



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE TRIAL CHAMBER

Case No.: STL-11-01/I/TC

Sitting: Judge Robert Roth, Presiding Judge
Judge Micheline Braidy
Judge David Re
Judge Janet Nosworthy, alternate judge
Judge Walid Akoum, alternate judge

Registrar: Mr Herman von Hebel

Date: 2 November 2011

Original: French

Type of document: Public

THE PROSECUTOR

v.

**SALIM JAMIL AYYASH
MUSTAFA AMINE BADREDDINE
HUSSEIN HASSAN ONEISSI &
ASSAD HASSAN SABRA**

**DECISION RELATING TO THE ASSIGNMENT OF “DUTY COUNSEL” BY THE
HEAD OF DEFENCE OFFICE**

Office of the Prosecutor:
Mr Daniel A. Bellemare, Q.C.

The Accused:
Mr Salim Jamil Ayyash
Mr Mustafa Amine Badreddine
Mr Hussein Hassan Oneissi
Mr Assad Hassan Sabra

Defence Office:
Mr François Roux





I. Background to the proceedings

1. Having been seized by the Pre-Trial Judge on 17 October 2011, on 20 October 2011 the Trial Chamber issued a “Scheduling Order in respect of Rule 106 of the Rules of Procedure and Evidence” (“RPE”).¹ This Order set a deadline of 2 November 2011 for the Office of the Prosecutor and the four Accused, as well as the Defence Office, to file written submissions as to the application of Rule 106 (A) of the RPE, with a hearing to follow on 11 November 2011.
2. On 25 October 2011, the Head of Defence Office assigned Messrs Eugene O'Sullivan and Emile Aoun as duty counsel for Mr Salim Ayyash, Messrs Antoine Korkmaz and John Jones as duty counsel for Mr Mustafa Badreddine, Messrs Vincent Courcelle-Labrousse and Yasser Hassan as duty counsel for Mr Hussein Oneissi and Mr David Young and Dr Guenael Mettraux as duty counsel for Mr Assad Sabra. The decision was based on Rule 57 (D) (ii) and (iii) of the RPE.²
3. On 27 October 2011, the Trial Chamber requested that the Defence Office clarify the basis on which it assigned the aforementioned counsel with respect to the application of Rule 57 D (iii) of the RPE.³
4. On 28 October 2011, the Defence Office responded to the request for clarification⁴ and specified that “[TRANSLATION] the listed counsel do not represent the Accused directly. They are assigned to protect the rights of the Accused in the proceedings resulting from the Order of the Chamber of 20 October 2011.”⁵ In the conclusion of its response to the Trial Chamber, the Defence Office requested that the counsel assigned in its decision of 25 October 2011 be authorised to file written submissions within the period laid down in the

¹ *In re: Prosecutor v. Ayyash et al.*, Scheduling Order in Respect of Rule 106 of the Rules of Procedure and Evidence, Case No. STL-1-01/I/TC, 20 October 2011 (“*Ayyash et al.*”).

² *Ayyash et al.*, Nomination des Conseils de Permanence en vertu de l’article 57(D) (ii) et (iii) du Règlement de procédure et de preuve, Case No. STL-1-01/I/TC, 25 October 2011

³ *Ayyash et al.*, Order for Clarification from the Defence Office, Case No. STL-1-01/I/TC, 27 October 2011.

⁴ *Ayyash et al.*, Réponse à l’Ordonnance de la Chambre de première instance de 27 octobre 2011, Case No. STL-11-01/I, 28 October 2011.

⁵ *Ibid.*, para. 4.



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Order of 20 October 2011 and that the aforementioned counsel be allowed to participate in the hearing scheduled for 11 November 2011.

II. Statement of reasons

5. In his decision of 25 October 2011, the Head of Defence Office refers to Rule 57 (D) (ii) and (iii) of the RPE as legal basis.
6. Rule 57 (D) (ii) of the RPE tasks the Head of Defence Office to “identify on the list mentioned in Rule 59 (B) counsel [...] for assignment to a suspect, for assignment to an accused for the purpose of the initial appearance conducted in accordance with Rule 98 or for any other urgent matter”. For its part, Rule 57 (D) (iii) grants the Head of Defence Office the authority to assign counsel to the suspect or to the accused “in consultation with [him] and with his agreement”.
7. According to the response from the Defence Office of 28 October 2011, “[TRANSLATION] [n]either the Head of Defence Office, nor any of the staff of the Office, have had contact with the Accused in the *Ayyash et al.* case.”⁶ The requirements of Rule 57 (D) (iii) are therefore clearly not fulfilled. The question then arises as to whether Rule 57 (D) (ii) may be read independently from Rule 57 (D) (iii) and whether it allows the Head of Defence Office to assign counsel to a suspect or to an accused without having consulted with him and without his agreement, for an “urgent matter” (Rule 57 (D) (ii) *in fine*).
8. This is not the case. The authority expressly granted to the Head of Defence Office by Rule 57 (D) (ii) is one to “identify [...] counsel” and not to appoint them. If the authors of the RPE had wished to give the authority to appoint, in the same paragraph, they would have said so. As a consequence, Rule 57 (D) (ii) does not extend the possibilities made available to the Head of Defence Office, in particular by Rule 57 (D) (iii).
9. This interpretation is consistent with the reasoning of the RPE and notably Rule 57 thereof. The RPE make a clear distinction between proceedings conducted in the presence of the accused and *in absentia* proceedings. There are specific rules which apply to the latter and

⁶ *Ibid.*, para. 6.



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with respect to the rights of defence, particularly Rule 57 (D) (viii), which shall be discussed hereinafter. For as long as the *in absentia* proceedings have not been initiated in accordance with Rule 106 (A), the right of the Accused to freely choose their own counsel must be respected. The Defence Office has not reported any consultation and even less any agreement with the Accused. It is not in accordance with the spirit of the RPE to circumvent that right, even with respect to an urgent matter within the meaning of Rule 57 (D) (ii) *in fine*.

10. As the Defence Office has acknowledged,⁷ Rule 57 (D) (viii), which gives the Head of Defence Office the authority to “assign counsel for the purposes of proceedings *in absentia*,” cannot be invoked at this stage. Indeed, even if the stages prior to the opening of *in absentia* proceedings were completed following the Order of the Pre-Trial Judge of 17 October 2011 and the Order of this Chamber of 20 October 2011, those proceedings can only be deemed to have started from the moment when the Trial Chamber has ruled with respect to Rule 106 of the RPE.
11. The counsel assigned by the decision of 25 October 2011 may not therefore be appointed for the Accused, as the Defence Office, moreover, has recognised.⁸ This does not, however, prevent them from participating in the proceedings. Indeed, Rule 57 (F) of the RPE provides that “the Head of Defence Office or a person designated by him shall have rights of audience in relation to [...] the fairness of the proceedings or the rights of a suspect or accused”. The counsel assigned by the decision of 25 October 2011 shall therefore be deemed to be representatives of the Defence Office, tasked by it to defend not the rights of the Accused considered individually, but those of all of the Accused in these proceedings, if they are designated for this purpose by the Head of Defence Office.

**FOR THESE REASONS,
the Trial Chamber:**

- (i) Authorises the counsel assigned by the decision of the Head of Defence Office to file written submissions within the period laid down by the Chamber, insofar as they have

⁷ *Ayyash et al.*, Réponse à l’Ordonnance de la Chambre de première instance de 27 octobre 2011, Case No. STL-11-01/I, 28 October 2011, para. 10.

⁸ *Ayyash et al.*, Réponse à l’Ordonnance de la Chambre de première instance de 27 octobre 2011, Case No. STL-11-01/I, 28 October 2011, para. 4 (“[TRANSLATION] [t]he listed counsel do not represent the Accused directly”).



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been designated by the Head of Defence Office pursuant to Rule 57 (F) of the Rules of Procedure and Evidence.

(ii) Allows them to participate in the hearing scheduled for 11 November 2011.

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

Leidschendam, 2 November 2011

[signature]

Robert Roth, Presiding Judge

[signature]

Micheline Braidy, Judge

[signature]

David Re, Judge

