

The Pre-Trial Judge



Le Juge de la mise en état

المحكمة الخاصة بلبنان
SPECIAL TRIBUNAL FOR LEBANON
TRIBUNAL SPÉCIAL POUR LE LIBAN

THE PRE-TRIAL JUDGE

Case no.: CH/PTJ/2010/003
Before: Judge Daniel Franssen
Acting Registrar: Mr Herman von Hebel
Date: 25 June 2010
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SCHEDULING ORDER FOR A HEARING

Counsel:
Mr Akram Azoury

Office of the Prosecutor:
Mr Daniel Bellemare, MSM, QC

Defence Office:
Mr François Roux

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I. – Summary of the Proceedings:

1. On 17 March 2010, Mr Jamil El Sayed, represented by his Counsel Akram Azoury (the “Applicant”), submitted an application before the President of the Special Tribunal for Lebanon (the “President” and the “Tribunal”, respectively), requesting “evidentiary material related to the crimes of libellous denunciations and arbitrary detention” (the “Application”).

2. On 15 April 2010, the President issued an order (the “President’s Order”) assigning the Application to the Pre-Trial Judge to (i) pronounce on whether he has jurisdiction over the matter of the Application and the Applicant has standing before the Tribunal; and (ii) should these two questions be answered in the affirmative, to rule on the merits of the Application.¹

3. On 21 April 2010, in order to rule on the Application pursuant to the President’s Order, the Pre-Trial Judge issued an order (the “Order of the Pre-Trial Judge”) inviting the Applicant and the Prosecutor to submit their respective arguments as to the jurisdiction of the Tribunal and the Applicant’s standing to bring proceedings.² On that occasion, he notably made provision that after the exchanges between the Applicant and the Prosecutor, *proprio motu* or after an express and reasoned request by one of them, and if he deems it appropriate, he would order a public hearing and set the date.

4. Pursuant to the time periods prescribed in the Order of the Pre-Trial Judge, the Applicant filed his brief on 12 May 2010 and the Prosecutor his on 2 June 2010. They then respectively filed rejoinders on 17 June 2010 (the “Applicant’s Reply”) and on 23 June 2010 (the “Prosecutor’s Rejoinder”).

¹ President’s Order, paras. 37 to 39.

² Order of the Pre-Trial Judge, pp. 2 to 4.

II. – The Arguments of the Applicant and of the Prosecutor:

5. In his Reply, the Applicant requests the Pre-Trial Judge to convene a public hearing in order to present his claims.³ In support of his request, he relies in particular upon the fact that the convening of a hearing constitutes the “confirmation of the quasi absolute right to publicity of the hearings which can only be set aside for exceptional reasons exhaustively set forth in the law.”⁴ He adds, to this end, that according to international case law, “[...] the basis for the right to a public hearing is the protection of the litigant from justice in secret with no public scrutiny and the guarantee of transparency in the administration of justice” and that “[t]o deny [...] this right would be to deprive him of the guarantee of a fair trial by depriving him of his right to ‘be entitled to present his arguments orally before a court’.”⁵

6. The Prosecutor, on the other hand, considers that it is unnecessary to convene a hearing on the strictly legal matters of jurisdiction and standing.⁶ Indeed, according to the Prosecutor, the Applicant has already had ample opportunity to submit his arguments through a public procedure of filing of submissions.⁷ Moreover, to allow the Applicant to present orally the arguments he has already made in writing would be contrary to the needs of a proper administration of justice and would not provide any additional procedural safeguard.⁸

III. – Statement of Reasons:

7. The Pre-Trial Judge wishes first of all to point out that the Applicant does not have an absolute right to present his claims orally before the Tribunal. Although it is an indispensable guarantee of justice and of transparency of the proceedings and constitutes

³ Applicant’s Reply, paras 56 and 57.

⁴ *Ibid.*, para.56.

⁵ *Ibid.*

⁶ Prosecutor’s Rejoinder, para.12.

⁷ *Ibid.*

⁸ *Ibid.*, para.15.

“one of the means whereby confidence [...] can be maintained” in the Tribunal, the exercising of this right must be assessed in terms of the circumstances of the case.⁹ In this regard, it should be noted, as the Prosecutor has indeed correctly observed, that the Applicant has already had the opportunity to submit all the arguments he wished in his briefs which, in order to maintain the transparency of the proceedings, have been registered in the public records.

8. That being so, taking account of the special circumstances of the present case and of the significance of the issues it raises, the Pre-Trial Judge considers that it is in the interests of justice to organise a hearing at which the Applicant and the Prosecutor will have the opportunity to orally emphasize or enumerate some fundamental points of their arguments as to the jurisdiction of the Tribunal and the standing of the Applicant to bring proceedings. The convening of a hearing would also provide an opportunity for the Pre-Trial Judge to obtain further information or explanations from the Applicant and from the Prosecutor in connection with, for example, the state of the ongoing internal proceedings, legislation in force in terms of international judicial cooperation, and any other issues of fact or of law that he may deem useful.

9. In addition, in the light of the Rejoinders,¹⁰ it appears that an issue closely connected with the jurisdiction of the Tribunal and with the Applicant’s standing to bring proceedings has already been examined, i.e. the possibility for the Applicant to have access to the requested documents during the investigation. A hearing will also allow the Applicant and the Prosecutor to present their views on this subject and they will be invited to do so at the time.

⁹ Cf. in this regard *Axen v. Germany*, judgement of 8 December 1983, European Court of Human Rights (ECHR), paras. 25 to 28; *Fredin v. Sweden*, judgement of 23 February 1994, ECHR, paras. 18 to 22; *Fischer v. Austria*, judgement of 26 April 1995, ECHR, para. 44; *Jacobsson v. Sweden* (n°2), judgement of 19 February 1998, ECHR, p. ii), part B); Decision on Prosecution Motion for Protective Measures (Concerning a Humanitarian Organisation), *The Prosecutor v. Mllošević*, Case no. IT-02-54-T, International Criminal Tribunal for the former Yugoslavia, p. 5; Communication n° 819/198, *Kavanagh v. Ireland*, 4 April 2001, para. 10.4. It should also be noted that Rule 156 of the Rules of Procedure and Evidence of the International Criminal Court provides that the appeal proceedings shall be in writing unless the Chamber decides to convene a hearing.

¹⁰ Applicant’s Reply, paras. 30 and 31, and Prosecutor’s Rejoinder, paras 28 and 29.

FOR THESE REASONS,

IN ACCORDANCE with the President's Order and the Order of the Pre-Trial Judge,

THE PRE-TRIAL JUDGE

ORDERS the convening of a hearing which will take place in the courtroom of the Tribunal on 13 July 2010 at 15.00 hours, under the following conditions:

- (i) The Applicant and the Prosecutor will have 20 minutes each to present their arguments;
- (ii) The Pre-Trial Judge will then ask any questions of the Applicant and of the Prosecutor that he deems useful, in particular on the subjects mentioned in paragraphs 8 and 9 above;

INVITES the Registrar of the Tribunal to take all necessary measures to this effect, in particular those provided for in Rule 139 of the Rules of Procedure and Evidence of the Tribunal.

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

Leidschendam, 25 June 2010.

Daniel Fransen
Pre-Trial Judge

