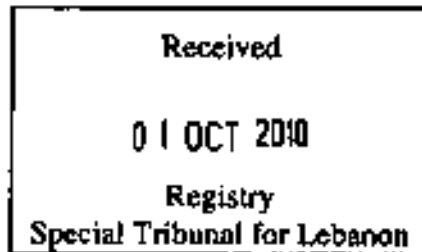




THE PRESIDENT OF THE TRIBUNAL

Case No.: CH/PRES/2010/02
Before: Judge Antonio Cassese
Acting Registrar: Mr Herman von Hebel
Date: 1 October 2010
Original language: English
Type of document: Public



SCHEDULING ORDER

Counsel:
Mr Akram Azoury

The Prosecutor:
Mr Daniel Bellemare, MSM, QC

The Head of the Defence Office:
Mr François Roux





I, Antonio Cassese, PRESIDENT of the Special Tribunal for Lebanon ("Tribunal"):

NOTING the "Order relating to the jurisdiction of the Tribunal to rule on the application by Mr El Sayed dated 17 March 2010 and whether Mr El Sayed has standing before the Tribunal" ("Order of 17 September 2010") issued by the Pre-Trial Judge on 17 September 2010;

NOTING the "Appeal of the 'Order Relating to the Jurisdiction of the Tribunal to Rule on the Application by Mr El Sayed Dated 17 March 2010 and Whether Mr El Sayed Has Standing before the Tribunal' and Urgent Request for Suspensive Effect" ("Appeal") by the Tribunal's Prosecutor ("Prosecutor") and the "Information sur le dépôt par le Requérent le 30 septembre 2010 d'une opposition à la demande du Procureur d'une mesure urgente et demande d'information sur l'identité des juges qui composent la cour d'appel" by Mr El Sayed, both filed on 29 September 2010;

NOTING that Article 8(1) of the Statute of the Tribunal ("Statute") provides that five judges shall serve on the Appeals Chamber;

CONSIDERING that the Rules of Procedure and Evidence of the Tribunal ("Rules") do not explicitly provide for a right to appeal orders or decisions other than preliminary motions or final judgments;

CONSIDERING however that, in accordance with Rule 3, in case of ambiguity, the Tribunal shall interpret the Rules *inter alia* in a manner consistent with the spirit of the Statute and the general principles of international criminal procedure;

CONSIDERING further that Article 14(5) of the International Covenant on Civil and Political Rights (1966) provides for the right to appeal decisions rendered by domestic courts but appears to limit such right of appeal to those who have been convicted of a crime;



CONSIDERING however that in instances other than criminal conviction the right of every person, institution or organ directly and adversely affected by a judicial decision to have such a decision reviewed, whether immediately or at the end of the proceedings in question, must be held to belong to the general principles of international criminal procedure, as evidenced *inter alia* by the practice of international criminal courts and tribunals:

CONSIDERING moreover that the rationale of this right is the need to ensure due process to any person or entity adversely and directly affected by a judicial decision, by enabling such person or entity to challenge the well-foundedness of the judicial decision, so that fundamental rights, both substantive and procedural, are fully safeguarded by double scrutiny;

CONSIDERING that the authority to provide for immediate judicial review is inherent in the jurisdiction of international criminal courts and tribunals, and the corresponding right must be fully respected, where fairness and the need for the expeditious administration of justice so require with a view to preventing possibly erroneous decisions from having a negative impact on the further conduct and the outcome of the proceedings;

NOTING the "Réplique à l'appel du Procureur limitée à la mesure urgente de suspension de l'effet exécutoire de l'Ordonnance du Juge de la mise en état du 17 septembre 2010" ("Reply"), filed by Mr El Sayed on 30 September 2010, opposing the request for suspensive effect of this appeal;

CONSIDERING the need for a fair and expeditious ruling on this appeal, which might result in rendering further litigation on the merits moot;

CONSIDERING therefore that for reasons of judicial economy it would be inappropriate to uphold the request by Mr El Sayed in his Reply;



CONSIDERING the need for the Appeals Chamber to convene in order to carry out its judicial function;

PURSUANT to Article 17 of the Annex to UN Security Council Resolution 1757 (2007), Article 10 of the Statute and Rules 8 and 32(H), and having taken into account Rules 90 and 176,

HEREBY DECIDE to convene the Appeals Chamber for the purposes of determining this appeal, its composition to be announced as soon as all the necessary measures, including security measures, are taken;

ORDER the stay of the Pre-Trial Judge's Order of 17 September 2010 until such time as these appellate proceedings are terminated;

ORDER that:

1. Mr El Sayed shall file his response, if any, to the Appeal, within five days of his receiving the French text of the Appeal;¹
2. The Prosecutor shall file his brief in reply, if any, within five days of his receiving the response of Mr El Sayed;¹
3. Any challenge pursuant to Rule 25 shall be filed within five days of the announcement of the composition of the Appeals Chamber.

CALL UPON the United Nations to file an *amicus curiae* brief by 6 October 2010 on the matters raised by the Order of 17 September 2010, in view of the fact that some of the material currently in the custody of the Tribunal would appear to have been transferred by the UN Independent Investigative Commission;

¹ All filings shall conform with the Practice Direction on Filing of Documents Before the Special Tribunal for Lebanon (STL-PD-2010-01) of 15 January 2010, except that copies of authorities pursuant to Article 4 thereof do not need to be provided if easily retrievable on the internet in English or French.



ORDER that, should Mr El Sayed or the Prosecutor wish to submit observations on such a brief, these observations shall be filed by 22 October 2010:

REQUEST the Registrar to serve a copy of this order to the relevant authorities within the UN.

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

Dated this 1st day of October 2010.

Leidschendam, The Netherlands

Judge Antonio Cassese

President

