

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

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: 24 February 2017

Original language: English

Classification: Public

The PROSECUTOR

v.

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

**DECISION ON MERHI DEFENCE REQUEST IN RESPONSE TO
A REGISTRY SUBMISSION**

Office of the Prosecutor:
Mr Norman Farrell & Mr Alexander Milne

Counsel for Mr Salim Jamil Ayyash:
Mr Emile Aoun, Mr Thomas Hannis &
Mr Chad Mair

**Legal Representatives of
Participating Victims:**
Mr Peter Haynes, Mr Mohammad F. Mattar
& Ms Nada Abdelsater-Abusamra

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 Geoffrey Roberts



INTRODUCTION

1. On 30 June 2016, the Trial Chamber invited the President of the Special Tribunal to utilise the procedure in Rule 13 of the Special Tribunal’s Rules of Procedure and Evidence, given that a Prosecution witness, residing abroad, was unwilling to testify before the Tribunal and the Trial Chamber needed assistance in securing the witness’s evidence.¹ Consequent to information received from the President’s office on possible forms of assistance available, on 27 September 2016, the Trial Chamber referred the matter to the President ‘to engage with the Third State to enter into *ad hoc* arrangements under Rule 125 (A) and to explore—in consultation with the Trial Chamber and the Registrar—the modalities of collecting the witness’s evidence under Rule 125 (B) and (C).²

2. On 30 January 2017, the President informed the Trial Chamber that the authorities of the Third State had agreed with the modalities set out in a request for assistance.³ The Trial Chamber found that the request was consistent with Rule 125 and the rights of the Accused to a fair and expeditious trial, and on, 31 January 2017, directed the Registrar to take all necessary steps, under Rule 13, to facilitate the collection of the witness’s evidence by the Third State, including signing and sending the request to the Third State.⁴ On 1 February 2017, the Registrar signed and sent the request for assistance to the Third State which responded on 14 February 2017, granting the request.⁵

SUBMISSIONS

3. Counsel for the Accused, Mr Hassan Habib Merhi, now request that the Trial Chamber ‘order the Registry’ to disclose its past and future correspondence with the Third State related to the *ad hoc* arrangements, and amend paragraphs (iii) to (vi) of the request for assistance to allow counsel to put their questions directly to the witness and not to be required

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi, and Sabra*, F2630, Decision under Rule 13 in respect of a Witness, 30 June 2016 (confidential), paras 1, 5-6, disposition, (a public redacted version was filed on the same date). Rule 13 ‘Arrangements or Agreements between National or International Entities and the Tribunal’ provides for the Tribunal, through the President, to invite a Third State or an entity to provide assistance to the Special Tribunal.

² F2738, Referral to the President of the Special Tribunal to Enter into *Ad Hoc* Arrangements with a State under Rules 13 and 125, 27 September 2016, para. 6.

³ STL-11-01/T/PRES, F2961, Concerning the Trial Chamber Referral Pursuant to Rule 13, 30 January 2017 (public with confidential annex), para. 4.

⁴ STL-11-01/T/TC, F2962, Order to the Registrar under Rule 13 in relation to a Witness, 31 January 2017, para. 5.

⁵ F2992, Registry Submission pursuant to Rule 48 (C) regarding the Trial Chamber’s “Order to the Registrar under Rule 13 in relation to a Witness”, 15 February 2017 (public with confidential annexes A and B), para. 2.

to reveal their cross-examination strategy in advance.⁶ Counsel argue that the modalities foreseen in the request for assistance do not meet the requirements of the right of the Accused to a fair trial as enshrined in Article 16 (4) (e) of the Statute of the Special Tribunal because they do not allow them to control and adapt the cross-examination of the witness.⁷ Counsel additionally submit that they will likely be unable to represent the interest of Mr Merhi if interpretation services from the Third State's language to the working languages of the Merhi Defence were not available for them.⁸

4. On the invitation of the Trial Chamber,⁹ the Registrar responded that the request for assistance is in accordance with Rule 125. The Registrar points out that confidential and *ex parte* filing may alleviate the Defence's concerns related to the anticipated disclosure of its strategy of cross-examination. He clarified that the modalities of cross-examination will be decided at the relevant time by the judicial authority of the Third State providing the assistance. Subject to the authorisation of the judicial authority of the Third State, the Registrar will take every effort to provide interpretation services to and from the relevant languages. Finally, the Registrar states that the Third State will not consent to disclosures of its communications with the Special Tribunal.¹⁰

DISCUSSION

5. The Trial Chamber reiterates that the request for assistance is the product of the President's *ad hoc* arrangement with the Third State pursuant to Rule 125. The Trial Chamber cannot modify the modalities in it. The request for assistance is clear and the modalities set out in paragraph (ii) (b) of the request are in accordance with Rule 125 (B) and do not violate the right of the Accused to a fair trial, as foreseen in Article 16 (4) (e) of the Statute. Moreover, this issue is not yet finalised because the Trial Chamber might be able to

⁶ The Trial Chamber notes that the arguments raised in the Merhi Defence request concern paras (ii) (b), (iv) and (vi) of the request for assistance.

⁷ Article 16 (4) (e) of the Statute provides as one of the minimum guarantees that the Accused is entitled, in full equality, to examine or have examined witnesses against him.

⁸ F2994, Merhi Defence Request in response to the Registry Submission regarding the Trial Chamber's Order under Rule 13, 16 February 2017 (confidential), paras 2-6, 8.

⁹ Email from the legal officer of the Trial Chamber to the Registrar on 16 February 2017.

¹⁰ F3005, Registry Submission pursuant to Rule 48 (C) in response to the "Merhi Defence Request in response to the Registry Submission regarding the Trial Chamber's Order pursuant to Rule 13", 21 February 2017 (confidential), paras 4-9.

communicate directly with the judicial authority of the Third State at the relevant time about the modalities of the testimony.¹¹

6. The Trial Chamber agrees with the Registrar that the filing of confidential and or confidential and *ex parte* submissions related to the Defence’s cross-examination strategy would limit its disclosure and minimise the Defence’s concerns. The Trial Chamber also accepts the Registrar’s clarification regarding interpretation services. Further, in the absence of any compelling reason in the interests of justice and because the Third State will not consent to it, the Trial Chamber will not order the Registry to disclose the communications related to the *ad hoc* arrangement between the President’s office and or Registrar and the Third State.

7. The Trial Chamber notes that the Merhi Defence’s request and the Registrar’s response were filed confidentially. In the interest of maintaining a public trial, counsel for Mr Merhi and the Registrar are required to file public redacted versions of their filings.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

DENIES the Merhi Defence request; and

ORDERS the Registrar and Defence counsel to submit public redacted versions of their respective filings.

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

Leidschendam,
The Netherlands
24 February 2017

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

¹¹ The Trial Chamber and the Parties discussed this possibility at a case management meeting held on 1 February 2017.

