



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:** 30 June 2016

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

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

***Public Redacted Version of “DECISION UNDER RULE 13 IN RESPECT  
OF A WITNESS” of 30 June 2016***

**Office of the Prosecutor:**

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

**Victims’ Legal Representatives:**

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

**Counsel for Mr Salim Jamil Ayyash:**

Mr Emile Aoun, Mr Thomas Hannis & Mr  
Chad Mair

**Counsel for Mr Mustafa Amine****Badreddine:**

Mr Antoine Korkmaz, Mr Iain Edwards &  
Mylène Dimitri

**Counsel for Mr Hassan Habib Merhi:**

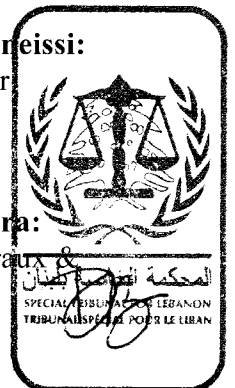
Mr Mohamed Aouini, Ms Dorothee Le  
Fraper du Hellen & Mr Jad Khalil

**Counsel for Mr Hussein Hassan Oneissi:**

Mr Vincent Courcelle-Labrousse, Mr  
Yasser Hassan & Ms Natalie von  
Wistinghausen

**Counsel for Mr Assad Hassan Sabra:**

Mr David Young, Mr Guénaél Mettraux &  
Mr Geoffrey Roberts



1. A Prosecution witness has informed Prosecution officials of their current unwillingness to testify.<sup>1</sup> As a result, the Prosecution has moved the Trial Chamber either to invoke Rule 13 of the Special Tribunal’s Rules of Procedure and Evidence, or alternatively, to find that the witness is ‘unavailable’ under Rule 158.<sup>2</sup>

2. The Special Tribunal through its President—under Rule 13—may ‘invite a Third State or an entity to provide assistance on the basis of an arrangement or an agreement with such State or entity or on any other appropriate basis’.

3. The Prosecution proposes that a court hearing could be held in the Third State<sup>3</sup> to receive the witness’s evidence, subject to that State’s national laws. This could require some form of participation by the Trial Chamber and counsel for the Parties, including submitting questions to the national judge to pose to the witness. Counsel for four Accused oppose this suggestion, arguing that this would be unfair and would deprive them of their right to effectively cross-examine the witness. They also oppose the Prosecution’s alternative that the Trial Chamber declare the witness ‘unavailable’, submitting that the witness was merely unwilling and there was no evidence of any impediment to the witness testifying.<sup>4</sup> The Sabra Defence submits, as an alternate remedy, that the President could invite assistance in asking the Third State authorities [REDACTED].

4. The witness provides important evidence for the Prosecution’s case in relation to aspects of paragraphs [REDACTED] of the consolidated indictment.<sup>5</sup> The Trial Chamber is of the view that other possibilities should be explored before considering whether the witness is ‘unavailable’ under Rule 158. This is a final resort for the admission of evidence and the Trial Chamber will not, at this stage, consider this application.

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<sup>1</sup> Witness PRH[REDACTED].

<sup>2</sup> F2550, Prosecution Application under Rule 13 in respect of Witness PRH[REDACTED], Confidential with Confidential and Ex-Parte Annexes A and B, 15 April 2016.

<sup>3</sup> [REDACTED].

<sup>4</sup> F2579, Sabra Defence Response to “Prosecution Application under Rule 13 in respect of Witness PRH[REDACTED]”, confidential, 29 April 2016; F2581, Badreddine Defence joinder to Sabra Defence Response to “Prosecution Application under Rule 13 in respect of Witness PRH[REDACTED]”, confidential, 2 May 2016; F2582, Oneissi Response to “Prosecution application under Rule 13 in respect of Witness PRH[REDACTED]”, confidential, 2 May 2016; F2583, Merhi Defence Response to “Prosecution Application under Rule 13 in respect of Witness PRH[REDACTED]”, confidential, 2 May 2016; see also F2591, Prosecution reply to Oneissi Defence response, to Sabra Defence response and the Badreddine joinder, to the Prosecution application under Rule 13 in respect of Witness PRH[REDACTED], confidential, 9 May 2016.

<sup>5</sup> [REDACTED].

5. The Third State may be prepared—if invited by the President of the Special Tribunal—to provide assistance to the Special Tribunal, for example, [REDACTED] and or by making video-conference link facilities available for receiving the witness’s testimony, or in otherwise assisting in having the witness provide evidence in a manner that permits questioning by the Parties, Legal Representative of Victims, and the Trial Chamber, such as described in the Prosecution’s motion.

6. The Trial Chamber accordingly refers this issue to the President under Rule 13 to make the appropriate invitation to the Third State in accordance with these possible forms of assistance.

7. Finally, the Prosecution complained in its reply that the Sabra Defence had filed an oversized response without first seeking the Trial Chamber’s leave. The Trial Chamber agrees and reminds counsel for Mr Sabra that they should seek the Trial Chamber’s leave before filing responses exceeding the prescribed word limit. Counsel know that the Trial Chamber liberally interprets these requirements and normally grants such applications.

8. The filings of the Parties should remain confidential pending resolution of the issue.

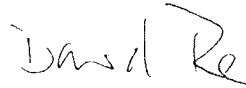
### **DISPOSITION**

**FOR THESE REASONS**, under Rule 13, the Trial Chamber:

**REQUESTS** the President of the Special Tribunal to invite the Third State to provide assistance to the Special Tribunal, such as the measures described in paragraph 5.


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

Leidschendam,  
The Netherlands  
30 June 2016



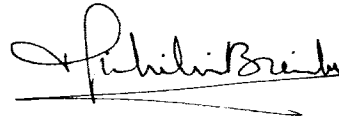
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Judge David Re, Presiding



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Judge Janet Nosworthy



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Judge Micheline Braidy

