



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:** 4 June 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 ONEISSI DEFENCE APPLICATION TO RECONSIDER  
THE TRIAL CHAMBER'S ORDER TO PROVIDE A SUMMARY OF FACTS OF  
MR JAMIL EL-SAYYED'S EXPECTED TESTIMONY**

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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 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 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. Following the Trial Chamber's decision dismissing an application, under Rule 167 (A) of the Special Tribunal's Rules of Procedure and Evidence,<sup>1</sup> to acquit Mr Hussein Hassan Oneissi on all counts charged in the amended consolidated indictment,<sup>2</sup> counsel for Mr Oneissi elected to call a Defence case. The Oneissi Defence's amended witness list (its fourth)<sup>3</sup> includes two *viva voce* (live) witnesses—an expert witness, Professor Siegfried Ludwig Sporer,<sup>4</sup> and Mr Jamil El-Sayyed.<sup>5</sup> Professor Sporer testified for three days between 14 and 16 May 2018, and his expert report has been received into evidence as exhibit 4D540.

2. Mr El-Sayyed, according to the fourth witness list, is expected to testify on political topics encompassing six years of political developments in Lebanon and the surrounding region before the assassination of the former Lebanese Prime Minister, Mr Rafik Hariri, in Beirut on 14 February 2005.<sup>6</sup> On 9 May 2018, and again on 28 May 2018, counsel for Mr Oneissi informed the Trial Chamber that Mr El-Sayyed could testify on 5, 6 and 7 June 2018.<sup>7</sup>

3. While the Oneissi Defence's fourth witness list detailed the topics on which Mr El-Sayyed was expected to testify, it did not inform the Trial Chamber of the substance of his expected testimony on these topics. Without this information the Trial Chamber had difficulty scheduling trial hearings to hear the witness as it could not assess the probative value of his evidence or its potential length. Consequently, on 16 May 2018, the Trial Chamber, under

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<sup>1</sup> Rule 167 (A) states that 'At the close of the Prosecutor's case, the Trial Chamber shall, by oral or written decision and after hearing submissions of the Parties, enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction on that count.'

<sup>2</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, Decision on the Oneissi Defence Application for a Judgment of Acquittal under Rule 167 (A), transcript of 7 March 2018, pp 3-52. Of the four Accused, only the Oneissi Defence made an application under Rule 167 (A) and has elected to call a case.

<sup>3</sup> 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), ('Oneissi Defence's fourth witness list'). The Oneissi Defence filed a public redacted version on 17 May 2018.

<sup>4</sup> Witness DHO-001.

<sup>5</sup> Witness DHO-002. Additionally, the Oneissi Defence's fourth witness list also includes four witnesses, Witnesses DHO-003, DHO-004, DHO-005 and Mr Xavier Jean-Marie Laroche (Witness DHO-006), whose statements have been admitted into evidence, under Rule 155, without requiring the witnesses to attend for cross-examination. See Decision Allowing the Oneissi Defence to Amend its Witness and Exhibit Lists and Admitting into Evidence Ten Witness Statements and Material Relied Upon in Professor Sporer's Expert Report, transcript of 14 May 2018, pp 5-10.

<sup>6</sup> Oneissi Defence's fourth witness list, item 2.

<sup>7</sup> Letter from counsel for Mr Oneissi to the Trial Chamber, the Prosecution and the Legal Representatives of Victims, copying the other Defence counsel, dated 9 May 2018. See also F3656, Observations de la Défense en réponse à l'Ordonnance portant calendrier délivrée par le Juge Rapporteur le 8 mai 2018, 10 May 2018, para. 23. Letter from counsel for Mr Oneissi to the Trial Chamber, copying other Defence counsel, dated 28 May 2018, disclosed to the Prosecution and the Legal Representatives of Victims via email from the Oneissi Defence's legal officer on the same day.

Rule 128 (i) (b), ordered the Oneissi Defence to file a summary of facts on which Mr El-Sayyed would testify by 28 May 2018.<sup>8</sup> This Rule states that,

After the close of the Prosecutor's case and upon a Defence election to present its case, the Trial Chamber shall order the Defence to file ... a summary of the facts on which each witness is expected to testify.

4. On 24 May 2018, two working days before the expiry of the deadline for filing the summary, counsel for Mr Oneissi filed an application seeking reconsideration of the Trial Chamber's order, under Rule 140.<sup>9</sup>

5. Under this Rule, a Chamber may '*proprio motu* or at the request of a Party, reconsider a decision, other than a judgement or sentence, if necessary to avoid injustice'. Reconsideration is an exceptional remedy, and the Rule must not be used to redress 'imperfections in a decision or to circumvent the unfavourable consequences of a ruling'. The party seeking reconsideration must demonstrate on specific grounds an injustice that involves prejudice. If prejudice or injustice is shown, reconsideration may be granted on grounds that include an error of law, abuse of discretion, or the existence of new facts or a material change in the circumstances.<sup>10</sup>

6. Counsel for Mr Oneissi argue that the order is not in accordance with the spirit and the letter of Rule 128 (i) (b), and that—in contrast to summaries provided by the Prosecution under Rule 91 (G) (ii) (b) before it called witnesses to testify<sup>11</sup>—the Trial Chamber unfairly set the standard higher for the Defence's summary of facts. It would cause an irreparable harm to the Oneissi Defence if the Trial Chamber were to condition Mr El-Sayyed's appearance on an obligation which it did not impose on the Prosecution.<sup>12</sup>

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<sup>8</sup> F3665, Order to the Oneissi Defence to Provide a Summary of Facts of Mr Jamil El-Sayyed's Expected Testimony, 16 May 2018.

<sup>9</sup> F3671, Requête en Réexamen de l'Ordonnance délivrée à la Défense de M. Oneissi visant à communiquer un résumé des faits sur lesquels Général El Sayed sera appelé à témoigner, 24 May 2018 ('Oneissi Defence reconsideration application').

<sup>10</sup> See F3345, Decision Denying Merhi Defence Application to Reconsider 'Decision Clarifying Mr Gary Platt's Area of Expertise', 2 October 2017, para. 8, quoting STL-11-01/PT/AC/R176bis, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F0327, Decision on Defence Requests for Reconsideration of the Appeals Chamber's Decision of 16 February 2011, 18 July 2012, paras 22-26, and citing F2719, Decision on Ayyash Defence Motion for 'Reissuance' and Oneissi Defence Motion for Reconsideration of the Trial Chamber's Decision of 29 July 2016, 14 September 2016, para. 10.

<sup>11</sup> Rule 91 (G) (ii) (b) provides that 'The Pre-Trial Judge shall order the Prosecutor, within a time-limit set by him and not less than six weeks before the Pre-Trial Conference required by Rule 127, to file ... a summary of the facts on which each witness is expected to testify'.

<sup>12</sup> Oneissi Defence reconsideration application, particularly paras 12-14, 19-31.

7. However, on 28 May 2018, the Oneissi Defence filed its summary of facts but expressing this to be ‘without prejudice to the merits’ of its application seeking reconsideration of the Trial Chamber’s order.<sup>13</sup>

8. The Prosecution in a succinct response submits that the Oneissi Defence’s application should be dismissed because it does not meet the requirements of Rule 140, and the filing of the summary of facts of Mr El-Sayyed’s expected testimony has rendered it moot.<sup>14</sup>

9. The Trial Chamber finds that the Oneissi Defence has not demonstrated any actual injustice that involves prejudice. Counsel’s arguments represent a mere disagreement with the Trial Chamber’s order. Further, the application is legally erroneous because the Trial Chamber’s order simply follows Rule 128 (i) (b). It is also factually ill-founded as it ignores that the Trial Chamber heard lengthy submissions from Prosecution counsel with respect to the relevance and probative value of the anticipated Prosecution witnesses’ evidence relevant to the political situation in Lebanon preceding Mr Hariri’s assassination,<sup>15</sup> and responses from counsel for the Accused.<sup>16</sup>

10. But most relevantly, filing the summary of facts of Mr El-Sayyed’s expected testimony—in compliance with the Trial Chamber’s order—only reinforces that the Oneissi Defence never suffered any procedural prejudice in having to file it in the first place. Consequently, the Trial Chamber has scheduled Mr El-Sayyed’s evidence between 5 and 7 June 2018. The Trial Chamber, therefore, **dismisses** the Oneissi Defence’s application both on its merits and also because it is now moot.

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<sup>13</sup> F3672, Summary of Facts of General El Sayed’s Expected Testimony pursuant to the Trial Chamber Scheduling Order dated 16 May 2018, 28 May 2018, para. 3. The summary of facts is annexed to the filing.

<sup>14</sup> F3675, Prosecution’s Response to the Oneissi Defence Request for Reconsideration of the Order to Provide a Summary of Facts of Mr. Jamil El Sayyed’s Expected Testimony, 30 May 2018. On 28 May 2018, the Trial Chamber reduced the time for responses, under Rule 9 (A) (i), and communicated this to the Parties and the Legal Representatives of Victims through its senior legal officer via email.

<sup>15</sup> See transcript of 13 November 2014, pp 34-67.

<sup>16</sup> See transcript of 13 November 2014, pp 68-83, 87-102; transcript of 14 November 2014, pp 2-10.

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

Leidschendam,  
The Netherlands  
4 June 2018

*David Re*

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Judge David Re, Presiding

*Janet Nosworthy*

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Judge Janet Nosworthy

*Micheline Braidy*

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Judge Micheline Braidy

