

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:** 21 September 2017

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

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

---

**DECISION DISMISSING THE HEAD OF THE DEFENCE OFFICE'S  
APPLICATION TO STAY ANY RULING ON THE APPLICABLE LAW IN THE  
PROCEEDINGS**

---

**Office of the Prosecutor:**Mr Norman Farrell & Mr Alexander Hugh  
Milne**Counsel for Mr Salim Jamil Ayyash:**Mr Emile Aoun, Mr Thomas Hannis &  
Mr Chad Mair**Defence Office:**

Mr François Roux

**Counsel for Mr Hassan Habib Merhi:**Mr Mohamed Aouini, Ms Dorothée Le Fraper  
du Hellen & Mr Jad Youssef Khalil**Legal Representatives of  
Participating Victims:**Mr Peter Haynes, Mr Mohammad F. Mattar  
& Ms Nada Abdelsater-Abusamra**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 &  
Ms Sarah Bafadhel

1. The Trial Chamber, on 7 September 2017, authorised the Head of the Defence Office—consistent with an order to the Parties and Legal Representatives of Victims issued on 27 July 2017<sup>1</sup>—to provide legal observations on ‘the elements of the offences charged in the amended consolidated indictment, on the modes of liability applicable under the relevant Lebanese laws, and on any other relevant legal matter’.<sup>2</sup>

2. The Head of the Defence Office, however, and instead of providing observations on the general order of 27 July 2017, filed an application asking the Trial Chamber to issue a ‘stay’ on the issue of any applicable law.<sup>3</sup> Specifically, he asked the Trial Chamber to,

- STAY the ruling on the issue of the applicable law opened by the Chamber following its Order of 27 July 2017;

- INVITE the parties and the Head of Defence Office to be heard on the consequences of the ongoing proceedings on the applicable law with respect to the fairness of the proceedings and the rights of the accused in the *Ayyash et al.* case.

3. The application is expressed to relate to another pre-indictment matter currently before the Appeals Chamber in case STL-17-07/I/AC under Rule 176 *bis* (A) of the Special Tribunal’s Rules of Procedure and Evidence, on a referral by the Pre-Trial Judge under Rule 68 (G).<sup>4</sup> In support of his application, the Head of Defence Office argues,

that the Chamber’s Order dated 27 July 2017 directs the parties and the Legal Representative of Victims to make submissions on “any other relevant legal matter” including in particular all the crimes and modes of liability, a number of which are the subject of preliminary questions submitted by the Pre-Trial Judge to the Appeals Chamber.<sup>5</sup>

---

<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F3254, Order to Parties and Legal Representatives of Victims to File Submissions and Observations on Lebanese Law, 27 July 2017.

<sup>2</sup> F3313, Decision on Observations from Head of Defence Office on Lebanese Criminal Law, 7 September 2017, paras 22-23; *see also* F3308, Prosecution Response to ‘Observations du Chef du Bureau de la Défense sur son droit d’audience proprio motu et demande de clarification’, 4 September 2017; F3306, Observations du Chef du Bureau de la Défense sur son droit d’audience *proprio motu* et demande de clarification, 31 August 2017; F3299, Prosecution Response to Head of Defence Office Indication of Submissions under Rule 57 (F), 29 August 2017.

<sup>3</sup> F3316, Submissions *proprio motu* from the Head of Defence Office following the Trial Chamber’s Order of 27 July 2017 on the Applicable Law, 8 September 2017 (‘Application’). This decision sets out the procedural background of this matter.

<sup>4</sup> Rule 68 (G) provides that the Pre-Trial Judge may submit to the Appeals Chamber any preliminary question on the interpretation (relevantly) of the Statute of the Special Tribunal or its Rules regarding the applicable law ‘that he deems necessary in order to examine and rule on the indictment’.

<sup>5</sup> Application, para. 17.

4. But this is factually and legally incorrect. The Appeals Chamber's scheduling order for written submissions before a public hearing (scheduled for 11 October 2017) states of the subject of the hearing that,

The Preliminary Questions raised by the Pre-Trial Judge concern the crime of criminal association as defined in Article 335 of the Lebanese Criminal Code and the criteria for reviewing the indictment.<sup>6</sup>

5. The offences charged in the amended consolidated indictment in the case STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, do not include any crime of 'criminal association' under the Lebanese Criminal Code. The legal matter before the Appeals Chamber in STL-17-07/I/AC is thus entirely unrelated to any of the charges in the *Ayyash* case. Hence, the application is quite perplexing.

6. The Prosecution pointed this out in its response to the application, arguing that it should be dismissed.<sup>7</sup> It also submitted that the Head of the Defence Office was incorrectly assuming that the Trial Chamber was intending to rule on the 'applicable law at some point imminently, as opposed to seeking the submissions of parties to simply inform future debate on any Rule 167 applications or closing arguments'.<sup>8</sup> The Prosecution further submitted that there is no basis for inviting further legal submissions as the Prosecution and counsel for the four Accused have responded to the Trial Chamber's order for submissions with 'one voice'.<sup>9</sup>

7. The Trial Chamber agrees. Moreover, and significantly, none of the four sets of Defence counsel assigned by the Head of the Defence Office to represent the Accused have either supported this application or filed their own motion seeking similar relief. Without determining whether, in these circumstances, it is within the Head of the Defence Office's mandate—and in the absence of anything suggesting, for example, that these Defence counsel are not competently representing the Accused—to make such an application, the application has proceeded on two flawed premises.

---

<sup>6</sup> STL-17-07/I/AC/R176bis, F0006, Scheduling Order for Written Submissions pursuant to Rule 176 *bis* (B) of the Rules, 24 August 2017 (initially confidential, made public on 8 September 2017).

<sup>7</sup> F3329, Prosecution Response to the 'Observations *proprio motu* du Chef du Bureau de la Défense suite à l'Ordonnance de la Chambre de Première Instance du 27 juillet 2017 relative au droit applicable', 18 September 2017 ('Prosecution response'), paras 9-11.

<sup>8</sup> Prosecution response, para. 6. Under Rule 167 the Trial Chamber must acquit an Accused at the close of the Prosecution case on any count for which 'there is no evidence capable of supporting a conviction on that count'.

<sup>9</sup> See, F3318, Joint Defence Submissions on Lebanese Law, 8 September 2017, and F3317, Prosecution Submissions pursuant to the Trial Chamber's Order of 27 July 2017, 8 September 2017, with annexes A (Elements of Crimes Charged in the Amended Consolidated Indictment) and B (Table of Modes of Responsibility Charged in the Amended Consolidated Indictment).

8. The first is that there is a connection between the pre-indictment proceedings before the Appeals Chamber and the legal issues in the *Ayyash* case, whereas there is none. The second is that the Trial Chamber was intending to make findings before hearing any submissions under Rule 167, or indeed final trial submissions, on the applicable law. This is not only speculative, but is misconceived and wrong. This application is without merit.

**FOR THESE REASONS**, the application is dismissed.

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

Leidschendam,  
The Netherlands  
21 September 2017

*David Re*

\_\_\_\_\_  
Judge David Re, Presiding

*Janet Nosworthy*

\_\_\_\_\_  
Judge Janet Nosworthy

*Micheline Braidy*

\_\_\_\_\_  
Judge Micheline Braidy

