



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: 23 July 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 SUPPLEMENTARY SUBMISSIONS ON DOCUMENTS RELATING TO AHMED ABU ADASS COMPUTER HARD DRIVE (ONEISSI DEFENCE)

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



BACKGROUND

1. This decision rules on the supplementary submissions filed on 27 June 2014 by counsel for Mr. Hussein Hassan Oneissi in relation to the disclosure of documents relating to the hard-drive of a computer allegedly belonging to Mr. Ahmed Abu Adass.¹ Counsel for Mr. Oneissi requested the Trial Chamber to order the Prosecution to: (1) disclose all the documents and information relating to the computer of Mr. Abu Adass, including an analysis carried out by a Prosecution ‘external expert’ between 22 November 2012 and 11 April 2013; and (2) provide a detailed and comprehensive report on ‘the chain of custody’ of the movements of this hard drive.² These submissions were filed pursuant to Article 110 (B) of the Special Tribunal’s Rules of Procedure and Evidence after a meeting on 4 June 2014 with the Trial Chamber’s legal officers, and relate to numerous pieces of correspondence³ and a filing on the issue.⁴

2. On 14 July 2014, the Prosecution responded arguing that the supplementary submissions: (1) were not legally justified nor based on any factual considerations;⁵ (2) were unfounded—as the investigative analysis of the hard drive should be treated as internal work product and therefore exempted from disclosure pursuant to Rule 111;⁶ and (3) in any case, were moot since the requested report was disclosed to counsel for Mr. Oneissi that same day (14 July 2014).⁷

DISCUSSION

3. On 5 June 2014, the Trial Chamber stated that it would receive any supplementary submissions from the Parties in relation to the Defence request for disclosure of documents relating

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi, and Sabra*, Oneissi Supplementary Submissions in Relation to the Disclosure of Documents relating to Ahmed Abu Adass Computer, 27 June 2014. A public redacted version was filed on 30 June 2014.

² Oneissi Defence submissions, para. 16.

³ STL-11-01/T/TC, Annex A to the Oneissi Supplementary Submissions in Relation to the Disclosure of Documents relating to Ahmed Abu Adass Computer, 27 June 2014; Letter from the Oneissi Defence to the Prosecution (**ON/DISC/90**) “Second Request for AAA HD and preparation of second inspection”, 28 May 2014; Letter from the Prosecution to the Oneissi Defence “Your letter of 28 May 2014, 4 June 2014; Letter from the Oneissi Defence to the Prosecution (**ON/DISC/91**) “Request for clarification on the copies of AAA HD (SI-0000329.1 and SI-0000329.2), 10 June 2014; Letter from the Prosecution to the Oneissi Defence “Your letter of 10 June 2014, 16 June 2014; Letter from the Oneissi Defence to the Prosecution (**ON/DISC/94**) “Request for a raw image of AAA HD SI-0000329.1, 18 June 2014; Letter from the Prosecution to the Oneissi Defence “Your letter of 18 June 2014”, 18 June 2014; Letter from the Prosecution to Oneissi Defence “Your letter of 10 June 2014”, 23 June 2014; Letter from the Prosecution to Oneissi Defence “Your letter of 18 June 2014”, 23 June 2014; Letter from the Prosecution to Oneissi Defence “Your letter of 10 June 2014 (Re: Request for clarification on the copies of AAA HD (SI-0000329.1 & SI-0000329.2))”, 23 June 2014.

⁴ STL-11-01/T/TC, Schedule in relation to Defence Request for Disclosure of Documents Relating to Ahmed Abu Adass, 5 June 2014.

⁵ STL-11-01/T/TC, Prosecution Response to Oneissi Defence’s “Supplementary Submissions in Relation to the Disclosure of Documents relating to Ahmed Abu Adass Computer”, 14 July 2014, paras 6-13.

⁶ Prosecution response, paras 14-25.

⁷ Prosecution response, para. 30.

to this computer.⁸ Thus, contrary to the Prosecution's submission that, in the absence of legal and factual justifications, they should be deemed improper,⁹ counsel for Mr. Oneissi were entitled to file them. They are therefore admissible and should be examined.

4. Counsel for Mr. Oneissi requested the disclosure of the entirety of the documents and information relating to Mr. Abu Adass's computer as defined in paragraphs 15 and 16 of the motion they filed on 20 March 2014,¹⁰ and, in particular, the analysis carried out by a Prosecution 'external expert'. This was to be accompanied by information relating mainly to: the identity of that expert and others who might have worked with him; the instructions given; the location of the examination of the hard drive; whether the expert examined the original version of the hard drive or a copy of it; and all other reports produced by the Prosecution on the basis of the hard drive.¹¹

5. The Prosecution has now made available to counsel for Mr. Oneissi: (1) the content of the hard drive in its possession;¹² (2) all information regarding any accessing of the hard drive—after its seizure by the Lebanese authorities— without taking proper forensic precaution;¹³ (3) two separate forensic images of the hard drive—one created on 10 May 2011 (SI-0000329), the other created between 9 May 2006 and 17 May 2006 (SI-0000329.01)—on which, according to the Prosecution, both forensic and content analysis can be conducted;¹⁴ and (4) its external expert's analysis,¹⁵ which contains the information requested,¹⁶ but with the exception of a comprehensive report on the chain of custody of the hard drive.

6. The Prosecution considers the external expert's report to be internal work product not subject to disclosure under Rule 111¹⁷ but for reasons unrelated to the nature and content of the report,¹⁸ it provided it to the Defence on 14 July 2014. That was the day on which it filed its response saying that the request was now 'moot'. Indeed, by these actions the Prosecution rendered that part of the Defence motion moot; however a more timely disclosure of this document to Defence counsel would have better facilitated the proceedings and hence avoided that part of this litigation.

⁸ STL-11-01/T/TC, Schedule in Relation to the Defence Request for Disclosure of Documents relating to Ahmed Abou Adass Computer, 5 June 2014, paras 1-2.

⁹ Prosecution response, paras 6-13.

¹⁰ STL-11-01/T/TC, Request for Disclosure of Documents relating to the Computer of Ahmed Abou Adass, 20 March 2014.

¹¹ Oneissi Defence request of 20 March 2014, para. 16.

¹² Prosecution response, para. 18.

¹³ Prosecution response, para. 18.

¹⁴ Prosecution response, para. 21.

¹⁵ Prosecution response, para. 29.

¹⁶ Prosecution response, para. 30.

¹⁷ Prosecution response, paras 14-25.

¹⁸ Prosecution response, para. 28.

7. Counsel for Mr. Oneissi also requested a detailed and comprehensive report on the chain of custody of the hard drive.¹⁹ The Prosecution stated that it has disclosed ‘documents and provided information pertaining to the chain of custody of the Hard Drive, including the information that the Hard Drive was in the custody of the Prosecution’s Assistant between 22 November 2012 and 11 April 2013.’²⁰ The Prosecution has informed counsel for Mr. Oneissi about the two dates—10 May 2011 and 7 September 2012—on which it accessed SI-000329 for investigative purposes without using a write-blocker.²¹ In light of the documents and information already provided, the Trial Chamber considers that the Prosecution is not obliged to produce a more comprehensive report on this.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

NOTES that the Prosecution’s disclosure of the information referred to in paragraph 5 has rendered moot the Defence supplementary submissions in relation to the documents and information relating to the computer of Mr. Abu Adass; and

DISMISSES the supplementary submissions in relation to the request for a detailed and comprehensive report on the chain of custody of the hard drive of the computer of Mr. Abu Adass.

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

Leidschendam,
The Netherlands
23 July 2014

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy



¹⁹ Oneissi Defence submissions, para. 16.

²⁰ Prosecution response, para. 18.

²¹ Prosecution response, para. 18.