



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: 14 May 2018

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

**DECISION DISMISSING THE ONEISSI DEFENCE APPLICATION TO
RECLASSIFY ITS SECOND UPDATED WITNESS LIST AS PUBLIC**

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

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

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

Counsel for Mr Hassan Habib Merhi:
Mr Mohamed Aouini, Ms Dorothée Le Frapier
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



1. The Defence of the Accused Mr Hussein Hassan Oneissi has filed four versions of its Defence witness list¹ and wishes to have the third version made public, but as the fourth list was filed confidentially and supersedes the third, the application is now moot.

2. Each of the four versions lists Dr Siegfried Ludwig Sporer (Witness DHO-001) with an identical summary of his expected testimony. The short procedural history is that the first version, filed on 7 March 2018, included only Dr Sporer's name and a summary of his expected testimony,² while the second version, filed the following day, 8 March, added a second witness, Mr Jamil Mohammad El Sayed (Witness DHO-002).³ The third version, filed on 29 March, expanded slightly on the topics of Mr El Sayed's expected testimony,⁴ while the fourth version, filed on 7 May, added four witnesses whose statements the Oneissi Defence wishes to tender under Rule 155 of the Special Tribunal's Rules of Procedure and Evidence.⁵

3. The Oneissi Defence filed its first witness list as 'confidential'. The Trial Chamber assumed that the Oneissi Defence had done so because information in the summary of Dr Sporer's expected testimony potentially breached protective measures ordered under Rule 133.⁶ Co-counsel for Mr Oneissi has acknowledged in court that portions of Dr Sporer's

¹ Filed under Rule 128 of the Special Tribunal's Rules of Procedure and Evidence, which provides that, upon election to present its case, the Defence shall file a list of the witnesses it intends to call—including 'a summary of the facts on which each witness is expected to testify'—and a list of the exhibits it intends to offer. In addition to the four versions of its Rule 128 witness list, the Oneissi Defence has also filed four versions of its Rule 128 exhibit list. F3596/A02, Annex B to Defence for Hussein Hassan Oneissi Submission Pursuant to the Trial Chamber's Scheduling Order of 23 February 2018, 7 March 2018 (confidential); F3596/A02, Updated Annex B to Defence for Hussein Hassan Oneissi Submission Pursuant to the Trial Chamber's Scheduling Order of 23 February 2018, 8 March 2018 (confidential); F3650/A06, Annex F to the 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); F3659, Annex A to the Rule 154 Motion for the Amendment of the Rule 128 Exhibit List and for the Admission of Documents Related to Mr Ahmed Abu Adass, 11 May 2018 (confidential). The most recent filing lists only proposed additions to the Oneissi Defence exhibit list and is therefore not a comprehensive version of all documents the Oneissi Defence intends to offer in its case.

² STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F3596/A01, Annex A to Defence for Hussein Hassan Oneissi Submission Pursuant to the Trial Chamber's Scheduling Order of 23 February 2018, 7 March 2018 (confidential).

³ F3596/A01, 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 (made confidential by Trial Chamber instructions).

⁴ F3596/A01, 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 (confidential).

⁵ F3650/A05, Annex E to the 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). Rule 155 provides for the admission of written statements in lieu of oral testimony.

⁶ F2269 filed confidentially on 15 October 2015; F3014, *Public Redacted Version of "Decision Varying Protective Measures for a Witness" of 27 February 2017*, 2 March 2017; F3037, Decision on Registry Request for Clarification of Decision Varying Protective Measures for a Witness, 15 March 2017. Rule 133 grants the Trial Chamber the authority to order 'appropriate measures for the privacy and protection of victims and witnesses', including non-disclosure to the public of any records identifying the victim or witness and through the use of closed session testimony.

testimony would have to be heard in private session.⁷ The issue is that while the general area of Dr Sporer's expected testimony may be made public, the particular application of Dr Sporer's area of expertise to these proceedings—which all versions of the witness list describe—may breach the protective measures.

4. The Oneissi Defence then filed the second list as 'public', and the Registry reclassified it as 'confidential' on the instruction of the Presiding Judge of the Trial Chamber.⁸ The Oneissi Defence filed the third list as 'public' but then refiled it as 'confidential', again on the Presiding Judge's instruction.⁹ Co-counsel for Mr Oneissi emailed the Trial Chamber's senior legal officer regarding the third list, stating: 'We don't see the factual or legal basis for the classification of this specific filing.'¹⁰ The reason for the Trial Chamber ordering the second and third lists to be classified as confidential was to maintain the orders for witness protection made under Rule 133, and the Trial Chamber's senior legal officer responded to co-counsel for Mr Oneissi: 'It is the area of Professor Sporer's expected evidence which should not have been made public.'¹¹

5. On 4 April, before filing its fourth witness list, the Oneissi Defence requested the Trial Chamber to reclassify the third list as public.¹² The next day, 5 April, the Trial Chamber's senior legal officer emailed the Oneissi Defence, explaining that the witness list should have been filed confidentially due to the protective measures in place and asking them to consider withdrawing their reclassification request.¹³ On 12 April, the Oneissi Defence filed public redacted versions of the second and third witness lists, redacting two and a half lines of the summary of Dr Sporer's expected testimony.¹⁴

⁷ Transcript of 8 March 2018, p. 42 (private session).

⁸ Email from the Trial Chamber's senior legal officer to the Registry, dated 29 March 2018.

⁹ Email from the Trial Chamber's senior legal officer to counsel for Mr Oneissi, dated 29 March 2018.

¹⁰ Email from co-counsel for Mr Oneissi to the Trial Chamber's senior legal officer, dated 29 March 2018.

¹¹ Email from the Trial Chamber's senior legal officer to co-counsel for Mr Oneissi, dated 4 April 2018.

¹² 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, paras 15, 17.

¹³ Email from the Trial Chamber's senior legal officer to counsel for Mr Oneissi, dated 5 April 2018, and filed as F3622/A01, Annexe A à la 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 (confidential), and STL-11-01/T/PRES, F3628/A02, Confidential Annex B to 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).

¹⁴ F3596/A01/PRV, Public Redacted Version of the Updated Annex A to Defence for Hussein Hassan Oneissi Submission Pursuant to the Trial Chamber's Scheduling Order of 23 February 2018 filed on 8 March 2018, 12 April 2018; F3596/A01/PRV, Public Redacted Version 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 filed on 29 March 2018, 12 April 2018.

6. On 13 April, in between filing the third and fourth list, counsel for Mr Oneissi sought the disqualification of the three Trial Chamber judges for bias, based in part on the Trial Chamber's reclassification of the second and third lists.¹⁵ The second Panel convened by the Special Tribunal's President dismissed the application.¹⁶

7. Following the Panel's decision, the Oneissi Defence filed the fourth witness list as 'confidential'. Counsel for Mr Oneissi apparently consider the application for reclassification of the third list as pending,¹⁷ but have themselves rendered it moot by filing their fourth and updated list as confidential.

8. The Trial Chamber, in keeping with the public nature of the proceedings and Mr Oneissi's right to a public hearing, will endeavour to hear as much of Dr Sporer's testimony as possible in open session. It will hear Dr Sporer's evidence in private or closed session only to the extent that his testimony may breach protective measures. Also in keeping with the public nature of the proceedings, the Trial Chamber orders the Oneissi Defence to file a public version of the fourth version of its witness list, redacting the portion of the summary describing the application of Dr Sporer's area of expertise to these proceedings.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

DISMISSES the Oneissi Defence application; and

ORDERS the Oneissi Defence to file a public redacted version of its fourth Rule 128 witness list, filed 7 May 2018.

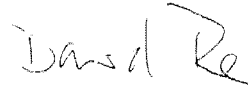
¹⁵ STL-11-01/T/PRES, F3628/PRV, Public Redacted Version of Oneissi Defence Rule 25 Motion for the Disqualification and Withdrawal of Presiding Judge David Re, Judge Janet Nosworthy, and Judge Micheline Braidy, 12 April 2018 (public with confidential annexes A-C), in particular paras 29-32.

¹⁶ 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. In paragraph 69 of its decision, the Panel found that the Trial Chamber had 'provided unbiased reasons' for instructing that the witness list be filed as confidential.

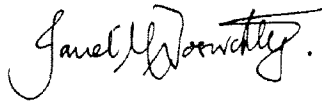
¹⁷ F3647, Requête de la Défense en Réexamen de l'Ordonnance de la Chambre portant calendrier pour les Mémoires en clôture et Plaidoiries finales en date du 11 avril 2018, 7 May 2018 (confidential), para. 20; F3650, Defence for Hussein Hassan Oneissi Request for Amendments to the Rule 128 Witness and Exhibit Lists and for the Admission of Documents Used by DHO-001, 7 May 2018 (confidential), para. 53; F3657, Defence for Hussein Hassan Oneissi Witness Schedule for the Week Commencing 14 May 2018, 11 May 2018, para. 3.

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

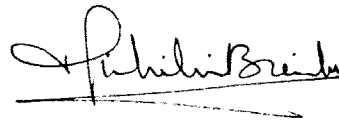
Leidschendam,
The Netherlands
14 May 2018



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

