



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: 19 August 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 DISMISSING REQUEST FOR CERTIFICATION TO APPEAL
'DECISION ON SUPPLEMENTARY SUBMISSIONS' OF 23 JULY 2014**

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 Métraux
& Mr. Geoffrey Roberts



BACKGROUND

1. Counsel for Mr. Hussein Hassan Oneissi sought certification under Rule 126 (C) of the Special Tribunal's Rules of Procedure and Evidence to appeal the Trial Chamber's 'Decision on Supplementary Submissions on Documents Relating to Ahmed Abu Adass Computer Hard Drive (Oneissi Defence)', dated 23 July 2014.¹ This decision ruled on supplementary submissions filed by counsel for Mr. Oneissi seeking documents relating to the hard-drive of a computer allegedly belonging to Mr. Ahmed Abu Adass. The Trial Chamber concluded that the Prosecution's disclosure of information and documents—including an analysis carried out by an 'external expert'—had rendered these supplementary submissions moot. It also dismissed a request to order the Prosecution to prepare a detailed and comprehensive report on the chain of custody of the computer's hard drive.²

2. Counsel for Mr. Oneissi then sought certification for interlocutory appeal of whether a report prepared by an external third party can be considered as internal product exempt from disclosure under Rule 111.³ Rule 111 provides that,

Reports, memoranda, or other internal documents prepared by a Party, its assistants or representatives in connection with the investigation or preparation of a case are not subject to disclosure or notification under the Rules.

3. Defence counsel argued that while this matter had not been settled by the Trial Chamber it significantly affects the fair conduct of the proceedings. If the Prosecution maintains that Rule 111 applies to such a report it is very likely that evidence subject to disclosure remains in its possession.⁴ Thus, '[c]onsidering the length of time elapsed between the initial request and the latest decision of the Trial Chamber on this issue, it is crucial to obtain some guidance from the Appeals Chamber on the matter of the scope of the Prosecution's disclosure obligations, as there are ongoing disagreements between the parties on this issue.' Immediately resolving the matter would therefore advance the proceedings.⁵ The Prosecution requested the Trial Chamber to dismiss the motion, arguing that the issue in dispute did not arise from the decision, the Trial Chamber had declared the issue moot and had not even adjudicated it.⁶

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi, and Sabra*, Defense for Hussein Hassan Oneissi Request for Certification to Appeal "Decision on Supplementary Submissions" dated 23 July 2014, 31 July 2014.

² Decision of 23 July 2014, Disposition.

³ Request for certification, para. 14.

⁴ Request for certification, paras 10-11.

⁵ Request for certification, para. 12.

⁶ STL-11-01/T/TC, Prosecution Response to "Defence for Hussein Hassan Oneissi Request for Certification to Appeal 'Decision on Supplementary Submissions' dated 23 July 2014", 6 August 2014, para. 3.

DISCUSSION

4. Rule 126 (C) authorises the Trial Chamber to certify an issue for interlocutory appeal once two cumulative criteria are met: i) the decision involved an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and ii) an immediate resolution of the issue in question by the Appeals Chamber may materially advance the proceedings. The Special Tribunal's Appeals Chamber has stressed that the requirements for certification for interlocutory appeal are strict and great care must be taken in assessing them.⁷ The issue certified for appeal must clearly arise from the decision and must not be overly broad.⁸

5. Specified rules allow the Appeals Chamber to hear appeals on defined matters, including against decisions of the Pre-Trial Judge and Trial Chamber, and against a judgement or sentence.⁹ The Appeals Chamber does not have supervisory jurisdiction over decisions of the Trial Chamber and—outside of its defined appellate jurisdiction—has no jurisdiction to provide the Trial Chamber with judicial guidance, or to issue advisory opinions.¹⁰ The request for certification, however, is tantamount to seeking an advisory opinion or judicial guidance from the Appeals Chamber in circumstances lacking a statutory basis.

6. The Trial Chamber did not actually decide the issue posed for certification for interlocutory appeal, namely whether a report prepared by an external third party—that is, by someone not working within the Office of the Prosecutor—should be considered as an internal work product exempt from disclosure under Rule 111. As the Prosecution had already disclosed all necessary documents and information, including the external report, the Trial Chamber decided that the issue

⁷ STL-11-01/PT/AC/AR126.5, Decision on Appeal by Counsel for Mr. Sabra against Pre-Trial Judge's "Decision on Sabra's Tenth and Eleventh Motions for Disclosure", 6 November 2013, para. 7; STL-11-01/PT/AC/AR90.2, Decision on Defence Appeals against Trial Chamber's "Decision on Alleged Defects in the Form of the Amended Indictment", 5 August 2013, para. 11; STL-11-01/PT/AC/AR126.2, Decision on Appeal against Pre-Trial Judge's Decision on Motion by Counsel for Mr. Badreddine Alleging the Absence of Authority of the Prosecutor, 13 November 2012, para. 15.

⁸ STL-11-01/PT/AC/AR 126.5, Decision on Appeal by Counsel for Mr. Sabra against Pre-Trial Judge's "Decision on Sabra's Tenth and Eleventh Motions for Disclosure", 6 November 2013, para. 7.

⁹ See, Rule 11 (D) 'Jurisdiction, Rule 17 (H) 'Request to Lebanon for Deferral', Rule 60 *bis* (M) 'Contempt and Obstruction of Justice', Rule 81 (C) 'Issuance of Safe-Conducts', Rule 86 (C) (i) 'Granting the Status of Victim Participating in the Proceedings', Rule 88 (B) 'Role of the Pre-Trial Judge before Confirmation of the Indictment', Rule 90 (B) 'Disposal of Preliminary Motions', Rule 92 (D) 'Exceptional Gathering of Evidence', Rule 102 (C) Release, Rule 108 (C) Appearance of the Accused in the Course of Proceedings *in Absentia*, Rule 109 (C) (iv) Appearance of the Accused after Proceedings *in Absentia*, Rule 116 (D) Application and Grounds for Non-Disclosure, Rule 118 (K) Information never Subject to Disclosure without Consent of Provider, Rule 119 (D) Special Counsel, Rule 126 (C) Motions Requiring Certification, Rule 152 (I) False Testimony under Solemn Declaration, Rule 170 (C) Status of Acquitted Person, Rule 176 (A) General Provision (Appellate Proceedings), Rule 177 Notice of Appeal, Rule 178 State Request for Review, Rule 192 Appeals (judgement of the Trial Chamber on review).

¹⁰ Rules 68 (G) and 176 *bis*, for example, provide a statutory exception in relation to advisory opinions—allowing the Pre-Trial Judge to submit to the Appeals Chamber a preliminary question on interpreting the Agreement between Lebanon and the United Nations, the Statute of the Tribunal, or its Rules regarding the applicable law, that the Pre-Trial Judge deems necessary to examine and rule on an indictment.

was moot and did not decide it.¹¹ The question submitted for certification therefore does not arise from the decision.

7. The procedure of certifying an issue for interlocutory appeal—which remains exceptional—does not allow a Party to obtain from the Appeals Chamber, as requested by counsel for Mr. Oneissi, ‘some guidance’ on matters of general interest to the proceedings.¹² The motion seeking certification for interlocutory appeal is accordingly dismissed.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

DISMISSES the request for certification.

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

Leidschendam,
The Netherlands
19 August 2014

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy



¹¹ Decision of 23 July 2014, paras 5, 6 and disposition.

¹² Request for certification, para. 12.