



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 October 2018

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

NOTIFICATION OF PROPOSED AMENDMENT TO RULE 57 'FUNCTIONS OF THE HEAD OF DEFENCE OFFICE' TO PROVIDE A MECHANISM TO DEAL WITH CONFLICTS OF INTEREST IN THE DEFENCE OFFICE

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

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. This filing is to notify the Parties and Legal Representatives of Victims that I have proposed to the Vice-President, who is the chair of the Special Tribunal's Rules Committee, to amend Rule 57 of the Special Tribunal's Rules of Procedure and Evidence, 'Functions of the Head of Defence Office'. The amendment would insert a new Rule 57 (K) to read,

Where the Head of Defence Office, a Judge or Chamber believes that a conflict of interest exists in relation to any function specified in Rule 57, the Registrar, after consulting the Head of Defence Office and the Judge or Chamber, shall appoint a neutral third party, such as an *amicus curiae*, to exercise the functions of the Head of Defence Office in all matters affected by the conflict of interest.

2. It follows from Rule 57 (I) which provides,

Neither the Head of Defence Office nor its members shall take any instructions from suspects or accused persons or be involved in factual allegations or matters relating to a specific case, which may raise conflicts of interest and affect the independence of the Office.

3. The general rationale for the proposed Rule amendment is to establish a statutory mechanism to deal with potential or actual conflicts of interest that may arise in the Defence Office in the absence of any express authority in the Statute of the Special Tribunal and the Rules permitting the delegation of any of the Head of Defence Office's functions to someone outside the Defence Office.

4. The need for such an amendment has been identified in the conflicts of role and hence interest arising from the new Head of Defence Office's former role—until 29 June 2018, the day after the completion of all Defence evidence in the case of *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*—as co-counsel for the Accused, Mr Hassan Habib Merhi, and her new statutory functions. These include the statutory oversight of the effective legal representation, by their assigned counsel, of Accused persons.¹

5. On 24 August 2018, Ms Dorothee Le Fraper du Hellen delegated certain functions relating to the oversight of the Merhi Defence to her Deputy.² However, on 1 October 2018—following my memorandum to her of 31 August pointing out that the delegation to her Deputy

¹ STL-13-04/I/PTJ, *Prosecutor v. Merhi*, F0049, Assignment of Co-counsel, 30 December 2013; STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F3701, Withdrawal of the Assignment of Ms Dorothee Le Fraper du Hellen, Co-counsel of the Defence team for Mr Hassan Habib Merhi, pursuant to Article 34 (A) of the Directive on the Appointment and Assignment of Defence Counsel, 29 June 2018.

² F3732, Publication of Correspondence with Head of Defence Office on Potential Conflict of Interest, 10 September 2018 ('Publication of correspondence'), pp 3-6.

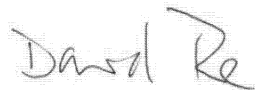
of the task of monitoring her superior's performance was defective as it created an untenable conflict of interest—she revoked the delegation.³ However, this means that she is now (again) effectively monitoring her own performance as counsel between 30 December 2013 and 29 June 2018.

6. The Head of Defence Office also sees no actual or potential conflict of interest in monitoring the effective representation of the Defence of the other Accused.⁴ This is notwithstanding that as co-counsel for Mr Merhi she signed more than 30 joint submissions with counsel for the other Accused,⁵ that counsel for Mr Merhi made in-court interventions supporting the submissions of other Defence counsel, and that the cross-examination of Prosecution witnesses was coordinated with counsel for other Accused.

7. Ms Le Fraper du Hellen, on 1 October, submitted that—to address the Trial Chamber's concerns—she will find an 'alternative mechanism' concerning monitoring the conduct of the Merhi Defence.⁶ On 5 October, the Trial Chamber requested details from her of this 'alternative mechanism' by 15 October, while giving the Parties until 22 October to respond.⁷ This proposed Rule amendment is independent of any 'alternative mechanism' that the Head of Defence Office may eventually propose.

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

Leidschendam,
The Netherlands
11 October 2018



Judge David Re, Presiding



³ 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's observations'), para. 6.

⁴ Head of Defence Office's observations, para. 2.

⁵ See Publication of correspondence, p. 9, fns 2-3.

⁶ Head of Defence Office's observations, para. 6.

⁷ F3745, Order in Relation to Head of Defence Office's Observations of 1 October 2018, 5 October 2018.