

**BEFORE THE TRIAL CHAMBER**

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

Before: Judge Robert Roth, Presiding
Judge Micheline Braidy
Judge David Re
Judge Janet Nosworthy, Alternate Judge
Judge Walid Akoum, Alternate Judge

Registrar: Mr. Herman von Hebel

Date: 13 January 2012

Original language: English

Type of document: Public

THE PROSECUTOR

v.

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

**DECISION ON « OBSERVATIONS DU BUREAU DE LA DÉFENSE » OF 22
DECEMBER 2011**

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

Head of Defence Office:
Mr. François Roux





1. On 22 December 2011 the Defence Office filed (confidentially) "Observations du Bureau de la Défense". The observations, in essence, argue that permanent counsel should be appointed to represent the four Accused, Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi and Assad Hassan Sabra, before the Trial Chamber has made its decision under Rule 106 of the Rules of Procedure and Evidence as to whether it should conduct a trial in absentia.
2. In its observations the Defence Office asks the Trial Chamber, first, to be informed of the substance of the submissions and second, to hold a closed session hearing to permit a debate with the Prosecutor before the Chamber "sur cette question" - meaning, presumably, the protection of the rights of the four Accused in the proceedings.
3. Supporting the request for the closed session hearing the observations note that the Office of the Prosecutor is the only party in the proceedings under Rule 106 actually making submissions concerning Requests for Assistance sent by the Prosecutor to the Lebanese authorities on 10 November 2011, and the responses of the Lebanese authorities. The Defence Office also notes that no defence counsel are defending the interests of the four Accused but considers that the Defence Office itself lacks the mandate to make its own submissions in relation to each Accused individually. Consequently, it argues, the proceedings have become "unilateral".¹ Assigned counsel for the four Accused should therefore be permitted to examine the measures taken by the Lebanese Authorities, to make submissions protecting the rights of the four Accused, and to participate in the Rule 106 proceedings, thereby allowing an adversarial argument² before the Trial Chamber.
4. To permit a debate on this question between the Prosecutor and the Defence Office, the observations request the Trial Chamber to convene a closed session hearing. On 11 January 2012 the Prosecution informed the Trial Chamber that it would not file a response to these observations.³

¹ « les débats devant la Chambre depuis cette date sont devenus unilatéraux », Defence Office observations, page 1.

² « de permettre un réel débat contradictoire », Defence Office observations, page 1.

³ Communication between the Office of the Prosecutor and the Trial Chamber's Legal Officer, 11 January 2012.



DISCUSSION

5. The Head of Defence Office, on 25 October 2011, purported under Rules 57 (D) (ii) and (iii) to assign a counsel and co-counsel to each of Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi and Assad Hassan Sabra.⁴ The Trial Chamber, however, ruled, on 2 November 2011,⁵ that although those Rules did not permit the appointment of counsel in the manner attempted by the Head of Defence Office, it would nevertheless allow the eight named defence counsel the right of audience, as designates of the Head of Defence Office under Rule 57 (F), thus permitting their participation in the proceedings under Rule 106, including in an oral hearing held on 11 November 2011.⁶ Subsequently, however, the Head of Defence Office declined to make a designation under Rule 57 (F).⁷
6. The Defence Office observations do not explicitly ask the Trial Chamber to reconsider the decision of 2 November 2011. However, even if they do implicitly seek this, no new facts have emerged, and hence no reason exists to reconsider the decision.
7. In relation to the Defence Office's request for a closed session hearing to allow a debate on the question of the assignment of defence counsel for each Accused, the Trial Chamber, noting firstly that the Prosecution has declined to make submissions, and secondly, that its decision of 2 November 2011 stands (and unchallenged) sees no valid reason to hold a hearing. Consequently, the Trial Chamber rejects the request.
8. As a final matter, the Defence Office filed its observations confidentially, but without specifying why it did so. The Trial Chamber can find no rationale for the observations to remain confidential and accordingly orders the lifting of the confidentiality.

⁴ « Nomination des conseils de permanence en vertu de l'Article 57(d) (ii) et (iii) du règlement de procédure et de preuve », 25 October 2011.

⁵ After first seeking clarification in "Order for Clarification from the Defence Office", 27 October 2011 and obtaining it in « Réponse à l'ordonnance de la Chambre de première instance de 27 Octobre 2011 », 28 October 2011.

⁶ Decision Relative a la Nomination de "Conseils de Permanence" Par le Chef du Bureau de la Defense, 2 November 2011, pages 3-4.

⁷ « Observations du bureau de la defense relatives à l'application de l'article 106 a) du règlement de procédure et de preuve », 2 November 2011, para. 7.



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The Trial Chamber:

- (i) **REJECTS** the Defence Office's request for a closed session hearing, and
- (ii) **INSTRUCTS** the Registry to file publicly the "Observations du Bureau de la Défense".

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

13 January 2012,
Leidschendam, The Netherlands


Judge Robert Roth, Presiding
Judge Micheline Braidy
Judge David Re