

**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: 14 October 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 THE ONEISSI DEFENCE MOTION FOR DISCLOSURE OF
DOCUMENTS REFERRED TO IN THE REPORT RELATED TO THE HARD
DRIVE OF MR. AHMED ABU ADASS**

Office of the Prosecutor:

Mr. Norman Farrell, Mr. Graeme Cameron
& Mr. Alexander Milne

Counsel for Mr. Salim Jamil Ayyash:

Mr. Eugene O'Sullivan, Mr. Emile Aoun
& Mr. Thomas Hannis

Victims' Legal Representatives:

Mr. Peter Haynes, Mr. Mohammad F. Mattar
& Ms. Nada Abdelsater-Abusamra

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 Mattar
& Mr. Geoffrey Roberts



BACKGROUND

1. On 19 November 2012, the Special Tribunal's Prosecutor sent a request for assistance to the French Government seeking its assistance in analyzing the hard drive of a computer seized at the house of Mr. Ahmed Abu Adass. Acting on the request, the French Government commissioned a report from its *Institut de Recherche de la Gendarmerie Nationale* (IRCGN) and provided it to the Prosecution. The report was subsequently disclosed to counsel appearing for the five Accused, on 14 July 2014. Counsel for Mr. Hussein Hassan Oneissi thereafter wrote to the Prosecution asking it to provide them with some documents associated with the report, including the original request for assistance.¹ The Prosecution declined to provide the documents,² and, as a result counsel for Mr. Oneissi moved the Trial Chamber to order the Prosecution to disclose those documents.³

2. The requested documents are: i) a two-page request for assistance from the Special Tribunal's Prosecutor to the Government of France asking it to designate an IRCGN expert to examine Mr. Abu Adass' hard drive and prepare a report; ii) a one-page letter, dated 4 January 2013, from the Deputy Public Prosecutor of the Regional Court of Paris (*vice-procureur de la République près le Tribunal de Grande Instance de Paris*) to the IRCGN submitting to the IRCGN the request for assistance; iii) a one-page document of 15 January 2013, emanating from the French Ministry of the Interior, formally appointing an expert to analyse Mr. Abu Adass' hard drive and prepare the report, iv) a one-page email from the expert to the Deputy Public Prosecutor, dated 15 January 2013, committing to keep the Deputy Public Prosecutor informed of progress; and v) emails dated 18, 22, 28, 31 January, and 19 and 26 February 2013 between the expert and the Deputy Public Prosecutor regarding the progress of the report. The Trial Chamber asked the Prosecution to provide it with the documents and then examined them.⁴

SUBMISSIONS

3. Counsel for Mr. Oneissi argue in their motion that the requested documents are necessary to 'understand the objectives pursued by the Prosecution'⁵ and are, under French law, not merely

¹ Letter from the Defence to the Prosecution, 'Request for disclosure of the documents referred to in [the expert]'s Report', 29 July 2014.

² Letter from the Prosecution to the Defence, 'Your letter of 29 July 2014', 18 August 2014.

³ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi, and Sabra*, Request for Disclosure of Documents Referred to in the Expert Report of the IRCGN, 9 September 2014.

⁴ On 2 October 2014, the Prosecution provided the Trial Chamber with copies of the documents.

⁵ Oneissi Defence motion, para. 16.

administrative but judicial acts.⁶ The requested documents, they argue, constitute an integral part of the IRCGN report to which they were annexed.⁷

4. The Prosecution responded that the requested documents are administrative in nature and, therefore, not subject to disclosure or inspection under the Special Tribunal's Rules of Procedure and Evidence.⁸ They merely reflect investigative steps taken in relation to the investigation of Mr. Abu Adass's hard drive.⁹ The Prosecution submitted that Defence counsel had failed to demonstrate that the requested documents are necessary for the preparation of the Defence pursuant to Rule 110 (B) and that it is not enough to argue that the disclosure of these documents is justified to 'understand the objectives' of the Prosecution.¹⁰ The requested documents must be material for the preparation of the Defence case. Most of the documents requested consist of correspondence between the author of the IRCGN report and French officials; the documents do not provide any information about the Prosecution's purported objectives.¹¹ Further, counsel for Mr. Oneissi did not provide any legal basis for seeking access to these documents other than referring to the French Code of Criminal Procedure,¹² which is inapplicable to the Special Tribunal.¹³

DISCUSSION

5. The Prosecution does not intend to use the report as evidence at trial nor call its author to testify; it is not asking the Trial Chamber to admit the document as expert evidence under Rule 161 of the Special Tribunal's Rules of Procedure and Evidence. The requested documents would have been disclosable to the Defence had the Prosecutor intended to tender the IRCGN report as an expert report.

6. The Trial Chamber has carefully examined the documents requested. Contrary to the Defence submissions, these documents were neither annexed to nor part of the IRCGN report. Apart from the request for assistance itself, these documents are of administrative correspondence, including the formal appointment of an expert, and his reports as to his progress in the matter. Here, the Trial Chamber stresses the difference between an expert report under Rule 161—intended for use as evidence in the proceedings—and other documents disclosable to the Defence under Rule 110 (B).

⁶ Oneissi Defence motion, paras 6-11.

⁷ Oneissi Defence motion, para. 13.

⁸ Prosecution Response to "Requête en communication des documents cites dans le rapport d'expertise de l'IRCGN", 23 September 2014, paras 8-10.

⁹ Prosecution response, para. 9.

¹⁰ Prosecution response, paras 11-16.

¹¹ Prosecution response, paras 14-16.

¹² Code de procédure pénale, 2 mars 1959.

¹³ Prosecution response, paras 17-25.

7. As the Prosecution submits—because the documents are not disclosable under Rule 161—the Trial Chamber should analyse the question of their possible disclosure under Rule 110 (B). That Rule exempts from disclosure documents which are not material to Defence preparations for trial.¹⁴ Having carefully reviewed the documents, the Trial Chamber has concluded that they are not material to the preparation of the defence of Mr. Oneissi under Rule 110 (B). The request for assistance and the other documents add nothing to the IRCGN report. The request for assistance merely asks the competent French authorities to perform an analysis on the hard drive, while the other documents are simply formal documents submitting other documents and appointing an expert and then transmitting the report to the Prosecutor of the Special Tribunal.

8. In the Trial Chamber’s view, the requested documents do not contain anything that could materially aid the preparation of the Defence for trial. The Prosecution therefore does not have to disclose them and the motion is dismissed.

CONFIDENTIALITY OF FILINGS

9. The Trial Chamber reiterates the importance of the filings in this case being public. Counsel for Mr. Oneissi and the Prosecution are ordered to file public redacted versions of their filings.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

DISMISSES the motion; and

ORDERS counsel for Mr. Hussein Hassan Oneissi and the Prosecution to file public redacted versions of their filings.

¹⁴ Re materiality under Rule 110 (B), see STL-11-01/PT/AC/AR126.4, *Prosecutor v. Ayyash, Badreddine, Oneissi, and Sabra*, Decision on Appeal by Counsel for Mr Oneissi Against Pre-Trial Judge’s “Decision on Issues Related to the Inspection Room and Call Data Records”, 19 September 2013, paras 21-23.

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

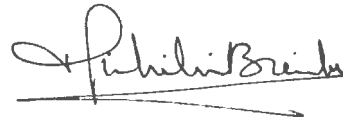
Leidschendam,
The Netherlands
14 October 2014



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

