

**THE PRESIDENT OF THE TRIBUNAL**

Case No.: STL-11-01/PT/AC
Before: Judge Sir David Baragwanath
Registrar: Mr Herman von Hebel
Date: 16 March 2012
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THE PROSECUTOR

v.

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

**ORDER FOR STAY OF THE SCHEDULING ORDER OF 7 MARCH 2012 AND
GIVING FURTHER DIRECTIONS**

Office of the Prosecutor:
Ms Joyce Tabet
Mr Iain Morley, QC
Mr Ekkehard Withopf

Counsel for Mr Salim Jamil Ayyash:
Mr Eugene O'Sullivan
Mr Emile Aoun

Head of Defence Office:
Mr François Roux

Counsel for Mr Mustafa Amine Badreddine:
Mr Antoine Korkomaz
Mr John Jones

Counsel for Mr Hussein Hassan Oneissi:
Mr Vincent Courcelle-Labrousse
Mr Yasser Hassan

Counsel for Mr Assad Hassan Sabra:
Mr David Young
Mr Guénaél Mettraux





I, David Baragwanath, President of the Special Tribunal for Lebanon (“Tribunal”), for reasons that follow, stay the Scheduling Order of 7 March 2012 until further order.

PROCEDURAL HISTORY

1. On 2 March 2012, the Appeals Chamber of the Tribunal was seized with a request by the Pre-Trial Judge to answer preliminary questions submitted pursuant to Rule 68(G) of its Rules of Procedure and Evidence (“Rules”).¹
2. The Pre-Trial Judge submits that on 8 February 2012, he received from the Tribunal’s Prosecutor a confidential and *ex parte* request to amend, in certain respects, the indictment² confirmed on 28 June 2011 against Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi and Assad Hassan Sabra.³
3. On 6 March 2012, the Appeals Chamber conducted an *ex parte* hearing to establish whether the proposed amendments affected all or any of the existing accused and was advised that the new count of criminal association affected each of them.
4. On 7 March 2012, I issued a Scheduling Order directing the Prosecutor and counsel for the existing accused to file by 15 March 2012 written submissions on (i) whether the Appeals Chamber should hear and determine the Pre-Trial Judge’s request; and (ii) the questions raised by him.⁴
5. Counsel for Mr Sabra filed their submissions on 9 March 2012.⁵ Counsel for Mr Oneissi filed their submissions on 13 March 2012.⁶ Counsel for Mr Badreddine,⁷ the Defence Office⁸ and the Prosecution⁹ filed their submissions on 15 March 2012.

¹ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/I/PT, Order on Preliminary Questions Concerning the Crime of Criminal Association Addressed to the Appeals Chamber Pursuant to Rules 68 (G) and 71 (A) (ii) of the Rules of Procedure and Evidence, 2 March 2012.

² STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/I, Indictment, 10 June 2011.

³ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/I, Decision Relating to the Examination of the Indictment of 10 June 2011 Issued Against Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine, Mr Hussein Hassan Oneissi & Mr Assad Hassan Sabra, 28 June 2011.

⁴ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/I/PT/AC, Scheduling Order for the Second Submission by the Pre-Trial Judge Pursuant to Rule 68(G), 7 March 2012.

⁵ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/I/PT/AC, Defence Submissions Pursuant to President’s Order of 7 March 2012, 9 March 2012.



6. However, on 15 March, the Pre-Trial Judge informed me that on 13 March 2012, by confidential decision, he rejected for procedural reasons the request of the Prosecutor to amend the indictment,¹⁰ and, on 15 March 2012, by confidential decision, declared for purposes of clarification that the decision of 13 March 2012 had rejected the request of 8 February 2012 wholly and not partially.¹¹
7. Since the terms of the Prosecutor's request to the Pre-Trial Judge are confidential and *ex parte*, on 15 March 2012 I met counsel for the Prosecutor *ex parte* to determine what degree of confidentiality should be maintained in the present order and reasons. They accepted that the reasons might include reference to the fact, although not the content, of the decisions of 13 and 15 March.

ANALYSIS

8. The decisions of 13 and 15 March having been brought to my attention, in the light of counsel's submissions I have formed the provisional view that the Scheduling Order of 7 March has been overtaken by the Pre-Trial Judge's rejection of the Prosecutor's request.
9. It is my opinion that the Pre-Trial Judge's rejection of the Prosecutor's request raises new issues as to the admissibility of the preliminary questions in terms of Rules 68(G) and 176 *bis* (A) and, consequently, necessitates a stay of the Scheduling Order of 7 March.
10. It is I consider arguable that the jurisdiction of the Pre-Trial Judge to submit a preliminary question under Rule 68(G) is premised on there being a relevant indictment giving rise to the question. But the Pre-Trial Judge is no longer seized of the request to amend the indictment. It

⁶ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/I/PT/AC, Observations of the Defence for Mr Oneissi In Compliance With the President of the Tribunal's Order of 7 March 2012, 13 March 2012.

⁷ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/I/PT/AC, Mémoire de la Défense de M. Badreddine en Réponse à l'Ordonnance du Président du Tribunal du 7 Mars 2012, 15 March 2012.

⁸ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/I/PT/AC, Observations du Bureau de la Défense, 15 March 2012.

⁹ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/I/PT/AC, Prosecution Submissions Pursuant to the President's Scheduling Order of 7 March 2012, 15 March 2012.

¹⁰ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/I/PT/PTJ, Décision Relative à la Requête du Procureur du 8 Février 2012 aux fins de Déposer un Acte d'Accusation Modifié, 13 mars 2012.

¹¹ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/I/PT/PTJ, Ordonnance Relative à la Requête Urgente du Procureur aux fins de Clarification de la Décision du Juge de la Mise en État du 13 Mars 2012, 15 mars 2012.



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may follow that the Appeals Chamber has no jurisdiction to exercise authority under Rule 176 *bis* (A) of the Rules to issue a decision on any such question. It is for the Appeals Chamber to decide whether that is so.

11. Accordingly the Scheduling Order of 7 March 2012 must be stayed pending the final decision of the Appeals Chamber on this matter.

DISPOSITION

FOR THESE REASONS;

PURSUANT TO Article 10 of the Statute and Rule 32(B) of the Rules;

I ORDER that the Scheduling Order of 7 March 2012 be stayed until further order;

I DIRECT that the Parties and the Defence Office may by 21 March 2012 file any further submissions on the issue in the light of the Pre-Trial Judge's rejection of the Prosecutor's request, and on the need for a public hearing on this matter;

I RESERVE leave to all parties to apply by memorandum for further directions in any other respect.

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

Dated this 16th day of March 2012,

Leidschendam, the Netherlands

David Baragwanath
President

