

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: 10 November 2015

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 THE ONEISSI DEFENCE MOTION FOR
DISCLOSURE OF THE CONTENT OF A FLOPPY DISK
AND A COMPACT DISC**

Office of the Prosecutor:

Mr Norman Farrell, Mr Graeme Cameron
& Mr Alexander Hugh 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 Iain Edwards &
Ms Mylène Dimitri

Counsel for Mr Hassan Habib Merhi:

Mr Mohamed Aouini, Ms Dorothée Le Fraper
du Hellen & Mr Jad Khalil

Counsel for Mr Hussein Hassan Oneissi:

Mr Vincent Courcelle-Labrousse, Mr Hassan
Hassan & Mr Philippe Laroche

Counsel for Mr Assad Hassan Sabra:

Mr David Young, Mr Guénaél Mettraux &
Mr Geoffrey Roberts



INTRODUCTION AND PROCEDURAL HISTORY

1. On 19 January 2015, counsel for Mr Hussein Hassan Oneissi requested the Trial Chamber, under Rule 110 (B) of the Special Tribunal’s Rules of Procedure and Evidence, to order the Prosecution to disclose the content of a floppy disk and a compact disc.¹ They also requested an order to the Prosecution to create and disclose an inventory of the contents of the floppy disk and compact disc.² The Prosecution opposed the requests and clarified that the contents of the floppy disk were entirely duplicated on the compact disc.³

2. The Trial Chamber, considering the contents of the floppy disk and compact disc potentially relevant to the political context of the case, ordered the Prosecution to review the contents to determine whether any material fell under Rule 110 (B).⁴ After its review, the Prosecution disclosed 1,484 files to the Defence.⁵

3. Counsel for Mr Oneissi did not react to the Prosecution’s disclosure, neither withdrawing their motion nor making additional submissions of inadequate disclosure.

4. On 24 June 2015, the Trial Chamber asked Defence counsel to inform the Chamber whether they were satisfied with the disclosure and, if so, invited them to withdraw their motion.⁶

5. Counsel for Mr Oneissi responded that they were not satisfied that the Prosecution had fully complied with its disclosure obligations, but conceded that they could prove nothing and did not think they could ‘take things any further’. Counsel initially insisted that they would not withdraw their motion, claiming that there were issues that needed to be ruled upon—

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F1819, The Defence for Hussein Hassan Oneissi Motion for the Disclosure of the Content of a Floppy Disk and a Compact Disc, 19 January 2015.

² Oneissi motion, para. 18.

³ F1838, Prosecution Response to the Defence for Hussein Hassan Oneissi Motion for the Disclosure of the Content of a Floppy Disk and a Compact Disc, 2 February 2015, para. 5.

⁴ F1924, Order in Relation to Oneissi Motion for the Disclosure of the content of a Floppy Disk and a Compact Disc, 23 April 2015. Rule 110 (B) says: ‘The Prosecutor shall, on request, permit the Defence to inspect any books, documents, photographs and tangible objects in the Prosecutor’s custody or control, which are material to the preparation of the defence, or are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused.’

⁵ F1984, Prosecution Notification in Respect to “Order in Relation to Oneissi Motion for the Disclosure of the Content of a Floppy Disk and a Compact Disc” dated 23 April 2015, 2 June 2015. The Prosecution had been ordered to complete its review and disclosure by 15 May 2015, but, considering the large number of files on the compact disc, could not comply within that timeframe. The Prosecution disclosed one batch on 15 May and completed its disclosure—a total of three batches—on 29 May 2015. *See* Letter from the Prosecution to the Oneissi Defence, 15 May 2015.

⁶ Transcript of 24 June 2015, pp 52-53.

namely, their request for an inventory of the contents of the floppy disk and compact disc. They also ‘deplored the way that the Prosecution has undertaken his disclosure obligations’. However, when asked whether they were legally satisfied that the Prosecution had complied with the Trial Chamber’s order—as opposed to being personally satisfied—counsel conceded that the Prosecution ‘seems to be complying with the order’ and accepted that they would withdraw their motion.⁷

6. Despite the Trial Chamber’s invitation, nearly five months later, counsel has yet to withdraw their motion. This decision now formally dismisses it.

SUBMISSIONS AND DISCUSSION

7. As counsel for Mr Oneissi accepted that the Prosecution complied with the Trial Chamber’s order for disclosure, the sole remaining issue to decide is whether to order the Prosecution to create and disclose an inventory of the content of the floppy disk and compact disc.

8. Counsel for Mr Oneissi, citing no legal basis for the Trial Chamber to issue such an order, submitted that an inventory would ‘provide a useful overview of the content and allow the Defence to demonstrate with greater facility the materiality of the content of the media containers’.⁸ In a review of the contents of the floppy disk and compact disc before counsel for Mr Oneissi filed their motion, the Prosecution disclosed under Rule 113⁹ one document as potentially exculpatory.¹⁰ Counsel for Mr Oneissi submit that, as the Prosecution was obligated to disclose all Rule 113 material by 17 June 2013, the late disclosure of this one document should merit the creation and disclosure of an inventory of the floppy disk and compact disc.¹¹

9. The Prosecution countered that it is under no obligation to create or disclose something it does not possess. Moreover, the Defence had not shown any prejudice to its case, making the creation of an inventory inappropriate as a remedy for the late disclosure of a

⁷ Transcript of 24 June 2015, pp 79-82.

⁸ Oneissi motion, para. 18.

⁹ Rule 113 says: ‘Subject to the provisions of Rules 116, 117 and 118, the Prosecutor shall, as soon as practicable, disclose to the Defence any information in his possession or actual knowledge, which may reasonably suggest the innocence or mitigate the guilt of the accused or affect the credibility of the Prosecutor’s evidence.’

¹⁰ Oneissi motion, para. 8 and Annex G.

¹¹ Oneissi motion, para. 21.

potentially exculpatory document.¹² The Pre-Trial Judge held that '[n]either Rules 110(B) nor 113 extend to permitting Defence to seek orders compelling the Prosecution to generate lists, tables or any other type of document which organises or identifies specific documents in the disclosed material'.¹³

10. The Trial Chamber agrees that Rules 110 (B) and 113 do not permit the Defence to make this request, either for disclosed materials or materials not subject to disclosure. Requesting the creation of an inventory is merely a 'fishing expedition' in disguise, which counsel have no legal right to request.

DISPOSITION

FOR THESE REASONS, the Trial Chamber,

DISMISSES the motion.

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

Leidschendam,
The Netherlands
10 November 2015

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy



¹² Prosecution responses, paras 15-16.

¹³ STL-11-01/PT/PTJ, F0510, Decision on the Sabra Defence's First, Second, Third, Fourth, Fifth and Sixth Motions for Disclosure, 8 November 2012, para. 31.