

**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: 12 May 2014

Original language: English

Classification: Public

INTERIM DECISION ON THE SABRA DEFENCE REQUEST (F1495) FOR A FINDING OF NON-COMPLIANCE UNDER RULE 20 (C)

(Extract from Official Public Transcript of Hearing on 12 May 2014, page 3, line 21 to page 7, line 22)

This is the interim decision concerning the co-operation of Lebanon with the Special Tribunal for Lebanon.

On the 14th of April, 2014, the Defence of the accused Mr. Assad Hassan Sabra sought an order from the Trial Chamber under Rule 20(C) of the Rules of Procedure and Evidence to make a finding of non-compliance against Lebanon. This arises from two orders made by the Trial Chamber on the 31st of January this year in relation to 11 requests for assistance sent by the Tribunal's Defence Office on behalf of the Defence of Mr. Sabra in 2013.

The request for assistance was sent by the Defence Office to the Government of Lebanon, asking them to provide certain information to the Defence of Mr. Sabra.

The Trial Chamber in its decision on the 31st of January ordered the Government of Lebanon to provide the requested information within 30 days of receiving the orders. The Lebanese government received the Trial Chamber's orders on the 5th of February.

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Defence counsel argued that Lebanon had not complied with seven of these 11 requests for assistance, numbered 41, 84, 86, 90, 108, 109, and 110. Defence counsel asked the Trial Chamber to make an order and to inform - that's an order of non-compliance - and to inform the President of the Special Tribunal of this order to enable him to engage in consultations with the relevant Lebanese authorities, with a view to obtaining the required co-operation.

They also requested bi-weekly updates from the Lebanese government about the status of implementing the requests for assistance and the Lebanese government was to detail the steps taken to comply with the order.

The Sabra Defence received some relevant information as a result of the Trial Chamber's orders, some relevant information from the Lebanese government and Lebanese telecommunications companies on the following dates: The 25th of February; the 11th, 13th, and 14th of March; and also on the 4th of April. The Sabra Defence says that four out of the eight requests in relation to telecommunications companies, that is, requests for information from them, have now been fully answered. However, they say they are yet to receive all information sought and most specifically some information sought from the Lebanese Internal Security Forces, in particular in relation to the attribution of Purple telephone 018, which is alleged by the Prosecution to have been used by Mr. Sabra as part of the conspiracy charged in the consolidated indictment. Defence counsel argue that this information is potentially exculpatory and having it is vital for their preparations for the resumption of the trial.

On the 29th of April, the Prosecution responded to the motion filed by counsel for Mr. Sabra. Prosecution argued that it was premature at this stage to make the order sought, as in their view the Lebanese government was making genuine attempts to comply with the Trial Chamber's orders. The Prosecution also submits that the Trial Chamber should solicit, that is, ask for, submissions from the Lebanese government before it makes any finding of non-compliance against Lebanon.

To the Trial Chamber, it appears that the Lebanese government has responded in some form to each of the eight requests for assistance that were the subject of the Trial Chamber's first of its two orders in January. The response in relation to the second order relating to the Internal Security Forces and Purple telephone 018, however, has been general, informing the Defence to "refer all requests received from the Trial Chamber to the organs concerned at the Special Tribunal for Lebanon."

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Now, the Prosecutor or Prosecution being the relevant organ, however, states that it does not possess the information sought by the Defence. Moreover, it says that the Defence has not demonstrated that this material -- material they seek actually exists.

The Trial Chamber is pleased that the Lebanese government and, through its efforts, the two Lebanese telecommunications companies have responded to most of the requests for assistance, the subject of the orders made by the Trial Chamber in January. And given previous problems with prior Defence requests for assistance, this is very encouraging.

But on the other hand, the Trial Chamber is concerned at the, at best partial, attempt to comply with the second order of the 31st of January, 2014, and especially in relation to information potentially held by the Lebanese Internal Security Forces. The Trial Chamber emphasizes that all Defence counsel must have the information necessary to mount an effective defence at trial.

However, making a finding of non-compliance under Rule 20(C) is a very serious measure. Such a finding could carry significant international and diplomatic consequences. And before doing so, that is, making such an order, the Trial Chamber must be satisfied that Lebanon has, quote, to use the words in the section, clearly failed to comply with the order or request.

The Trial Chamber is not yet satisfied that this is the case.

The Trial Chamber will not, at this stage, make such a finding. And if it were considering making such an order, it would first seek to hear submissions from the Lebanese government.

For these reasons, this is an interim decision and the Trial Chamber is not dismissing the motion filed by counsel for Assad Hassan Sabra. The motion remains pending before the Chamber for final determination. Meanwhile, the Trial Chamber will continue to carefully monitor Lebanon's compliance with the Trial Chamber's orders. We note the Lebanese government's efforts to provide the information sought by the Defence and we encourage Lebanon to do everything possible to ensure that the Defence received its information in a timely manner.

We emphasize that if the Lebanese authorities do not actually possess the material sought, as the Prosecutor has questioned, they, the Lebanese authorities, must or should clearly state so, so that the Tribunal can contemplate pursuing other avenues to obtain the material. The Trial Chamber will re-visit this issue, that is, the status of the outstanding

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requests for assistance and the Lebanese government's compliance with our order of the 31st of January, before the resumption of trial.

The Registrar is instructed to notify the Lebanese authorities of this interim decision and to provide them with a certified Arabic copy of it as soon as possible.

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