



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: 15 December 2017

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

ORDER TO COUNSEL FOR MR HASSAN HABIB MERHI ON CONFIDENTIAL FILINGS AND BREACHING THE PRACTICE DIRECTION ON FILINGS

Office of the Prosecutor:

Mr Norman Farrell & Mr Alexander Hugh Milne

Head of Defence Office

Mr François Roux

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 Dorothée Le Fraper du Hellen & Mr Jad Youssef 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 & Ms Sarah Bafadhel



1. Documents may be filed before the Special Tribunal with a marking of ‘public’, ‘confidential’, ‘confidential and *ex parte*’, or ‘under seal and *ex parte* with limited distribution’. The ‘Practice Direction on Filing of Documents before the Special Tribunal for Lebanon’ governs this. Article 6 (1)—referring to these four classifications—provides that:¹

Subject to Article 7 (5) (d) of this Practice Direction, where a document bears one of the classifications under paragraph (1) (b)-(d), all related documents (responses, replies, etc) shall bear the same marking, unless otherwise authorised by a Judge or Chamber.²

2. The Pre-Trial Judge has held that ‘associated filings’—namely those connected to the original document that was filed confidentially but that may not be termed, for example, a ‘response’ or a ‘reply’—fall within Article 6, finding that:

The Pre-Trial Judge notes that by giving the Response to the Request for Amendment a public character, the Defence, without having been authorised to do so, made public the existence of the Request for Amendment, which was classified as confidential by the Prosecution. The Defence could not do this and, consequently, has exceeded its rights.

If it wished to challenge the confidentiality of the Request for Amendment, the Defence should have submitted, confidentially, its observations to the Pre-Trial Judge who, seized of that matter, is the only one to have jurisdiction to rule on the confidential character of that request and any associated written submissions that have been filed.³

3. The Trial Chamber has explicitly agreed with, and followed, the Pre-Trial Judge’s interpretation of Article 6 and, on 5 October 2016, made an in-court order reminding counsel of their duties under the Practice Direction.⁴

4. On 14 December 2017, however, counsel for the Accused, Mr Hassan Habib Merhi, in contravention of Article 6, publicly filed a motion⁵ that was associated with a confidential and

¹ STL/PD/2010/01/Rev.2, 14 June 2013.

² Article 7 (5) (d) provides that a later change of classification of a particular document ‘shall not affect the classification of any other related document’.

³ STL-11-01/PT/PTJ, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F0413, Decision on the Classification of the Prosecution Request for Amendment of 17 August 2012, on the Prosecution Motion to Reclassify the Joint Defence Response of 10 September 2012 and on the Joint Defence Response of 11 September 2012, 14 September 2012, paras 13-14.

⁴ Transcript of 5 October 2016, pp 32-45, with order at pp 44-45, ‘Decision Reclassifying Oneissi and Sabra Defence’s Requests dated 3 and 4 October 2016’.

⁵ F3483.

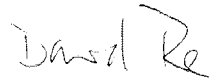
ex parte filing. The Trial Chamber immediately ordered that the motion be reclassified as ‘confidential’.⁶

5. Such breaches of the Practice Direction must not recur.

6. Counsel for Mr Merhi are again reminded of its existence and effect, and are ordered not to breach Article 6 of the Practice Direction on the Filing of Documents before the Special Tribunal for Lebanon again.

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

Leidschendam,
The Netherlands
15 December 2017



Judge David Re, Presiding

⁶ By email from the Trial Chamber’s senior legal officer to the Registry’s Court Management Services Section.

