

**BEFORE THE TRIAL CHAMBER**

Case No: STL-11-01/PT/TC

Judge Robert Roth, Presiding
Judge Michelle Braidy
Judge David Re
Judge Janet Nosworthy, Alternate Judge
Judge Walid Akoum, Alternate Judge

Registrar: Mr. Herman von Hebel

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THE PROSECUTOR

v.

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

**DECISION ON EXTENSION OF WORD LIMITS FOR THE FILING OF
PRELIMINARY MOTIONS CHALLENGING JURISDICTION**

Office of the Prosecutor:
Mr. Norman Farrell

Defence Office:
Mr. François Roux

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

Counsel for Mustafa Badreddine:
Mr. Antoine Korkmaz
Mr. John Jones

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

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





I. Introduction

1. On 2 February 2012, the Head of the Defence Office appointed counsel to represent the four Accused, Mr. Salim Jamil Ayyash, Mr. Mustafa Amine Badreddine, Mr. Hussein Hassan Oneissi and Mr. Assad Hassan Sabra in the proceedings to be held *in absentia*.¹ On 12 April 2012, in a status conference, the Pre-Trial Judge ordered that any preliminary motions challenging the jurisdiction of the Tribunal under Rule 90 (A) (i) of the Rules of Procedure and Evidence be filed by 4 May 2012.²
2. The Practice Direction on Filing of Documents before the Special Tribunal for Lebanon specifies that, unless otherwise provided for in the Rules or ordered by a Judge or Chamber, preliminary motions shall not exceed 20 pages or 6,000 words, whichever is greater.³ The Practice Direction clearly defines the page and word limit; and a motion challenging jurisdiction is a preliminary motion.
3. On Friday 4 May 2012 – the deadline for filing – the Defence for Mr. Sabra, Mr. Badreddine and Mr. Oneissi, each attempted to file motions challenging the jurisdiction of the Tribunal. However, the Court Management Services Section (CMSS) rejected each for contravening the Practice Direction by exceeding both the page and word limit. CMSS then directed the parties to file separate motions seeking an extension of the word and page limits and an extension of the time to file. The Defence of Mr. Ayyash also filed a motion challenging jurisdiction on 4 May 2012, but one in accordance with the Practice Direction.

II. Sabra Defence Motions

4. After CMSS refused to accept and file the three defective motions challenging jurisdiction, on 4 May 2012, the Defence for Mr. Sabra filed two motions. The first requested an extension of the page and word limit on its motion challenging jurisdiction, to an additional five pages, to total 25 pages, or a 5,000 word increase to a total of 11,000 words, and to regard its

¹ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Assignment of Counsel for the Proceedings Held *In Absentia* Pursuant to Rule 106 of the Rules, 2 February 2012.

² STL, *Prosecutor v. Ayyash et al.*, Case No STL-11-01/PT/TC, Conférence de mise en état (audience publique), 12 avril 2012, page 51, lignes 8-15, Status Conference before the Pre-Trial Judge, 12 April 2012, page 47, lines 17-23.

³ Practice Direction on Filing of Documents before the Special Tribunal for Lebanon, 23 April 2012, STL/PD/2010/01/Rev.1, Article 5(1)(a).



substantive motion challenging jurisdiction as validly filed within time.⁴ It submitted that a requirement to file for an extension as separate from the substantive motion is a “new approach and departure from existing practice”. It claimed that no legal basis exists for this requirement “which in any case contradicts years of practice before the *ad hoc* Tribunals”. Additionally, as substantive justification for the extension sought, it observes that this is the first challenge to the legality of the Tribunal, and the novelty of the issues and the absence of any other case law necessitates reliance on many distinct legal and factual issues and a large number of supporting authorities from other jurisdictions. The Prosecution will not be prejudiced, it argued.

5. The second Sabra Defence motion requested an extension of the page and word limit in relation to a proposed motion relating to the Trial Chamber’s Decision to Hold Trial *in Absentia*.⁵ The motion seeks a further seven pages or 7,000 words and to regard the motion as validly filed within time. The Sabra Defence submitted that the issue is central to the fair trial of the accused, the *in absentia* Decision is lengthy, *in absentia* proceedings have not been subject to international litigation for over 60 years, the absence of any case law arising from this Tribunal requires a large number of supporting authorities from other jurisdictions, a lack of prejudice to the Prosecution, the modest extension in size and the focused submissions.⁶

III. Badreddine Defence Motion

6. On 4 May 2012, the Defence for Mr. Badreddine also filed a motion requesting an extension of the page limit for its motion challenging jurisdiction to 70 pages, and for an extension of

⁴ STL, *Prosecutor v. Ayyash et al.*, Case No STL-11-01/PT/TC, Sabra Motion for Extension of Page Limit/Word Count In Re Motions Challenging Jurisdiction, 4 May 2012.

⁵ STL, *Prosecutor v. Ayyash et al.*, Case No STL-11-01/PT/TC, Sabra Motion for Extension of Page Limit/Word Count In Re *Absentia* Motion, 4 May 2012.

⁶ The Defence of Mr. Badreddine and Mr. Oneissi filed before the Presiding Judge of the Trial Chamber requests for leave to file motions for reconsideration of the Trial Chamber’s Decision to Hold Trial *in Absentia*. STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/TC, Requête de la défense de M. Oneissi en autorisation de sa «demande en réexamen de la décision d’ouverture d’une procédure par défaut du 1^{er} février 2012», 4 mai 2012 ; STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/TC, Demande de la défense de M. Badreddine aux fins d’autorisation du réexamen de la «Décision portant ouverture d’une procédure par défaut» rendue par la Chambre de première instance le 1^{er} février 2012, 4 mai 2012.



the time limit to file this motion.⁷ It submitted that it needs this additional time to adequately represent the interests of the defence, noting that the International Criminal Court has allowed up to 100 pages for requests of this importance.

IV. Oneissi Defence Motions

7. The Defence for Mr. Oneissi filed two motions on 4 May 2012. The first – in respect of its motion challenging the legality of the Tribunal - requested an extension of the page limit by 13 pages to a total of 33 pages or an increase of 8,000 words to a total of 14,000 words.⁸ It observed that the Practice Direction on Filings is silent as to extensions of page limits and whether they should be filed separately or in advance. The Oneissi Defence took issue with being required to file a separate and preliminary motion to extend the page and word limit rather than being permitted to include that motion in the body of its jurisdictional challenge. It repeated the objections of the first Sabra Defence motion submitting that a requirement to file for an extension as separate from the substantial motion is a “new approach and departure from existing practice”. It also noted an apparent inconsistency with the previous practice before the Pre-Trial Judge in the matter of *El-Sayed*.⁹ As a substantive explanation it submitted that the motion challenging the legality of the Tribunal raises “important issues of international law and Lebanese constitutional law whose content is heavy” thereby justifying the extra length.
8. The second motion requested an extension of time for the motion challenging the legality of the Tribunal if the Trial Chamber did not regard its motion as validly filed by 4 May 2012.¹⁰

⁷ STL, *Prosecutor v Ayyash et al.*, Case No STL-11-01/PT/TC, Requête déposée par la défense de M. Badreddine sollicitant l’extension par acte séparé du nombre de pages et la prorogation du délai pour son exception préjudicielle d’incompétence du Tribunal spécial pour le Liban déposée ce jour, 4 mai 2012.

⁸ STL, *Prosecutor v. Ayyash et al.*, Case No STL-11-01/PT/TC, The Defence for Mr Hussein Hassan Oneissi Request for Extension of the Page Limit for the Motion Challenging the Legality of the Tribunal, 4 May 2012.

⁹ STL, *In the matter of El-Sayed*, Case No CH/PTJ/2001/13, Prosecution’s Submission following the Pre-Trial Judge’s Decision Relating to Mr El Sayed’s Observations of 17 August 2011 Concerning the Enforcement of the Decision of 12 May 2011, para. 91.

¹⁰ STL, *Prosecutor v. Ayyash et al.*, Case No STL-11-01/PT/PTJ, Defence for M. Hussein Hassan Oneissi Request for Extension of Time for the Motion Challenging the Legality of the Tribunal, 4 May 2012.



V. Prosecution response

9. On 8 May 2012, the Prosecution filed a response to the second Sabra Defence Motion relating to the *in absentia* Decision, requesting the Trial Chamber to dismiss it because it is not a preliminary motion under Rule 90 (A) (i) and does not fall within the scope of the Pre-Trial Judge's order of 12 April 2012. The Prosecution stated that the Trial Chamber's *in absentia* Decision did not determine the jurisdiction of the Tribunal or the confirmed indictment, and did not address matters described in Rule 90.¹¹ The Prosecution also responded to the three Defence requests for extension of the word count and page limit, stating that it would leave the matter for the Trial Chamber's resolution, without its input.¹²

VI. Discussion

10. The Practice Direction not only specifies that preliminary motions shall not exceed 20 pages or 6,000 words, whichever is greater, but that they should be "submitted to CMSS in accordance with the time limits provided for in the Rules or prescribed by an order or decision issued by a Judge or Chamber".¹³
11. The Sabra and Oneissi motions both claim that seeking leave *before* filing the substantive motion "contradicts years of practice before the *ad hoc* Tribunals". This, however, overstates the procedure at, for example, the International Criminal Tribunal for the Former Yugoslavia (ICTY), where the *practice* varies between the chambers, and according to the circumstances. Indeed some chambers at the ICTY have adversely commented on parties waiting until the deadline to file a request for extension despite well knowing the issues beforehand, and have stated a preference that requests of extension of word limits or time limits be filed in advance.¹⁴ Additionally, a key difference between parties seeking leave to file a reply or seeking an extension of a word or page limit within the substantive document - which may

¹¹ STL, *Prosecutor v Ayyash et al.*, Case No STL-11-01/PT/TC, Prosecution Response to the "Sabra Motion for Extension of Page Limit/Word Count In re *Absentia* Motion", 8 May 2012.

¹² Email correspondence from the Office of the Prosecutor to a Legal Officer of the Chamber, 8 May 2012.

¹³ Practice Direction on Filing of Documents before the Special Tribunal for Lebanon, Article 9 (1).

¹⁴ For example, ICTY, *The Prosecutor v. Slobodan Milosevic*, Case No. IT-02-54-ART73.5, Order Granting Extension of Time, 21 May 2003, page 2; *The Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Order for Extension of Time, 26 October 2011, page 3; *The Prosecutor v. Sainovic et al.*, Case No. IT-05-87-A, Decision on Sreten Lukic's Motions for Admission of Additional Evidence on Appeal and for Extension of Word Limit, Nebojsa Pavkovic's Motions to Join and to Call Dick Marty as a Witness Before the Appeals Chamber, and Prosecution's Motion to Strike, 12 May 2011, page 4.



occur at the ICTY - and the challenge to jurisdiction at hand here lies in the nature of the filing. A preliminary motion, such as one challenging jurisdiction, is in a category entirely different to that of a party seeking leave to reply to a response to a motion, but within a limited time frame. It is thus more analogous to a party filing a pre-trial or final trial brief and seeking a word or page limit extension within the document itself. That is a practice that can be neither encouraged nor permitted, except in the most exceptional circumstances.

12. Counsel practising before the Tribunal must be aware of all Practice Directions. The spirit of the Rules and the content of the Practice Direction on Filing of Documents require parties seeking extensions to do so well before the deadline, except in exceptional circumstances. The principal reason for this is to ensure fair and expeditious litigation. It avoids the impression of a party presenting a Judge or Chamber with a *fait accompli*. It also prevents prejudice by filing inadmissible material before a Chamber. Seeking an extension before the deadline achieves fairness to the opposing parties by allowing them to respond to the application in advance. Filing the request before the deadline permits time for proper consideration and avoids unnecessary wastage of the Tribunal's resources (such as in unnecessary translation); it is also simply good litigation practice. The Trial Chamber here also expresses its concern that the failure to seek the extension of the word and page limits in advance of the filing has resulted in a delay of six days in the proceedings relating to the challenge to jurisdiction. The Trial Chamber does not accept that the parties could not have anticipated well in advance of the afternoon of Friday 4 May 2012 that they would be seeking an extension of the word and page limits.
13. The Trial Chamber, however, considers that such a motion is necessarily of some significance to the Tribunal and would normally warrant a departure from the word limits specified in the Practice Direction, and that it could benefit from receiving more detailed submissions than would normally be permitted. Recognising this, the Chamber will allow an extension of the word limit. But while doing so the Trial Chamber notes that it regards the Badreddine Defence request as particularly unjustified and excessive.
14. The Chamber informs the parties that it also intends to hold an oral hearing, thus allowing the parties to substantiate their arguments and respond to questions based on their written



submissions. The Chamber therefore considers that the appropriate length for preliminary motions under Rule 90 (A) (i) should be 10,000 words. Any refiled motions must comply both with this order, and the terms of the Practice Direction.

15. The Oneissi Defence and Badreddine Defence simultaneously requested an extension of the time limit to file their motions. The Defence of each Accused person filed their motions on Friday 4 May 2012, but the motions of three were rejected by CMSS as deficient filings due to the excessive word count and page limits. Consequently, the Trial Chamber will extend the time for refileing the motions to Thursday 8 May 2012 at 9.00 am.
16. Finally, the Sabra Defence, on 4 May 2012, sought an extension of the word limit in respect of a proposed motion relating to the Trial Chamber's Decision to Hold Trial *in Absentia* of 1 February 2012. The motion described it as a "preliminary motion" but without specifying how it could fall within Rule 90 (A). The Trial Chamber is thus unaware of the nature of this motion. It cannot, however, be a preliminary motion - such as a challenge to jurisdiction - under Rule 90 (A). This request is therefore dismissed.
17. If it is intended to be a request for reconsideration under Rule 140, which does not fall within Rule 90 (A), leave is required of the Presiding Judge of the Trial Chamber. The Presiding Judge of the Trial Chamber, however, has received no such request.

FOR THESE REASONS the Trial Chamber:

- (i) **ALLOWS** the Defence of Mustafa Badreddine, Hussein Oneissi, and Assad Sabra each an extension of the word length to a maximum of 10,000 words for the preliminary motions challenging jurisdiction under Rule 90 (A) (i);
- (ii) **ORDERS** the Defence of Mustafa Badreddine, Hussein Oneissi, and Assad Sabra to re-file their motions by Thursday 10 May 2012 at 9.00am; and
- (iii) **REJECTS** the Sabra Defence Motion for an Extension of Page Limit/Word Count In *Re Absentia* Motion;



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

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

8 May 2012,
Leidschendam,
The Netherlands

Judge Robert Roth, Presiding

Judge Micheline Braddy

Judge David Re

