

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: 11 June 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 RECONSIDERING VARIATION DECISION OF 2 MAY 2014 AND DECISION ON CERTIFICATION FOR INTERLOCUTORY APPEAL

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 Larochelle

Counsel for Mr. Assad Hassan Sabra:

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



BACKGROUND

1. On 9 April 2014, in deciding a motion filed by counsel for Mr. Hussein Hassan Oneissi, the Trial Chamber ordered the Prosecution to give Defence counsel access to: (1) the list of students attending a university specified in the motion and its addendum for the years 2004 and 2005; and (2) information identifying any student enrolled at this university in 2006 whose telephone number appears in an addendum to the motion.¹

2. The Prosecution, on 17 April 2014, filed a notice of its inability to strictly comply with the decision, stating that it did not possess separate lists of student information based on years of enrolment, but only had a comprehensive list of students attending the university between 2003 and 2006. On that basis, the Prosecution proposed that the Trial Chamber amend its decision by ordering it to either: (1) disclose the names of students on the comprehensive list of 2003-2006 who had telephone numbers matching those listed in Annex B; or alternatively, (2) disclose the full list of students enrolled between 2003 and 2006.² Counsel for Mr. Oneissi responded requesting the Trial Chamber to order the Prosecution to immediately disclose the full list of students for 2003-2006. They added that any privacy concerns relating to those whose names appear on the lists were adequately addressed by the obligations imposed upon counsel under the Code of Professional Conduct for Counsel Appearing before the Tribunal.³

3. On 2 May 2014, the Trial Chamber declined to reconsider its decision to allow access to *all* student records, including those not previously considered to be material to the preparation for trial. Instead, the Trial Chamber varied its decision and ordered that the Prosecution identify those students attending the university between 2003 and 2006 with telephone numbers matching those listed in Annex B to the Addendum and to provide counsel for Mr. Oneissi with access to this information. However, the Trial Chamber observed that it ‘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.’ It also noted that ‘[a]fter 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.’⁴

¹ STL, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, STL-11-01/T/TC, Decision on Disclosure of List of Student Information, 9 April 2014, Disposition.

² Notice of Prosecution’s Inability to Strictly Comply with the Trial Chamber’s “Decision on Disclosure of List of Student Information”, 17 April 2014, paras 5-8.

³ 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’” dated 17 April 2014, 24 April 2014, paras 1, 5.

⁴ Order Varying Decision on Disclosure of List of Student Information, 2 May 2014, paras. 4-5, Disposition.

4. Counsel for Mr. Oneissi then, pursuant to Rule 126 (C) of the Special Tribunal's Rules of Procedure and Evidence, requested certification of that decision for interlocutory appeal, arguing that because the material and immaterial information were inseparable the Trial Chamber should have ordered the disclosure of the full list of students. In other words, 'where the material information and the immaterial information in a document are inseparable, the fair rights of an *in absentia* accused, coupled with the strict confidentiality obligations that bind Defence Counsel, require that such document be disclosed in full – even if so doing would entail providing Counsel for an *in absentia* accused with information that they do not require for their preparation.'⁵ The Prosecution opposed the request for certification, arguing that the criteria in Rule 126 (C) were not met and, in particular, that ordering the disclosure of the entire list would not significantly affect the fair conduct of the proceedings.⁶

ANALYSIS

5. Rule 140 permits the Trial Chamber *proprio motu* to reconsider a decision, other than a Judgement or sentence, if necessary to avoid an injustice. The Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) made the following clarification: '[a] Trial Chamber may [...] always reconsider a decision it has previously made, not only because of a change of circumstances but also where it is realised that the previous decision was erroneous or that it has caused an injustice.' And '[w]here such a decision is changed, there will be a need in every case for the Trial Chamber to consider with great care and to deal with the consequences of the change upon the proceedings which have in the meantime been conducted in accordance with the original decision.'⁷ The Trial Chamber agrees with this.

6. In its variation decision of 2 May 2014, the Trial Chamber stated that upon good cause being shown it would be prepared to reconsider its decision and expand the scope of the information sought. By contrast with their earlier submissions, counsel for Mr. Oneissi have now clearly and convincingly argued—in their submission filed on 9 May 2014—that the right of the Defence to prepare for trial requires that they be provided with the full list of students enrolled between 2003 and 2006, even if so doing would entail disclosing information not strictly necessary for the preparation of the case. Indeed, it is now more apparent, in light of the practical challenges posed by

⁵ Defence for Hussein Hassan Oneissi Request for Certification to Appeal "Order Varying Decision on Disclosure of List of Student Information" dated 2 May 2014, 9 May 2014, paras 1, 13.

⁶ Prosecution Response to the Oneissi Defence's Request for Certification to Appeal the Trial Chamber's "Order Varying Decision on Disclosure of List of Student Information", 22 May 2014.

⁷ ICTY, *Prosecutor v. Galić*, IT-98-29-AR73, Decision on Application by Prosecution for Leave to Appeal, 14 December 2001, para. 13.

the nature of the information to be disclosed, that withholding such information may have the effect of preventing the Defence from obtaining the information the Trial Chamber identified as ‘material’ in its decision of 9 April 2014.

7. The Trial Chamber is mindful that counsel for Mr. Oneissi did not request reconsideration of the variation decision of 2 May 2014 but rather sought certification to appeal it. However, the Trial Chamber is of the view that at this stage of the proceedings and in these specific circumstances, awaiting the resolution of an appeal would further delay the proceedings and would therefore be contrary to the fair and expeditious conduct of the trial. Accordingly, to give full effect to decision of 9 April 2014 and to avoid an injustice and further delays, the Trial Chamber will *proprio motu* reconsider its variation decision of 2 May 2014 and order the Prosecution to disclose to counsel for Mr. Oneissi the full list of students enrolled between 2003 and 2006.

8. The Trial Chamber recognizes that disseminating such information—here to Defence counsel—may impact on the rights to privacy of the students concerned. Counsel for Mr. Oneissi are therefore reminded of their obligations of non-disclosure under Article 5 of the Code of Professional Conduct for Counsel Appearing before the Tribunal of 28 February 2011.

REQUEST FOR CERTIFICATION

9. As the Trial Chamber has now reconsidered its variation decision of 2 May 2014, the request for certifying that decision for interlocutory appeal is moot and is dismissed.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

RECONSIDERS under Rule 140 of the Rules of Procedure and Evidence its decision of 2 May 2014; and

ORDERS the Prosecution to provide counsel for Hussein Hassan Oneissi with the list of students attending the specified university for the years 2003 to 2006;

REMINDS counsel for Hussein Hassan Oneissi of their obligations of confidentiality as set out in Article 5 of the Code of Professional Conduct for Counsel Appearing Before the Tribunal, and

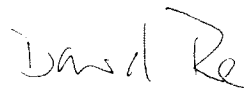
DISMISSES the request for certification for interlocutory appeal.

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

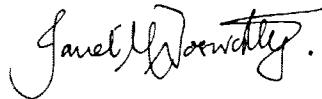
Leidschendam,

The Netherlands

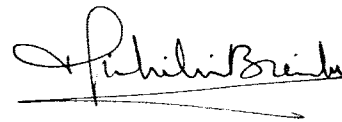
11 June 2014



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy