



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: 23 March 2018

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

**SCHEDULING ORDER FOR HEARING THE ONEISSI DEFENCE CASE
BETWEEN 10 AND 20 APRIL 2018**

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. On 7 February 2018, the Prosecution closed its case against the four Accused,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 with respect to Mr Oneissi under Rule 167 of the Special Tribunal's Rules of Procedure and Evidence. Further Prosecution oral submissions were heard 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. The Prosecution and the Oneissi Defence filed additional, but written, submissions on 27 February 2018.²
2. No submissions were made under Rule 167 by counsel for Mr Ayyash, Mr Hassan Habib Merhi or Mr Assad Hassan Sabra.³
3. On 7 March 2018, the Trial Chamber delivered a decision under Rule 167 dismissing the Oneissi Defence application to acquit Mr Oneissi on all counts charged against him on the amended consolidated indictment.⁴
4. On 7 March 2018, after the delivery of the decision—and pursuant to the Trial Chamber's order to all Defence counsel issued on 23 February 2018—the Oneissi Defence filed its witness and exhibit lists under Rule 128 'Functions that May Be Exercised after Close of the Prosecutor's Case'.⁵ One witness was on the list, Professor Siegfried Ludwig Sporer, who is expected to give expert evidence.
5. The Trial Chamber held Pre-Defence Conferences under Rule 129, on 8 and 22 March 2018, during which issues concerning the Defence case and the filing of final trial briefs were

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

² Pursuant to an oral order, transcript of hearing on 22 February 2018, pp 9-10; *see* 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; corrected and public redacted versions were filed on 5 March 2018); F3587, *Prosecution Further Submissions in Response to an Oneissi Defence Application for Acquittal Under Rule 167*, 27 February 2018 (confidential; corrected and public redacted versions were filed on 1 March 2018).

³ Transcript of hearing on 7 February 2018, pp 72-73; provisional transcript of hearing on 20 February 2018, pp 8-13.

⁴ Decision on the Oneissi Defence Application for a Judgment of Acquittal under Rule 167 (A). Transcript of 7 March 2018, pp 3-52.

⁵ F3583, *Scheduling Order to the Defence under Rule 128*, 23 February 2018 ('Scheduling Order of 23 February 2018'); and F3596, *Defence for Hussein Hassan Oneissi Submission Pursuant to the Trial Chamber's Scheduling Order of 23 February 2018*, 7 March 2018 (public with confidential annexes).

discussed. The Trial Chamber also discussed these issues with the Parties and Legal Representatives of Victims in a case management meeting on Wednesday 21 March 2018.

6. In the Pre-Defence Conference held on 8 March 2018, counsel for Mr Oneissi informed the Trial Chamber that they intended to call a second witness, Mr Jamil El-Sayyed. They then filed an amendment to their witness list specifying that he would testify in relation to counts 1 and 6 to 9 of the amended consolidated indictment ‘on the political situation in Lebanon preceding Mr Hariri’s assassination’.⁶

7. Following an oral order issued by the Trial Chamber on 8 March 2018,⁷ counsel for Mr Sabra formally notified the Trial Chamber on 9 March 2018 that they were electing not to call a Defence case.⁸

8. Finally, on 14 March 2018, the Oneissi Defence filed an application seeking certification for interlocutory appeal under Rule 126 (C) of the Trial Chamber’s decision under Rule 167, but also seeking a stay of proceedings—the effect of which would be to halt the proceedings against all four Accused until the issue is decided.⁹ Prosecution counsel informed the Trial Chamber that it opposes the application;¹⁰ a response from the Prosecution is due on Tuesday 3 April 2018.¹¹ The Trial Chamber will decide these applications in due course.

PROFESSOR SPORER’S EXPERT REPORT

9. The Oneissi Defence filed a notice under Rule 161 ‘Testimony of Expert Witnesses’, asking for the Trial Chamber to declare that Professor Sporer is an expert and to receive his expert report into evidence.¹² Rule 161 (B) allows the opposing Party thirty days to respond as to whether it accepts the report, wishes to cross-examine the witness or challenges the witness’s qualifications. Time runs from the disclosure of the report; the report was disclosed to the Prosecution on 7 March 2018.

⁶ F3596, Updated Annex A to Defence for Hussein Hassan Oneissi Submission Pursuant to the Trial Chamber’s Scheduling Order of 23 February 2018, 8 March 2018.

⁷ Transcript of hearing on 8 March 2018, pp 9-15, particularly p. 13.

⁸ Email from lead counsel for Mr Sabra to Trial Chamber senior legal officer on 9 March 2018.

⁹ F3603, Requête en certification de la décision de la Chambre en date du 7 mars 2018 rejetant la demande d’acquiescement de M. Oneissi déposée en application de l’article 167, 14 March 2018 (confidential; a public redacted version was filed on 15 March 2018).

¹⁰ Provisional transcript of hearing on 22 March 2018, pp 32-36.

¹¹ Provisional transcript of hearing on 22 March 2018, p. 6.

¹² F3605, Defence for Hussein Hassan Oneissi Rule 161 (A) Disclosure Notice and Request for the Admission into Evidence of Prof Sporer’s Expert Report, 21 March 2018 (confidential).

10. The Prosecution should file its notices by Friday 6 April 2018, which will allow the Trial Chamber time to make any consequential orders before Professor Sporer testifies. The Oneissi Defence and the Prosecution are urged to attempt to reach agreement on the content of the report and to delineate any areas of contention in a timely manner.

MR JAMIL EL-SAYYED'S WITNESS SUMMARY

11. The witness summary filed by the Oneissi Defence is deficient, specifying only a one line subject heading of 'the political situation in Lebanon preceding Mr Hariri's assassination'. Rule 128 (1) (b) requires Defence counsel to file 'a summary of the facts on which each witness is expected to testify'.

12. In the Pre-Defence Conference of 22 March 2018, the Prosecution sought better particulars from the Oneissi Defence of the scope of Mr El-Sayyed's expected testimony, to allow Prosecution counsel to prepare for any cross-examination.¹³ International criminal procedural law precedents support Trial Chambers ordering Defence counsel (and the Prosecution) to file proper summaries of evidence.¹⁴

13. The Trial Chamber told counsel for Mr Oneissi that it wanted the summary to be filed by **Thursday 29 March 2018**, but co-counsel for Mr Oneissi queried this.¹⁵ The Trial Chamber said that it would accept this without an order and expects the Oneissi Defence to file an adequate summary by that date setting out the points on which Mr El-Sayyed will testify.

14. During the Pre-Defence Conference on 22 March 2018, co-counsel for Mr Oneissi read to the Trial Chamber a letter from Mr El-Sayyed to lead counsel (obtained after the Trial Chamber had asked co-counsel at the case management meeting on 21 March 2018 to make inquiries about his availability to testify). Mr El-Sayyed stated that he was busy campaigning in advance of the Lebanese elections on 6 May 2018 and was therefore not available to testify before then, and if elected could not testify for some time thereafter. He could not travel during Ramadan, which is between 16 May and 15 June 2018, hence he would not be

¹³ Provisional transcript of hearing on 22 March 2018, p. 18.

¹⁴ See e.g. International Criminal Tribunal for the former Yugoslavia, IT-04-75-T, *Prosecutor v Hadžić*, Decision on Defence Motion for Admission of Evidence of DGH-051 pursuant to Rule 92 ter, 28 November 2014, para. 11; IT-04-74-T, *Prosecutor v. Prlić*, Decision on Prosecution Motion for the Provision of an Adequate Summary for the Forthcoming Testimony of Slobodan Božić, 22 January 2009; IT-98-29/1-T, *Prosecutor v. Dragimir Milošević*, Decision on the Prosecution's Motion for Defence Compliance with Rule 65 ter (G), 26 June 2007.

¹⁵ Provisional transcript of hearing on 22 March 2018, pp 27-28.

available to testify until the last week of June 2018,¹⁶ which would be the week commencing Monday 25 June 2018. That is, he would not be available for another three months.

15. The Trial Chamber then asked the Oneissi Defence to recontact Mr El-Sayyed and suggest to him the possibility of video-conference link testimony or testimony over different days or weeks with the possibility of varied sitting hours. The Trial Chamber stated that it could also issue a summons to compel his attendance, and co-counsel stated that this was a matter for the Trial Chamber.¹⁷

16. In its orders on 23 February and 6 March 2018 the Trial Chamber stated,¹⁸

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—they must be in a position to present their evidence immediately after any Pre-Defence Conference.

17. The Trial Chamber is responsible for setting the court's sitting schedule and has a statutory responsibility to ensure that the trial is both fair and expeditious. The Trial Chamber does not believe it would be either reasonable or responsible to effectively suspend the proceedings to accommodate the availability of one witness, especially when it has no information on the topics that his testimony would cover.

18. For these reasons the Trial Chamber directs the Oneissi Defence to contact Mr El-Sayyed and find a suitable date for his testimony in the manner suggested above.

ORDER THAT THE ONEISSI DEFENCE CALL ITS CASE BETWEEN 10 AND 20

APRIL 2018

19. In view of the procedural history outlined above, the Trial Chamber **orders the hearing of the Defence case for Mr Oneissi between Tuesday 10 April and Friday 20 April 2018.**

20. The Defence estimate for Mr El-Sayyed's evidence is of three days of examination in chief. However, in the absence of any information about the content of Mr El-Sayyed's

¹⁶ Provisional transcript of hearing on 22 March 2018, pp 52-53.

¹⁷ Provisional transcript of hearing on 22 March 2018, pp 54-55.

¹⁸ Scheduling Order of 23 February 2018, para. 8; F3593, 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, 6 March 2018 ('Order and Decision of 6 March 2018'), para.7.

testimony, the Prosecution cannot yet estimate the length of its cross-examination. A realistic estimate for Professor Sporer's evidence—if he is called to testify, and as opposed to the five days specified in the Defence Rule 128 notice—is of one to two days.

21. The Defence case therefore is *capable* of completion within this two-week period. The Trial Chamber will of course consider any applications for adjournment or extension of this period.

ANY EVIDENCE CALLED BY THE TRIAL CHAMBER UNDER RULE 165

22. On 5 March 2018, the Sabra Defence—a month after the close of the Prosecution's case—filed an application asking the Trial Chamber to itself call four former 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 2018.¹⁹ Counsel for Mr Oneissi also sought a similar suspension. The Trial Chamber denied these applications for suspension on 6 March 2018.²⁰

23. The Prosecution has informed the Trial Chamber that it opposes the applications, but a formal reasoned response from the Prosecution is required before the Trial Chamber will decide whether to call any of the witnesses under Rule 165. If it does, their evidence will follow that of any witnesses called by the Oneissi Defence between 10 and 20 April 2018.

FINAL TRIAL BRIEFS AND CLOSING SUBMISSIONS

24. The Trial Chamber is of the view that the Parties should be able to file their final trial briefs shortly after the close of the Defence case. As noted above, the substantive evidence was completed in October 2017, and the Prosecution case closed on 7 February 2018. The Parties should thus well know their respective cases. The Trial Chamber therefore expects the final trial briefs to be filed in May 2018.²¹ The Trial Chamber notes, however, that the Prosecution stated that it needed until July 2018 to file its brief.²²

25. A related issue is whether the Parties should file their briefs simultaneously, as has been the practice at other international criminal tribunals, or, as has occurred at the

¹⁹ F3591, Sabra Defence Request pursuant to Rule 165 and for Suspensive Effect of Rule 128 Order, 5 March 2018 (confidential with confidential annexes).

²⁰ Order and Decision of 6 March 2018, paras 9, 12-13.

²¹ Provisional transcript of hearing on 22 March 2018, p. 41.

²² Provisional transcript of hearing on 22 March 2018, p. 44.

International Criminal Court, consecutively, namely the Prosecution filing first, followed by the Legal Representatives of Victims and then the Defence. The Prosecution prefers simultaneous filing while the Defence prefers consecutive briefs. There are advantages and disadvantages in both.²³

26. At the Pre-Defence Conference on 22 March 2018, Prosecution counsel foreshadowed filing submissions concerning these two matters shortly.²⁴ The Trial Chamber will therefore await these submissions and responses to them before issuing orders for the filing of final trial briefs and oral closing submissions.

27. The Prosecution also sought an extension of the 30,000 word limit for filing final trial briefs to 150,000, given that there are four Accused and one named co-conspirator, Mr Mustafa Amine Badreddine, in the case. The Trial Chamber granted the application and also allowed the Defence and Legal Representatives of Victims to exceed the word limit, if they needed to.²⁵

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

Leidschendam,
The Netherlands
23 March 2018

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy



²³ Provisional transcript of hearing on 22 March 2018, pp 40-50.

²⁴ Provisional transcript of hearing on 22 March 2018, pp 42, 49.

²⁵ Provisional transcript of hearing on 22 March 2018, pp 4, 42, 48-49.