



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:** 11 April 2018

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

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

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**DECISION DISMISSING AS INADMISSIBLE AN ONEISSI DEFENCE  
APPLICATION FOR CERTIFICATION TO APPEAL A NON-EXISTENT  
'DECISION'**

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**Office of the Prosecutor:**  
Mr Norman Farrell & Mr Nigel Povoas

**Counsel for Mr Salim Jamil Ayyash:**  
Mr Emile Aoun, Mr Thomas Hammis &  
Mr Chad Mair

**Acting Head of Defence Office:**  
Ms Héleyn Uñac

**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. On 7 March 2018, counsel for the Accused, Mr Hussein Hassan Oneissi, filed their witness list for their short Defence case under Rule 128 of the Special Tribunal's Rules of Procedure and Evidence.<sup>1</sup> They filed it confidentially, as is standard practice in filing witness lists. On 8 March and 29 March 2018, they filed updated lists, but filed them publicly.<sup>2</sup> However, like the original list, these should have been filed confidentially. There were no intervening facts or circumstances to justify a public filing; the Oneissi Defence made no applications to change the status of the original witness list, nor did the Trial Chamber allow a change of status.

2. The Trial Chamber then directed, as is normal in these matters, the Registry to reclassify the updated list as 'confidential'.<sup>3</sup> The Trial Chamber's senior legal officer communicated this to the Parties by email on 29 March 2018. The Trial Chamber also instructed the Oneissi Defence to refile its second updated witness list confidentially. Counsel for Mr Oneissi complied, but on 4 April 2018 filed a confidential application to have the filing reclassified from confidential to public.<sup>4</sup>

3. On 5 April 2018, the Trial Chamber informed the Oneissi Defence—again by email from its senior legal officer—why it had ordered the reclassification of the two filings to confidential and asked counsel to 'consider withdrawing' their application to have the filing reclassified. The Trial Chamber also directed the Oneissi Defence to file a public redacted version of the updated list, which has not yet occurred. This is a standard direction consistent with the principle of the public nature of the proceedings, and email expedites the communication of the decision to the Parties.

4. Moreover, since the beginning of the trial the Trial Chamber, the Parties—including the Oneissi Defence, and as recently as 11 April 2018—and the participating victims have communicated via email as a matter of course in relation to things such as applications for extensions of time for filings and extensions of mandated word limits in filings, and the

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F3596, Defence for Hussein Hassan Oneissi Submission pursuant to the Trial Chamber's Scheduling Order of 23 February 2018.

<sup>2</sup> 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; F3596, Second Updated Annex A to Defence for Hussein Hassan Oneissi Submission Pursuant to the Trial Chamber's Scheduling Order of 23 February 2018, 29 March 2018. The Oneissi Defence sent a courtesy copy of its Second Updated Annex to the Trial Chamber, the Parties and the Legal Representatives of Victims on the same day.

<sup>3</sup> This was pursuant to Article 7 'Public Record and Change of Classification' of the Practice Direction on filing of documents before the Special Tribunal for Lebanon, STL/PD/2010/01/Rev.2, 14 June 2013.

<sup>4</sup> F3616, Request for Reclassification of the Second Updated Annex A to Defence for Hussein Hassan Oneissi Submission Pursuant to the Trial Chamber's Scheduling Order of 23 February 2018, dated 8 March 2018, 4 April 2018.

classification of and redactions to filings. This includes orders and directions which are then generally confirmed in a written decision.

5. The Trial Chamber, however, *did not decide and has not decided the application to reclassify the witness list*. Despite this, counsel for Mr Oneissi filed an application for interlocutory appeal under Rule 126 (C)<sup>5</sup> *against a decision that has yet to be made*—and annexing the Trial Chamber’s email—in which they complain about the Trial Chamber’s communication by email.<sup>6</sup>

6. The application for certification against a non-existent decision is inadmissible and is dismissed. Premature applications of this nature risk wasting the Special Tribunal’s resources and should not be filed.

7. Counsel for Mr Oneissi are again ordered to file public redacted versions of their witness lists, **by 12 April 2018**. They are also ordered to file a public redacted version of their application for certification.

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

Leidschendam,  
The Netherlands  
11 April 2018

*David Re*

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Judge David Re, Presiding

*Janet Nosworthy*

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

*Micheline Braid*

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Judge Micheline Braid



<sup>5</sup> F3622, Requête de la Défense en Certification de la Décision de la Chambre en date du 5 avril 2018 rejetant la demande de Reclassification, 10 April 2018.

<sup>6</sup> Ironically, in light of these complaints, at 11.30 am on 11 April 2018, co-counsel for Mr Oneissi emailed the Trial Chamber’s senior legal officer asking for a short extension of time to file a response to a Prosecution filing due at 12 pm the same day; the Trial Chamber granted counsel an extension of time—but again by email—at 11.43 am on 11 April 2018.