequently filed a notice stating that it did not possess separate lists of student information based only on years of enrolment; it had only a comprehensive list for 2003 through 2006, and had not anticipated the Trial Chamber's order sub-dividing the list.² It therefore cannot provide the extracts of the information for 2006 only. On this basis, the Prosecution proposes that the Trial Chamber amend its decision in one of two ways. The first would identify those on the comprehensive list of 2003-2006 having telephone numbers matching those listed in the annex, thus providing counsel for Mr Oneissi with the information actually needed. The second option would provide Defence counsel with the full list of all students enrolled at the university for 2003-2006, including information found not to be material in the Trial Chamber's decision.

3. Counsel for Mr Oneissi responded, arguing that the only way the Prosecution could effectively comply with the substance of the Trial Chamber's decision would be to provide access to the full list of students for 2003-2006. Any privacy concerns relating to those whose names appear on the lists are adequately addressed by the obligations incumbent upon counsel.³

4. It is now evident that the Prosecution cannot provide the information in the manner ordered by the Trial Chamber. However, to make the order now sought by Defence counsel would be contrary to the Trial Chamber's decision holding that the Defence had not demonstrated the materiality to its preparations in having access to the relevant student records in 2003 and 2006. The Trial Chamber found that that time-frame extended both beyond the relevant period in the consolidated indictment and before the witness was interviewed by the United Nations International Independent Investigation Commission in 2007.⁴ To allow the request in the Defence response seeking full enforcement of the decision would require a reconsideration of the decision as it

¹ STL-11-01/T/TC, Decision on Disclosure of List of Student Information, 9 April 2014.

² STL-11-01/T/TC, Notice of Prosecution's Inability to Strictly Comply with the Trial Chamber's 'Decision on Disclosure of List of Student Information', Confidential, 17 April 2014, paras 3-4.

³ STL-11-01/T/TC, Defence for Hussein Hassan Oneissi Response to 'Notice of Prosecution's Inability to Strictly Comply with the Trial Chamber's 'Decision on Disclosure of List of Student Information'', 24 April 2014, paras 4-6.

⁴ Decision, para. 15.

concerns ‘materiality’. The Defence response has not provided any basis for the Trial Chamber to do this. Nor is the Trial Chamber prepared to do so *proprio motu* under Rule 140 of the Special Tribunal’s Rules of Procedure and Evidence.

5. The Trial Chamber—as it is not yet prepared to reconsider its previous decision relating to ‘materiality’—will therefore vary its decision of 9 April 2014, as requested by the Prosecution, to order it to identify those on the comprehensive list (2003-2006) who have telephone numbers matching those listed in the annex to the Defence motion, and to provide this information to Defence counsel. The Trial Chamber understands the concerns of counsel for Mr Oneissi and is determined to ensure that all information material to the preparation of the Defence case be provided to them. After assessing the information received, counsel for Mr Oneissi—providing that they can show good cause—may ask the Trial Chamber to expand the scope of the information sought.

CONFIDENTIALITY

6. In identical terms to paragraph 20 of its decision of 9 April 2014, ‘the Trial Chamber reiterates that motions and responses should, wherever possible, be filed publicly. Counsel should—the Trial Chamber repeats—file motions publicly with any confidential information in a confidential annex.’ **The Prosecution notice and Defence response should have been written and filed in this manner.** The Parties are therefore ordered to file public redacted versions of their filings as soon as practicable.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

VARIES its Decision of 9 April 2014;

ORDERS the Prosecution to identify those students attending the Lebanese university between 2003 and 2006 with telephone numbers matching those listed in Annex B to ‘Addendum to “The Defence for Hussein Hassan Oneissi Request for Disclosure of the Full List of [...] Students from 2003 to 2006”’, filed 12 March 2004, and to provide counsel for Mr Oneissi with access to this information, and

ORDERS the Prosecution and Defence counsel to file public redacted versions of their submissions as soon as practicable.

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

Leidschendam,
The Netherlands
2 May 2014



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

