

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

**THE PRESIDENT**

**Case No.:** STL-11-01/T/PRES

**Before:** Judge Ivana Hrdličková, President

**Registrar:** Mr Daryl Mundis

**Date:** 30 October 2015

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

**SALIM JAMIL AYYASH**  
**MUSTAFA AMINE BADREDDINE**  
**HASSAN HABIB MERHI**  
**HUSSEIN HASSAN ONEISSI**  
**ASSAD HASSAN SABRA**

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**DECISION ON APPLICATION FOR APPOINTMENT OF SPECIAL COUNSEL  
PURSUANT TO RULE 119(A)**

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**Prosecutor:**

Mr Norman Farrell

**Head of Defence Office:**

Mr François Roux

**Legal Representatives of  
Participating Victims:**

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 Iain Edwards &  
 Ms. Mylène Dimitri

**Counsel for Mr Hassan Habib Merhi:**

Mr Mohamed Aouini, Ms Dorothee Le  
 Fraper du Hellen & Mr Jad Youssef 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 Mettraux &  
 Mr Geoffrey Roberts



1. On 1 October 2015, under Rule 119 (A) of the Tribunal's Rules of Procedure and Evidence ("Rules"), counsel for Mr Sabra requested that I appoint Special Counsel to provide advice to the Pre-Trial Judge in the performance of his functions under Rule 118 (C).<sup>1</sup> The Prosecution opposed the Application.<sup>2</sup>

2. The Application related to counsel for Mr Sabra's earlier submissions of 16 September 2015 requesting the Pre-Trial Judge to resolve a disclosure matter concerning a specific Prosecution document under Rule 118 (C) and (D).<sup>3</sup>

3. On 26 October 2015, the Pre-Trial Judge declared this disclosure request unfounded on the basis of Rule 118.<sup>4</sup> The Pre-Trial Judge concluded that "he has not been properly seized with a request under Rule 118 (C)" and consequently "cannot take the counterbalancing measures provided for in Rule 118 (D)".<sup>5</sup> Further, "he cannot order the Prosecution to produce this document".<sup>6</sup>

4. Rule 119 (A) is the relevant provision for this Decision. It states that, in the interests of justice, the Prosecutor or the Defence may apply to the President to appoint a Special Counsel to provide advice to the Pre-Trial Judge in the performance of his Rule 118 (C) functions.

5. Accordingly, in order for the President to consider the merits of an application under Rule 119 (A), the Pre-Trial Judge must be performing his Rule 118 (C) functions. Here, the Pre-Trial Judge determined that he cannot do so on the basis of counsel for Mr Sabra's disclosure request. The Application is therefore moot.

6. I note that the Application and Response, as well as the relevant submissions before the Pre-Trial Judge, were filed confidentially.<sup>7</sup> This was because they made reference to confidential

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<sup>1</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/PRES, F2235, Application for Appointment of Special Counsel Pursuant to Rule 119(A), Confidential with Confidential Annexes, 1 October 2015 ("Application").

<sup>2</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/PRES, F2244, Prosecution Response to Sabra Defence Application for Appointment of Special Counsel Pursuant to Rule 119(A), Confidential, 2 October 2015 ("Response").

<sup>3</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/PTJ, F2198, Submissions on Request for Disclosure of a Document, Confidential, 16 September 2015 ("Sabra Defence Submissions").

<sup>4</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/PTJ, F2287, Decision Relating to the Request for a Document by the Sabra Defence, 26 October 2015 ("PTJ Decision").

<sup>5</sup> PTJ Decision, para. 12.

<sup>6</sup> *Ibid.*

<sup>7</sup> See above fns 1-3; see also STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/PTJ, F2230, Prosecution Response to Sabra Defence Submissions on Request for Disclosure of a Document, Confidential, 30 September 2015 ("Response to Sabra Defence Submissions").

filings and correspondence, quoted the content of the Prosecution document in question or, in the Prosecution's case, responded to confidential submissions.<sup>8</sup> However, this Decision contains none of the information justifying confidential classification. Moreover, the PTJ Decision, which details the submissions before the Pre-Trial Judge, was filed publicly.<sup>9</sup> For these reasons, I render this Decision publicly. Further, though there is indeed information in the Application that should remain confidential, with appropriate redactions, it should be made public. I also find no reason for maintaining the confidentiality of the Response.

## **DISPOSITION**

**FOR THESE REASONS;**

**I**

**DISMISS** the Application;

**ORDER** counsel for Mr Sabra to file a public redacted version of the Application; and

**REQUEST** the Registry to reclassify the Response (F2244) to Public.

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

Dated 30 October 2015,

Leidschendam, the Netherlands



Judge Ivana Hrdličková  
President



<sup>8</sup> Application, para. 37; Sabra Defence Submissions, para. 30; Response to Sabra Defence Submissions, para. 43.

<sup>9</sup> See above fn. 4.