

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

BEFORE THE TRIAL CHAMBER

SPECIAL TRIBUNAL FOR LEBANON

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: 21 July 2016

Original language: English

Classification: Public

PROSECUTOR

v.

**SALIM JAMIL AYYASH
HASSAN HABIB MERHI
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA**

Public Redacted Version of 'DECISION ON SABRA DEFENCE MOTION FOR DISCLOSURE OF NOTES REGARDING MEETING WITH WITNESS [REDACTED]' of 12 July 2016

Office of the Prosecutor:

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

Legal Representatives of Participating Victims:

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 Hassan Habib Merhi:

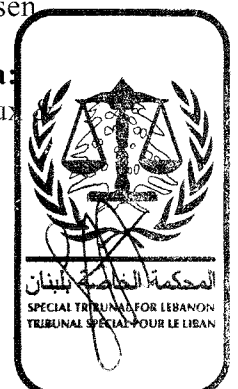
Mr Mohamed Aouini, Ms Dorothee Le Fraper du Hellen & Mr Jad Khalil

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. The Defence of the Accused, Mr Assad Hassan Sabra, seeks three orders to the Prosecution: to disclose notes, records and documentation of a meeting between a Prosecution investigator, Mr Timothy Holford, and Witness [REDACTED]; to disclose the records of any other meetings and communications; and to redisclose [REDACTED] and explain why it was not disclosed earlier.¹ The Prosecution opposes the motion.²

(1) Notes of meeting between Witness [REDACTED] and Mr Holford

2. Witness [REDACTED] and Mr Holford met in March 2012. The Defence of Mr Sabra seeks all documents relating to this meeting. Defence counsel submit, relying upon the case-law of the International Criminal Tribunal for the Former Yugoslavia,³ that anything said in a meeting relevant to an indictment is a statement that must be disclosed to the defence, either under Rule 110 (A) (ii) or Rule 113 of the Special Tribunal's Rules of Procedure and Evidence.⁴

3. The Prosecution responded stating that two internal memoranda existed. The first was a record of the meeting, but relates to matters other than the subject of the witness's statement (his evidence). It summarised the meeting for administrative, witness and security issues. It also contains Mr Holford's 'thoughts, opinions and original work, and internal Prosecution work product'.⁵ It is therefore not disclosable as it is internal work product covered by Rule 111.⁶

4. The second internal memorandum was concerned with a family matter related to the witness. The Prosecution disclosed a redacted version of the document 'out of an abundance of caution given the particular information' in it.⁷ The Defence had not presented the

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F2502, Sabra Defence Motion for Disclosure of Notes Regarding Meetings with [REDACTED], Confidential with Annexes A-F, 17 March 2016.

² F2536, Prosecution Response to "Sabra Defence Motion for Disclosure of Notes Regarding Meetings with [REDACTED]", 4 April 2016.

³ Defence motion, para. 11, in particular, ICTY, *Prosecutor v. Haradinaj*, IT-04-84bis-T, Decision on Haradinaj Motion for Disclosure of Exculpatory Evidence in Respect of Witness 81, 18 November 2011, para. 32.

⁴ Rule 110 (A) (ii) governs the disclosure of the statements of witnesses the Prosecution intends to call to testify at trial and Rule 113 provides for the disclosure of exculpatory material.

⁵ Prosecution response, para. 6.

⁶ Under Rule 111, 'Reports, memoranda, or other internal documents prepared by a Party... in connection with the investigation or preparation of a case' are exempt from disclosure.

⁷ Prosecution response, para. 7.

necessary *prima facie* showing of the probable exculpatory nature of the internal memoranda to require disclosure.⁸

5. The Trial Chamber agrees. Neither document relates to the subject matter of the witness's testimony and cannot be a 'statement' for disclosure purposes. The document, based on the Prosecution's submissions, is covered by Rule 111 and is not disclosable under either Rule 110 (A) (ii) or Rule 113 (A).

(2) Other internal documents relating to communications between the witness and the Prosecution

6. The Prosecution submits that all other internal documents in its possession relating to this witness concern matters other than his evidence. They include, for example, queries relating to the well-being of the witness, the status of the case and administrative matters, all of which are irrelevant to his evidence. For the same reasons as expressed in paragraph 5, the Trial Chamber agrees that these types of matters are not disclosable under either Rule 110 (A) (ii) or Rule 113 (A).

(3) Already disclosed [REDACTED]

7. The Defence seek the redisclosure of an already disclosed document—but under Rule 113 (A)—in accordance with the Pre-Trial Judge's working plan.⁹ The Prosecution opposes this. On 17 September 2015, it disclosed the relevant [REDACTED] to the Defence. The [REDACTED] does not relate to the subject matter of the witness's evidence and was disclosed for other reasons. It has similarities to another [REDACTED].

8. Making an order for the redisclosure of a document already in the possession of Defence counsel would be pointless; the Trial Chamber will not accede to this request. Defence counsel have the document and may make whatever use of it they deem necessary. Further, the Prosecution has explained, in its response, the chronology of its disclosure.

⁸ As decided by the Trial Chamber in F1519, Decision on Prosecution Witness Expenses, 9 May 2014, para. 13.

⁹ STL-11-01/PT/PTJ, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F0496, Order on a Working Plan and on the Joint Defence Motion Regarding Trial Preparation, 25 October 2012.

DISPOSITION

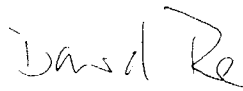
FOR THESE REASONS, the Trial Chamber,

DISMISSES the motion; and

ORDERS the Parties to file public redacted versions of their filings.

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

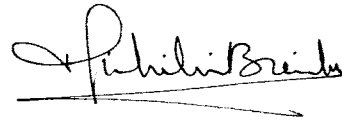
Leidschendam,
The Netherlands
21 July 2016



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

