



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:** 5 October 2018

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

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

---

**ORDER IN RELATION TO HEAD OF DEFENCE OFFICE'S OBSERVATIONS  
OF 1 OCTOBER 2018**

---

**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

**Head of Defence Office**  
Ms Dorothée Le Fraper du Hellen

**Counsel for Mr Hassan Habib Merhi:**  
Mr Mohamed Aouini & 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. The Head of Defence Office, Ms Dorothee Le Fraper du Hellen, was co-counsel for the Accused, Mr Hassan Habib Merhi, from 30 December 2013 until 29 June 2018. On 23 July 2018, she was sworn in as Head of Defence Office. On 24 August 2018, she delegated some of her functions under Rule 57 (G) and (H) of the Special Tribunal's Rules of Procedure and Evidence to her Deputy, Ms Héleyn Uñac, in respect of certain matters concerning the conduct of the Merhi Defence, including monitoring the effectiveness of Mr Merhi's legal representation. This is an ongoing obligation which lasts from the date of a counsel's assignment until its withdrawal.

2. On 10 September 2018, the Presiding Judge filed his correspondence with the Head of Defence Office on the issue of the potential conflict between her former role as co-counsel for Mr Merhi and her new role as Head of Defence Office.<sup>1</sup>

3. Following this, the Trial Chamber made an order in court on Friday, 21 September 2018 seeking submissions from the Parties, the Head of Defence Office and the Deputy Head of Defence Office on the matters raised in the correspondence, by Monday, 1 October 2018.<sup>2</sup>

4. The Parties filed their submissions on 1 October 2018, either taking no position or expressing that there is no need for the Trial Chamber's intervention.<sup>3</sup> The Head of Defence Office also filed her submissions on 1 October 2018,<sup>4</sup> as did her Deputy.<sup>5</sup> The Head of Defence Office informed the Trial Chamber that she had now reconsidered her decision of

---

<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F3732, Publication of Correspondence with Head of Defence Office on Potential Conflict of Interest, 10 September 2018. This filing is comprised of a memorandum from the Head of Defence Office to the President, Registrar, Prosecutor and Presiding Judge dated 24 August 2018 informing that she delegated certain functions regarding the monitoring of the defence of Mr Merhi to her Deputy, the Presiding Judge's response of 31 August and her response to the Presiding Judge dated 5 September. An addendum to this correspondence was filed on 28 September 2018, F3732, Addendum to Publication of Correspondence with Head of Defence Office on Potential Conflict of Interest, 28 September 2018.

<sup>2</sup> Transcript of 21 September 2018, pp 72-74.

<sup>3</sup> F3737, Ayyash Defence Submissions Pursuant to the Trial Chamber's Request of 21 September 2018, 1 October 2018; F3738, Soumissions de la Défense de Merhi relativement aux écritures F3732, 1 October 2018; F3739, Sabra Defence Submissions in Relation to Oral Order dated 21 September 2018, 1 October 2018; F3742, Prosecution's Submissions pursuant to the Trial Chamber's Order of 21 September 2018, 1 October 2018; F3743, Soumissions de la Défense de M. Oneissi en réponse à l'Ordonnance de la Chambre du 21 septembre 2018, 1 October 2018. The submissions of the Sabra Defence were filed as confidential and *ex parte*; that status was lifted by the Trial Chamber on 3 October 2018, *see* F3744, Order Reclassifying Sabra Defence Submissions of 1 October 2018, 3 October 2018. The Legal Representatives of Victims informed the Trial Chamber's senior legal officer informally that they do not take a position on the matter.

<sup>4</sup> F3740, Observations de la Chef du Bureau de la Défense suite à l'Ordonnance de la Chambre de première instance du 21 septembre 2018, 1 October 2018 ('Head of Defence Office Observations').

<sup>5</sup> F3741, Observations de la Chef adjointe du Bureau de la Défense suite à l'Ordonnance de la Chambre de première instance du 21 septembre 2018, 1 October 2018.

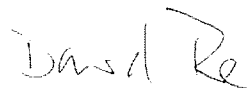
24 August 2018 to delegate to Ms Uñac some of her functions concerning the monitoring of the conduct of the Merhi Defence, but envisaged that an ‘alternative mechanism’ should be put in place to resolve the situation.<sup>6</sup>

5. The Head of Defence Office’s submissions, however, do not elaborate on this envisaged alternative mechanism (a subject which the Presiding Judge had originally raised in his memorandum to her of 31 August 2018). In addition, her submissions provide no suggested timeline for resolving the matter. The Trial Chamber seeks an expeditious solution.

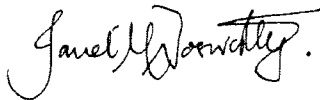
6. Accordingly, to address the identified conflict of interest, the Trial Chamber **instructs** the Head of Defence Office to inform the Trial Chamber of the details and timeline for the envisaged alternative mechanism, including its legal basis, by **Monday, 15 October 2018**. Given that the Parties were unaware when they filed their submissions on 1 October 2018 that the Head of Defence Office had reconsidered her decision of 24 August 2018, they may make any further submissions by **Monday, 22 October 2018**.

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

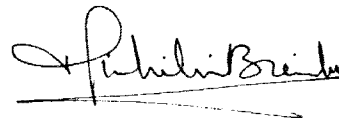
Leidschendam,  
The Netherlands  
5 October 2018



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

<sup>6</sup> Head of Defence Office Observations, para. 6.

