



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: 6 March 2018

Original language: English

Classification: Public

THE PROSECUTOR
v.
SALIM JAMIL AYYASH
HASSAN HABIB MERHI
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA

**ORDER SCHEDULING PRE-DEFENCE CONFERENCE ON THURSDAY
8 MARCH 2018 AND DISMISSING ONEISSI AND SABRA APPLICATIONS TO
SUSPEND ORDERS UNDER RULE 128 TO FILE WITNESS AND EXHIBIT LISTS**

Office of the Prosecutor:
Mr Norman Farrell & 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 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



BACKGROUND

1. The Prosecution closed its case against the four Accused on 7 February 2018,¹ and on 20 and 21 February 2018 the Trial Chamber heard oral submissions from counsel for the Accused, Mr Hussein Hasan Oneissi, on an application to enter a judgement of acquittal against Mr Oneissi under Rule 167 of the Special Tribunal's Rules of Procedure and Evidence.²
2. The Trial Chamber also heard Prosecution oral submissions on 21 and 22 February 2018 in relation to the sufficiency of evidence in the case against Mr Oneissi and the Accused, Mr Salim Jamil Ayyash.³ On the Trial Chamber's oral order of 22 February 2018,⁴ the Prosecution and the Oneissi Defence filed additional, but written, submissions on 27 February 2018.⁵ No submissions were made under Rule 167 by counsel for the Accused Mr Ayyash, Mr Hassan Habib Merhi and Mr Assad Hassan Sabra.⁶
3. The Trial Chamber then also ordered counsel for the four Accused—if they had elected to call a Defence case—to file their Defence witness and exhibit lists and all associated documents specified in Rule 128, 'Functions that May Be Exercised after Close of the Prosecutor's Case' by 7 March 2018.⁷

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, transcript of hearing on 7 February 2018, p. 69.

² Transcript of hearing on 20 February 2018, pp 19-98; transcript of hearing on 21 February 2018, pp 3-37, 114-121.

³ Transcript of hearing on 21 February 2018, pp 39-112; transcript of hearing on 22 February 2018, pp 4-7, 20-39.

⁴ Transcript of hearing on 22 February 2018, pp 9-10.

⁵ F3586, *Soumissions additionnelles de la Défense de M. Oneissi en application de l'article 167 et de l'ordonnance orale de la Chambre de première instance en date du 22 février 2018*, 27 February 2018 (confidential, a public redacted version was filed on the same day); F3586, *Version corrigée des « Soumissions additionnelles de la Défense de M. Oneissi en application de l'article 167 et de l'ordonnance orale de la Chambre de première instance en date du 22 février 2018 »*, 5 March 2018 (confidential, a public redacted version was filed on the same day); F3587, *Prosecution Further Submissions in Response to an Oneissi Defence Application for Acquittal Under Rule 167*, 27 February 2018 (confidential, a public redacted version was filed on the same day); F3587, *Corrected Version of Prosecution Further Submissions in Response to an Oneissi Defence Application for Acquittal Under Rule 167*, 1 March 2018 (confidential, a public redacted version was filed on the same day).

⁶ Transcript of hearing on 7 February 2018, pp 72-73; transcript of hearing on 20 February 2018, pp 8-13.

⁷ F3583, *Scheduling Order to the Defence under Rule 128*, 23 February 2018.

VARIATION OF THE RULE 128 ORDER TO FILE WITNESS AND EXHIBIT LISTS

4. The Trial Chamber will deliver its decision or judgement under Rule 167 on Wednesday 7 March 2018. In light of this, the Trial Chamber now varies this order to order the filing of the relevant Rule 128 documents by **14.00 on Wednesday 7 March 2018**.⁸

5. This is to allow the Prosecution time to review the material before the Pre-Defence Conference which is to follow. The substantive oral testimony against all four Accused was complete on 18 October 2017 when Prosecution investigator, Mr Andrew Donaldson, completed his cross-examination by Defence counsel, and most written evidence was received by 14 December 2017. Defence counsel therefore have had ample time to prepare the documents necessary to call a Defence case following the close of the Prosecution case. The remaining oral evidence was received five to seven weeks ago, on 11 and 26 January 2018.

ORDER SCHEDULING A PRE-DEFENCE CONFERENCE FOR THURSDAY**8 MARCH 2018**

6. The Trial Chamber will hold a Pre-Defence Conference under Rule 129 at **10.00 on Thursday 8 March 2018** when it will ‘issue directions necessary or desirable to ensure a fair, impartial and expeditious trial’.

7. The Trial Chamber repeats the following passage from its scheduling order of 23 February 2018 that,

After receiving submissions, the Trial Chamber will allow the Prosecution the reasonable time necessary to prepare for any Defence cases. However, given the time elapsed since the calling of substantive evidence and the close of the Prosecution case—and, additionally, that Defence counsel must know the content of any Defence case—the Defence must be in a position to present their evidence immediately after any Pre-Defence Conference.

ORDERS DISMISSING DEFENCE APPLICATIONS TO SUSPEND RULE 128**ORDERS***Sabra Defence*

8. Counsel for Mr Sabra, on 5 March 2018—a month after the close of the Prosecution’s case, and four and half months since the last substantive evidence against Mr Sabra—filed an

⁸ The Trial Chamber’s senior legal officer notified the Parties of this variation by email at 20.03 on Monday 5 March 2018.

application asking the Trial Chamber to itself call four Prosecution investigators as witnesses—under Rule 165 ‘Power of Chambers to Order Production of Additional Evidence’—and to suspend the order under Rule 128 until the evidence is heard. They also sought an order that the Prosecution respond to these applications by 6 March 2018.⁹

9. The application seeking the suspension of the order under Rule 128 is untimely and unpersuasive. The Sabra Defence has had months to make this application yet delayed filing it until the day before the Trial Chamber’s intended delivery of its decision or judgement under Rule 167. **That part of the application is therefore dismissed.**

10. The remaining application that the Trial Chamber itself summons former Prosecution investigators to testify in the case under Rule 165 requires careful consideration and a response from the Prosecution.

Oneissi Defence

11. The Oneissi Defence filed an application after business hours on 5 March 2018 seeking a suspension of the order under Rule 128 until all matters related to its Rule 167 application are definitively resolved, including any interlocutory appeal under Rule 126 (C), asserting that filing documents under Rule 128 before then would be ‘premature’.¹⁰

12. Procedurally, the application has been filed the day before a deadline that was imposed ten days earlier and, if granted, would only further delay progress in the trial. Substantively, however, the order under Rule 128 is merely to file witness and exhibit lists and the other documents specified in the Rule.

13. Filing these documents confidentially cannot in any way prejudice the Defence of Mr Oneissi under any scenario. If the Trial Chamber dismisses the Rule 167 application, the Oneissi Defence must file these documents if it elects to call a defence. If, on the other hand, the Trial Chamber acquits Mr Oneissi the Oneissi Defence does not need to file the documents. Finally, if the Trial Chamber were to dismiss the application and allow an interlocutory appeal, there could be no prejudice in filing a witness and exhibit list. If the appeal is successful and Mr Oneissi is acquitted, the Defence does not proceed and nothing has been lost, and in the converse situation, the Oneissi Defence has already filed its witness

⁹ F3591, Sabra Defence Request Pursuant to Rule 165 and for Suspensive Effect of Rule 128 Order, 5 March 2018 (confidential).

¹⁰ F3592, Oneissi Defence Request for Suspension of Rule 128 Scheduling Order, 5 March 2018. A courtesy copy was sent to the Trial Chamber at 19.34 on 5 March 2018.

and exhibit list as required by the Rules, and in a timely fashion. **This application is dismissed.**

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

Leidschendam,
The Netherlands
6 March 2018

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

