



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: 8 May 2018

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

SCHEDULING ORDER TO RESUME THE TRIAL ON 14 MAY 2018

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

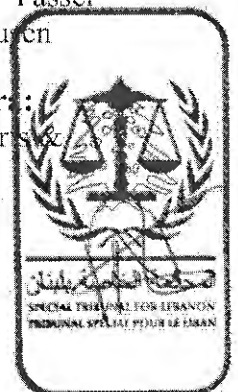
**Legal Representatives of
Participating Victims:**
Mr Peter Haynes, Mr Mohammad F. Mattar
& Ms Nada Abdelsater-Abusamra

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 Dorothee 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 Robert &
Ms Sarah Bafadhel



1. The Trial Chamber had intended to schedule the testimony of Professor Siegfried Ludwig Sporer—an expert witness for the Accused, Mr Hussein Hassan Oneissi—from Tuesday 17 April 2018. It had also intended to call for itself, under Rule 165 of the Special Tribunal’s Rules of Procedure and Evidence, a former Prosecution Chief of Investigations, Mr Michael Taylor, to testify in the week of Monday 23 April. However, an ultimately unsuccessful application by the Oneissi Defence, filed on 13 April under Rule 25 (A) to disqualify the three Trial Chamber judges, stopped the trial and hence the intended testimony of both witnesses.¹
2. The operation of Rule 25 (D) prevented the Trial Chamber judges from participating in the proceedings pending resolution of the application, unless a Panel appointed to determine the application decided otherwise. Neither of two successive Panels appointed by the Special Tribunal’s President—the first on 13 April² and the second on 25 April³—made such an order. Three weeks after the Oneissi Defence application was filed, the second Panel, on Friday 4 May, dismissed the application.⁴ Although the unsuccessful application suspended the trial for three weeks, its flow-on effects could add several months to the trial.
3. On Monday 7 May, the Presiding Judge held a case management meeting with the Parties and Legal Representatives of Victims to discuss the resumption of the trial and other urgent scheduling matters. Counsel for Mr Oneissi foreshadowed filing an application to tender into evidence under Rule 155—that is, without oral testimony—some witness statements relied on by Professor Sporer in his expert report.⁵ The consequence of this late application—filed two months after the Oneissi Defence filed its first witness list on 7 March 2018, containing only Professor Sporer’s name⁶—is that the Prosecution will need time to respond to it and, accordingly, the trial now cannot resume until the week of Monday 14 May.

¹ STL-11-01/T/PRES, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F3628, Oneissi Defence Rule 25 Motion for the Disqualification and Withdrawal of Presiding Judge David Re, Judge Janet Nosworthy, and Judge Micheline Braidy, 12 April 2018 (confidential with confidential annexes A-C). A public redacted version of the motion was filed on the same day.

² STL-11-01/T/PRES, F3630, Order Designating a Panel Pursuant to Rule 25 (C), 13 April 2018.

³ STL-11-01/T/PRES, F3639, Order on the Composition of a Panel Designated Pursuant to Rule 25 (C), 25 April 2018.

⁴ STL-11-01/T/OTH/R25, F3645, Decision on Oneissi Defence Rule 25 Motion for the Disqualification and Withdrawal of Presiding Judge David Re, Judge Janet Nosworthy, and Judge Micheline Braidy, 4 May 2018.

⁵ STL-11-01/T/TC, F3650, Defence for Hussein Hassan Oneissi Request for Amendments to the Rule 128 Witness and Exhibit Lists and for the Admission of Documents Used by DHO-001, 7 May 2018 (confidential with confidential annexes A-G), distributed 8 May 2018.

⁶ 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 A-B).

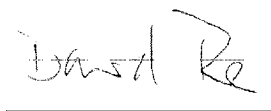
4. A further scheduling complication is that on 11 April the Trial Chamber ordered the Parties to file their written final trial briefs on Monday 4 June,⁷ with oral closing submissions in the weeks of 25 June to 6 July, and each Party has asked the Trial Chamber to reconsider this order and to allow them further time for filing the briefs.⁸ The Oneissi Defence, however, is yet to make any application to adjourn or extend the trial to allow it to call its second intended witness, Mr Jamil El-Sayyed, who apparently cannot testify until the week of 25 June—three weeks after the date set for filing final trial briefs.

5. Reconsidering the date for filing the final trial briefs is interconnected with the issue of if and when Mr El-Sayyed testifies. But the Oneissi Defence has not yet informed the Trial Chamber of the substance of Mr El-Sayyed's intended testimony, meaning that, although the evidence appears relevant, the Trial Chamber cannot assess the probative value of his intended evidence to the Defence case (i.e., what it proves), and hence whether to allow any application to permit him to testify a month after the intended close of the case. Rule 149 (C), which permits a Chamber to 'admit any relevant evidence which it deems to have probative value', applies equally to evidence submitted by any Party, and additional evidence ordered by the Trial Chamber under Rule 165. The Trial Chamber therefore awaits better information from the Oneissi Defence on the scope of Mr El-Sayyed's intended testimony, an intended date for his testimony, and if necessary, a formal reasoned application to call him to testify on a date after the expected close of the evidence.

6. For these reasons, the trial will resume on **Monday 14 May 2018** with the evidence of Professor Sporer, followed by that of Mr Taylor on a date to be decided.

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

Leidschendam,
The Netherlands
8 May 2018



Judge David Re, Presiding



⁷ F3623, Scheduling Order for Final Trial Briefs and Closing Arguments under Rule 147, 11 April 2018.

⁸ F3627, Joint Defence Request for Reconsideration of the Scheduling Order for Final Trial Briefs and Closing Arguments under Rule 147, 12 April 2018. The Prosecution also sought reconsideration of the scheduling order, and partially joined the Defence reconsideration application. *See* F3636, Prosecution Motion for Reconsideration of the Order of 11 April 2018; Partial Joinder and Response to the Joint Defence Request for Reconsideration, and Motion for Clarification, 20 April 2018. The Oneissi Defence essentially joined the joint Defence application. *See* F3647, Requête de la Défense en Réexamen de l'Ordonnance de la Chambre portant calendrier pour les Mémoires en clôture et Plaidoiries finales en date du 11 avril 2018, 7 May 2018 (confidential).