



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE PRESIDENT

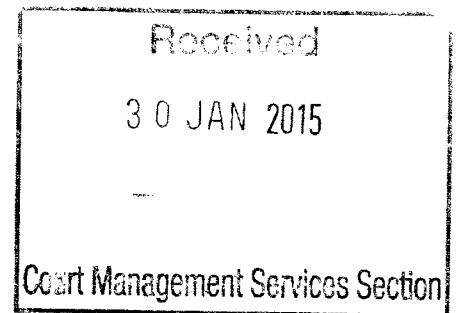
Before: Judge David Baragwanath, President

Registrar: Mr Daryl Mundis

Date: 30 January 2015

Original language: English

Classification: Public



ORDER ASSIGNING MATTER TO PRE-TRIAL JUDGE

Counsel for Mr Ali Salah-el-Din El Hajj:
Mr Maan Al-Assaad

The Prosecutor:
Mr Norman Farrell

Head of Defence Office:
Mr François Roux



1. In my capacity as President of the Special Tribunal for Lebanon, I received through the Registrar a request by counsel for Mr Ali El Hajj (“Applicant”) in relation to certain evidentiary material allegedly in the possession of the Tribunal.¹ In particular, counsel requests:

[A] copy, authenticated by your Tribunal, of the investigation records held by your Tribunal and by the UNIIC relating to protected and non-protected witnesses in which my client [the Applicant] was the subject of slander and false testimony against him and direct and indirect incitement against him and his family so that we may take the necessary steps.²

While the Request is somewhat unclear as to what these “necessary steps” might include, counsel states that he “intend[s] to bring a civil action in accordance with the rules in force against any party which harms my client [the Applicant]”.³

2. I first note that under ordinary circumstances, individuals other than the parties or other participants to the proceedings have generally no right to seek access to such materials. However, the situation might be different here. The Applicant is one of the four individuals who were held in detention in Lebanon in connection with the assassination of former Prime Minister Hariri. He was released by order of the Pre-Trial Judge once the Tribunal became seized of the case.⁴ When one of the other detainees—Mr Jamil El Sayed—made a request to access certain material in the possession of the Tribunal, the Pre-Trial Judge, to whom the President had assigned the matter,⁵ held that the Tribunal had jurisdiction to rule on the application by Mr El Sayed and that he had standing to request access to the documents in question.⁶ The Appeals Chamber upheld this decision.⁷ In particular, it stated:

¹ The request (“Request”) is entitled “Motion” and was submitted by counsel for the Applicant to the Registry on 23 October 2014. It was forwarded to me on 14 January 2014. The Registry has also informed me that the Applicant made a different request to receive certified public copies of certain public transcripts from the *Ayyash et al.* case and that those transcripts will be provided to the Applicant.

² Request, p. 13.

³ Request, p. 12.

⁴ STL, CH/PTJ/2009/06, Order Regarding the Detention of Persons Detained in Lebanon in Connection With the Case of the Attack Against Prime Minister Rafiq Hariri and Others, 29 April 2009.

⁵ STL, *In the matter of El Sayed*, CH/PRES/2010/01, Order Assigning Matter to the Pre-Trial Judge, 15 April 2010 (“*El Sayed* Assignment Order”).

⁶ STL, *In the matter of El Sayed*, CH/PTJ/2010/005, Order Relating to the Jurisdiction of the Tribunal to Rule on the Application by Mr El Sayed Dated 17 March 2010 and Whether Mr El Sayed Has Standing Before the Tribunal, 17 September 2010.

⁷ STL, *In the matter of El Sayed*, Decision on Appeal of Pre-Trial Judge’s Order Regarding Jurisdiction and Standing, 10 November 2010 (“*El Sayed* Appeal Decision on Jurisdiction and Standing”).

[T]he Appeals Chamber bears in mind its obligation to apply the highest standards of justice and to ensure its fair administration, as provided for by the Tribunal's Statute and general principles of international law.

Through the exercise of its primary jurisdiction, the Tribunal is now said to be in the possession of the evidence on the basis of which the Applicant was detained for nearly four years. The incidental jurisdiction of the Tribunal's Chambers over that evidence and thus over the legal issues addressed in the Application arises as a direct consequence of the matter having been brought before the Tribunal's Prosecutor pursuant to Article 4, paragraph 2 of the Tribunal's Statute, although the substance of the Application is not directly dealt with in the Statute or Rules. The power to consider whether a person with standing may request access to the Tribunal's evidence is also necessarily incidental to the exercise of the Tribunal's primary jurisdiction to collect and preserve that evidence. Further, as aptly noted by the Pre-Trial Judge in his decision of 17 September 2010 in paragraph 35, were the Tribunal to decide that it lacks the authority to determine this issue, the Applicant would be deprived of his right to have access to some relevant parts of his criminal file and would thereby be denied the right to seek compensation for the allegedly false testimony that led to his imprisonment.⁸

3. In the result, the Pre-Trial Judge granted Mr El Sayed's request in principle.⁹ This was upheld by the Appeals Chamber, which ruled that there was "a real possibility that access to information is required to avoid an injustice".¹⁰ The Appeals Chamber clarified that such access was permitted only to the extent required to enable Mr El Sayed to pursue certain remedies in national courts and subject to appropriate conditions set by the Pre-Trial Judge, for example non-disclosure on justified grounds.¹¹

4. Similar considerations may apply to the Applicant's request. It is not my function as President of the Tribunal to make any pronouncement in this regard. My role as President is primarily administrative.¹² While I am responsible for the good administration of justice at the Tribunal,¹³ judicial decisions must be taken by the competent judicial body.

5. In the present circumstances I have decided to assign the Applicant's request to the Pre-Trial Judge to determine whether the Tribunal has jurisdiction over the request and whether the Applicant has standing to file it. Assignment to the Trial Chamber is not appropriate, given that

⁸ *El Sayed* Appeal Decision on Jurisdiction and Standing, paras 52-53 (footnotes omitted).

⁹ STL, *In the matter of El Sayed*, CH/PTJ/2011/08, Decision on the Disclosure of Materials from the Criminal File of Mr El Sayed, 12 May 2011.

¹⁰ STL, *In the matter of El Sayed*, CH/AC/2011/01, Decision on Partial Appeal by Mr. El Sayed of Pre-Trial Judge's Decision of 12 May 2011, paras 68, 119.

¹¹ *Id.* at paras 68, 111-119.

¹² *El Sayed* Assignment Order, para. 13.

¹³ See Art. 10 STL St., Rule 32(B) STL RPE.

judicial examination of the request might involve a review of investigative records in the *Ayyash et al* case. The Trial Chamber is not necessarily privy to such material, nor should it be, given that its role is to adjudicate the case based on the evidence it receives during the trial, at which the requested material may not be admitted. No such concerns exist with respect to the Pre-Trial Judge.

6. Finally, I note that the Applicant's request does not conform with the filing instructions applicable in proceedings before the Tribunal. The relevant Practice Direction is not of direct application, operating only once a new case file is opened, which is dependent on a Chamber's decision "to grant standing to person before the Tribunal a matter falling under the Tribunal's inherent jurisdiction".¹⁴ No such decision has been taken here.¹⁵ While the present request thus falls outside the scope of the Practice Direction, its provisions should have been applied by analogy. However, if there are any concerns in this regard, they may be addressed by the Pre-Trial Judge. This also applies to the question of whether to make public the Applicant's request at this stage. Given that the Applicant refers to the name of a protected witness, I order that his request should remain confidential for the time being.

¹⁴ STL, Practice Direction on Filing of Documents Before the Special Tribunal for Lebanon, STL/PD/2010/01/Rev. 2, 14 June 2013, Art. 1(1)(f).

¹⁵ Cf. *El Sayed* Assignment Order, para. 15.

DISPOSITION

FOR THESE REASONS;

PURSUANT to Article 10 of the Statute and Rule 32 (B) of the Rules of Procedure and Evidence;

I

ASSIGN the matter to the Pre-Trial Judge; and

ORDER the Registrar to treat the Request as confidential, subject to any further orders by the Pre-Trial Judge in this regard.

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

Dated 30 January 2015,

Leidschendam, the Netherlands



Judge David Baragwanath

President

