



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 March 2018

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

**DECISION VARYING THE ‘DECISION ON LANGUAGES’ TO PERMIT FRENCH
LANGUAGE SIMULTANEOUS TRANSCRIPTION**

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:

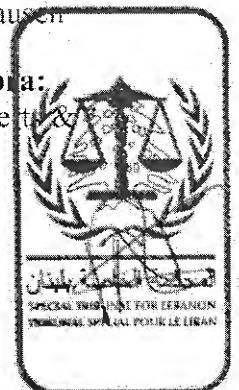
Mr Mohamed Aouini, Ms Dorothée Le Fraper
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Counsel for Mr Assad Hassan Sabra:

Mr David Young, Mr Geoffrey Robert &
Ms Sarah Bafadhel



1. The languages used in the proceedings in the case of *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra* are essentially regulated by a ‘Decision on Languages’ that the Pre-Trial Judge made on 16 September 2011 under Rule 10 of the Special Tribunal’s Rules of Procedure and Evidence (‘Official and Working Languages’).¹

2. This comprehensive decision dealt with the languages that could be used for filings, court proceedings, transcription and disclosure of documents and evidence. As the Trial Chamber has had the case since 25 October 2013, applications to vary the decision must be filed before the Trial Chamber. For example, in July 2016—on the Registrar’s application—the Trial Chamber varied the Pre-Trial Judge’s decision on the issue of disclosure of material and ordered that exculpatory documents under Rule 113 should be disclosed to the Defence in their original language and in English.²

3. Following the Pre-Trial Judge’s decision, the in-court proceedings have been conducted in the Special Tribunal’s three official languages, Arabic, French and English. Witnesses may testify in other languages, with prior notice. Until now, a real-time transcript has been made in English in the courtroom with the French transcript available within 24 hours and an Arabic transcript within 48 hours. With respect to real-time transcripts, that is the live transcript taken by a court-reporter seated in the court-room, the Pre-Trial Judge held:

that it may be advisable for real time transcripts to be provided in English, with Arabic and French transcripts being made available within a reasonable time after the end of the hearing. However, since resolving the language regime applicable to transcripts of oral proceedings would not contribute to the expeditious preparation of the trial at this stage of proceedings, the Pre-Trial Judge will not decide on that regime, and instead defers to the relevant Chamber to make that determination at the appropriate time.³

4. The Trial Chamber has not yet varied this aspect of the decision, nor, until 5 October 2017, was it asked to. However, on Friday, 29 September 2017, the Trial Chamber discovered that the Registrar intended to introduce real-time French transcription in the proceedings. This was apparently due to occur on the morning of Monday, 2 October 2017, during the cross-examination of a significant Prosecution witness, Mr Andrew Donaldson.⁴

¹ STL-11-01/I/PTJ, F0047, Decision on Languages in the Case of *Ayyash et al.*, 16 September 2011 (‘Decision on Languages’).

² STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2649, Decision Varying the Pre-Trial Judge’s ‘Decision on Languages in the Case of *Ayyash et al.*’ in Respect of Translating Exculpatory Material Into Arabic, 14 July 2016 (‘Decision of 14 July 2016’), para. 9.

³ Decision on Languages, para. 79 (internal footnote omitted).

⁴ See F3344, Order Regarding Simultaneous Transcription, 2 October 2017 (‘Order’), para. 3.

5. However, before permitting the introduction of real-time French transcription, the Trial Chamber needed first to have been adequately informed about any proposal to take this step and, then—in coordination with the Special Tribunal’s Court Management Services Section (CMSS)—to have had the opportunity to consider its potential impact on the proceedings. In addition, the Trial Chamber had to test the process in a simulated hearing which would not affect the court proceedings.

6. For these reasons, the Trial Chamber ordered the Registrar to provide it with submissions on the technical and practical aspects of the French real-time transcription, and delayed its implementation pending further consideration and testing of the system. The Trial Chamber, however, also made it clear that it supported its introduction—as it would support the introduction of Arabic real-time transcription, particularly as it is Lebanon’s official language.⁵

7. The Registrar then provided the relevant submissions to the Trial Chamber informing it of what had transpired in the previous five months. He submitted that the Registry’s initiative to provide French real-time transcription followed an enquiry of the Registrar, in May 2017, by the then Head of the Defence Office, about the Registry’s capacity to provide French transcription in the Defence phase of the trial, or sooner.⁶ The Registrar also informed the Trial Chamber that in July 2017, the CMSS had tested the French real-time transcription in the courtroom of the Special Tribunal. Following the test, the CMSS was satisfied with the report on the transcript’s accuracy and recommended engaging the court-reporter on a provisional basis to provide French real-time transcription through to the end of 2017. The Registrar agreed with the recommendation and stated that he was confident that the introduction of the French real-time transcription would not negatively impact the flow of the proceedings.⁷

8. Regarding the practical aspects of the introduction of the French real-time transcription, the Registrar recommended that the Trial Chamber designate the English version of the transcript as the authoritative version and that the French real-time version would only be utilized as an aid for counsel. All redaction orders would be based on the English real-time transcript, to be replicated in the official French and Arabic public redacted

⁵ Order, paras 4-6. Contrary to inaccurate assertions made by the former Head of Defence Office, Mr François Roux, in a meeting of all Special Tribunal staff in a farewell speech on 12 February 2018, the Trial Chamber was not ‘blocking’ the introduction of a real-time French transcription.

⁶ F3352, Registry Submission Pursuant to Rule 48(C) in Response to the Trial Chamber’s Order of 2 October 2017, 5 October 2017 (‘Registry submission’), para. 2.

⁷ Registry submission, paras 4-8.

transcripts following the hearing. He suggested that the same would apply to oral orders by the Trial Chamber. Finally, there would be no change to access to the real-time transcript, as anyone concerned would have the same access to the French real-time transcript as the English version.⁸

9. On the Trial Chamber's request, the Registrar made supplementary submissions, on 18 October 2017, providing further details on what had happened. He reported that the issue of French real-time transcription had been raised with the Trial Chamber's former Presiding Judge in 2013. Annexed to the submission was a memorandum that the Registrar—then the Acting Registrar—had sent to the former Presiding Judge on 16 July 2013, which referred to the Pre-Trial Judge's Decision on Languages and the submissions the Prosecutor, Registrar and Head of Defence Office had made before the decision was issued in 2011.

10. The Registrar also informed the Trial Chamber that he had put the issue before the Special Tribunal's Senior Management Board (comprising the President, Registrar, Prosecutor and Head of Defence Office) in a memorandum on 15 June 2017, at the request of the then Head of Defence Office. The Registrar provided further reports to this board on 28 June, 30 August and 20 September 2017. None of this Senior Management Board activity relating to an essential function of the Trial Chamber, namely the transcription used in the courtroom during its hearings, had been brought to the Trial Chamber's attention.

11. In addition, the Registrar submitted that it was not clear to the Registry that it was necessary to seek to vary the Decision on Languages in relation to real-time transcription for the purposes of the trial proceedings.⁹ The Registry recognizes, however, that it is within the Trial Chamber's sole competence to decide whether French real-time transcription is warranted in its proceedings and thus it should have been consulted throughout the process.¹⁰

12. The Trial Chamber, for various logistical reasons, including the availability of the French language court-reporter, who had to travel to Leidschendam, the Netherlands, from Canada, was unable to conduct its own testing until 6 February 2018. On that date it did so, in a simulated hearing featuring Trial Chamber staff assuming the roles of witnesses and counsel in a mock court hearing using an international moot court problem. Judges Re and Braidy participated in and directed this 'hearing'.

⁸ Registry submission, paras 11-12.

⁹ The Registrar, however, had referred to that decision in the first paragraph of his own memorandum to the former Presiding Judge, Judge Robert Roth, on 16 July 2013.

¹⁰ F3363, Registry Supplementary Submission Pursuant to Rule 48(C) in Relation to the Trial Chamber's Order of 2 October 2017, 18 October 2017 (public with confidential annex).

13. In this exercise, the Trial Chamber had attempted to test the system in a real-time simulation as close as possible to that of a normal hearing, which includes—despite in-court efforts to prevent it—speakers interrupting and speaking over each other, reading passages of documents which have not been provided to the court-reporter and interpreters in advance, switching languages mid-sentence, reading documents too quickly without pausing, and generally speaking too fast.

14. Additionally, the proceedings are publicly broadcast after a 30-minute delay, which allows the Trial Chamber to make any necessary redactions to the broadcast of information that may, for example, breach orders made protecting the identity of witnesses. Witnesses and court participants sometimes, but inadvertently, divulge information that may reveal the identity of protected witnesses. For this reason, before permitting the French real-time transcription, the Trial Chamber had to test how introducing a second real-time transcript could affect the protective measures in place for certain witnesses. Thus the testing on 6 February 2018 also included simulated breaches of protective orders, in multiple languages, requiring immediate redaction from the public broadcast.

15. On 13, 26 and 27 February 2018, the CMSS provided the Trial Chamber with reports on the results of both the Trial Chamber's test and the test conducted by the CMSS in July 2017.

16. The Trial Chamber is satisfied with the results and considers that the implementation of real-time French transcription in the court proceedings is warranted. The Trial Chamber therefore varies the Pre-Trial Judge's order to allow for simultaneous English and French real-time transcription in these proceedings. The Trial Chamber underlines that this order precedes the commencement of the Defence phase of the trial and expects that the French real-time transcription will assist French-speaking counsel.

17. With regard to the Registrar's recommendation that the Trial Chamber designate the English version of the transcript as the authoritative version, the Trial Chamber notes the disclaimer in the footer of all of the official transcripts of the proceedings—the English, French and Arabic—which states: 'Interpretation serves to facilitate communication. Only the original speech is authentic'. Accordingly, the Trial Chamber does not consider that the English version of the transcript is authoritative, and there is thus no reason to designate it as such.

18. With respect to the Registrar's suggestion that all redaction orders should be based on the English real-time transcript, the Trial Chamber notes that this would not address a scenario where confidential information is revealed only in the real-time French transcript. In that case, a redaction order would be necessary for the French transcript only.

19. The Trial Chamber is therefore not satisfied that the English real-time transcript should be the authoritative version for this purpose. Redactions may thus be required for both the English and French real-time transcripts.

20. The Trial Chamber has previously held that it can adopt and adjust the Pre-Trial Judge's decisions,¹¹ and accordingly varies paragraph 79 of the 'Decision on Languages in the Case of *Ayyash et al.*' of 16 September 2011 to allow for real-time transcription to be provided in French, as well as in English, in these proceedings. The relevant portion of paragraph 79 should therefore read as:

'Real time transcripts are to be provided in English and French, with the Arabic transcript being made available within a reasonable time after the end of the hearing.'

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

Leidschendam,
The Netherlands
21 March 2018

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

¹¹ See Decision of 14 July 2016, paras 9-10; STL-13-04/PT/TC, *Prosecutor v. Merhi*, F0073, Decision on Working Language(s) and Application for Leave to Appeal, 30 January 2014, para. 2.

