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SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE PRESIDING JUDGE OF THE TRIAL CHAMBER

Case No.: STL-11-01/PT/TC
Before: Judge Robert Roth, Presiding
The Registrar: Mr Herman von Hebel
Date: 15 May 2012
Original language: French
Type of document: Public

THE PROSECUTOR

v.

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

**DECISION AUTHORIZING THE BADREDDINE DEFENCE AND THE ONEISSI
DEFENCE TO FILE A REQUEST FOR RECONSIDERATION**

Office of the Prosecutor:
Mr Norman Farrell

Head of Defence Office:
Mr François Roux

Counsel for Mr Salim Ayyash:
Mr Eugene O'Sullivan
Mr Emile Aoun
Counsel for Mr Mustafa Badreddine:
Mr Antoine Korkmaz
Mr John Jones
Counsel for Mr Hussein Oneissi:
Mr Vincent Courcelle-Labrousse
Mr Yasser Hassan
Counsel for Mr Assad Sabra:
Mr David Young
Dr Guénaél Mettraux





I. Introduction

1. On 1 February 2012, the Trial Chamber decided to initiate proceedings *in absentia* against Messrs. Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi and Assad Hassan Sabra, pursuant to Rule 106 of the Rules of Procedure and Evidence (the “Rules”).¹

2. On 2 February 2012, the Head of Defence Office assigned counsel to the four accused, pursuant to Rule 105 *bis* (B) of the Rules.²

3. On 4 May 2012, the Badreddine Defence filed before the Presiding Judge of the Trial Chamber a request for leave to seek reconsideration of the Decision issued by the Trial Chamber on 1 February 2012 (the “Request of the Badreddine Defence of 4 May 2012”).³ In support of its request, the applicant submits that a new fact arose on 2 February 2012, with the assignment of counsel for Mr Badreddine, and that this new fact justifies a reconsideration of the Decision of 1 February 2012. It recalls that, in view of the confines of its mandate, the Defence Office refused to raise any objection regarding the illegality of the proceedings *in absentia*. Lastly, it considers that the request for leave to seek reconsideration is consistent with the fairness of the proceedings and that a refusal would result in a violation of the rights of the defence.⁴ In the Annex to its request, the Badreddine Defence attached a document,⁵ which “[TRANSLATION] contains submissions concerning the said injustice”.⁶ It states that it is prepared to file this document before the Trial Chamber, should the Presiding Judge grant it leave to do so.

¹ STL, *The Prosecutor v Ayyash et al.*, Case No. STL-11-01/I/TC, Decision to Hold Trial *In Absentia*, 1 February 2012 (the “Decision of 1 February 2012”).

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

³ STL, *The 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 May 2012.

⁴ Request of the Badreddine Defence of 4 May 2012, para. 4.

⁵ STL, *The Prosecutor v Ayyash et al.*, case No. STL-11-01/PT/TC, *Demande de la Défense de M Badreddine du 4 mai 2012, Annexe A - Requête de la Défense de M Badreddine aux fins de réexamen de la « Décision portant ouverture d'une procédure par défaut » rendue par la Chambre de première instance le 1^{er} février 2012*, 4 May 2012.

⁶ Request of the Badreddine Defence of 4 May 2012, para. 5.



4. Likewise on 4 May 2012, the Oneissi Defence filed before the Presiding Judge of the Trial Chamber a request for authorisation of its “[TRANSLATION] request for reconsideration of the decision to hold a trial *in absentia* of 1 February 2012” (the “Request of the Oneissi Defence of 4 May 2012”).⁷ In its opinion, the assignment of counsel for the defence after the Decision of 1 February 2012 justifies that the “review” of that decision be undertaken in order to take into account the Defence’s position. The Chamber allegedly committed several errors and the proceedings themselves are “[TRANSLATION] completely incompatible with the rights of the accused”.⁸ The applicant seeks that the Presiding Judge forward to the Trial Chamber the request for reconsideration, which is attached to the request.⁹

5. On 11 May 2012, the Prosecution filed a response to the Request of the Badreddine Defence and the Request of the Oneissi Defence.¹⁰ It concludes principally by seeking the dismissal of the Requests. In the alternative, should the Chamber (*recte*: the Presiding Judge) grant leave, it concludes that the Badreddine Defence and the Oneissi Defence be ordered to submit their requests for reconsideration in accordance with the Practice Direction on Filing of Documents before the Special Tribunal for Lebanon, in particular with regard to the page and word limits, and that the Prosecution be authorised to respond to the above-mentioned Requests within fourteen days. In support of its conclusions, the Prosecution submits in particular that the accused did not avail themselves of the opportunity that they were given to submit their submissions during the hearing held by the Trial Chamber, pursuant to Rule 106 of the Rules;¹¹ that the assignment of counsel for the defence by the Head of Defence Office does not constitute a new fact and that counsel are bound by the conduct of their clients, prior

⁷ STL, *The Prosecutor v Ayyash et al.*, Case No. STL-11-01/PT/TC, *Requête de la Défense de M Oneissi en autorisation de sa « Demande de réexamen de la Décision d’ouverture d’une procédure par défaut du 1^{er} février 2012 »*, 4 May 2012.

⁸ Request of the Oneissi Defence of 4 May 2012, para. 8.

⁹ STL, *The Prosecutor v Ayyash et al.*, Case No. STL-11-01/PT/TC, Request of the Oneissi Defence of 4 May 2012, Annex: *Demande de la Défense de M Oneissi en réexamen de la Décision d’ouverture d’une procédure par défaut du 1^{er} février 2012*, 4 May 2012.

¹⁰ STL, *The Prosecutor v Ayyash et al.*, Case No. STL-11-01/PT/TC, Prosecution Response to the Badreddine Defence and Oneissi Defence Requests for Leave to Seek Reconsideration of the Trial *In Absentia* Decision, 11 May 2012 (the “Prosecution’s Response”).

¹¹ Prosecution’s Response, para. 9.



to their assignment;¹² that the Defence Office chose not to designate counsel for the accused prior to the hearing of the Chamber of 11 November 2011;¹³ that the Requests are manifestly unfounded, on the one hand because they fail to show, *prima facie*, that refusal to admit reconsideration would result in an injustice and, on the other, because they seek to circumvent the Rules;¹⁴ that the Requests do not present new facts that might warrant reconsideration.¹⁵ The Prosecution for its part requests that the Chamber order the requesting parties to re-file their applications for reconsideration, insofar as the Chamber should discourage the parties from filing substantive submissions as annexes.¹⁶

II. Applicable law

6. Rule 140 of the Rules sets forth that a Chamber may, *proprio motu* or at the request of a Party with leave of the Presiding Judge, reconsider a decision if necessary to avoid an injustice. The review corresponds to a reconsideration according to standard legal language, the two terms here being synonymous.

7. The Practice Direction on Filing of Documents before the Special Tribunal for Lebanon (the "Practice Direction") sets out in Article 5 (1) (a) that, unless otherwise provided in the Rules or ordered by the Pre-Trial Judge or a Chamber, motions shall not exceed 20 pages or 6,000 words, whichever is greater.¹⁷

¹² Prosecution's Response, para. 11.

¹³ Prosecution's Response, para. 13.

¹⁴ Prosecution's Response, paras 14-15 and 17.

¹⁵ Prosecution's Response, para. 16.

¹⁶ Prosecution's Response, para. 18.

¹⁷ Practice Direction on Filing of Documents before the Special Tribunal for Lebanon, 23 April 2012, STL/PD/2010/Rev.1, Article 5 (1) (a).



III. Discussion

8. Unless there is a special provision, as in Rule 176 *bis* (C) of the Rules concerning requests addressed to the Appeals Chamber, a request for reconsideration may be filed at any time.

9. Rule 140 of the Rules sets out a procedure divided into two stages: a request for authorisation, which must be decided by the Presiding Judge alone, and subsequently a request for reconsideration itself, submitted to the Chamber for consideration. That procedure is also applied to requests addressed to the Pre-Trial Judge, with the distinction that it is the same person who decides on the two decisions, which led the Pre-Trial Judge, in the two recent cases that were submitted to him, to join them together into one decision.¹⁸ In the case at hand, the two decisions will not be joined.

10. With regard to the request for authorisation, the Presiding Judge must undertake a *prima facie* examination.¹⁹ This examination must, in principle, consider both the procedural and the substantive aspects of the request. It should induce the Presiding Judge to determine, on the one hand, if the request is not “manifestly unfounded”²⁰ and, on the other, to verify that it can be admitted in terms of procedure. That examination assumes that the applicant seeking authorisation presents a summary of the submissions it intends developing in its request for reconsideration and the reasons why it is well-founded, according to the requirements of the case law of international criminal tribunals in this regard.

11. In the case at hand, the Presiding Judge has not been seized of such a document. He only has in his possession at this stage the Annexes attached to the two requests for authorisation,

¹⁸ STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Decision on the Prosecution’s Request for Partial Reconsideration of the Pre-Trial Judge’s Order of 8 February 2012, 29 March 2012 (the “Pre-Trial Judge’s Decision of 29 March 2012”); STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Decision Relating to the Prosecution Request for Reconsideration of the Decision of 5 April 2012, 4 May 2012 (the “Pre-Trial Judge’s Decision of 4 May 2012”).

¹⁹ Cf. *mutatis mutandis* the Pre-Trial Judge’s Decision of 29 March 2012, paras 28-31. The Pre-Trial Judge’s Decision of 4 May 2012, paras 11-12.

²⁰ Cf. the Pre-Trial Judge’s Decision of 29 March 2012, paras 29-30. The Pre-Trial Judge’s Decision of 4 May 2012, para. 11.



which consist of two “requests for reconsideration”.²¹ Those requests cannot be considered as having been formally filed, particularly as they fail to comply with the instructions in the Practice Direction and the Trial Chamber has not yet ruled at this stage on the request filed by the Badreddine Defence seeking an extension of the page or word limits.

12. Therefore, the Presiding Judge should only deal with the procedural aspects of the request and suspend the examination of the substantive requirements (the not “manifestly unfounded” element). However, in light of the fundamental importance of the subject and the fact that the guidelines had not previously been made known to the applicants, he considers that authorisation should be granted.

13. In its motion of 11 May 2012, the Prosecution presents a series of submissions, all of which deal with the substance of the procedure.²² Contrary to what the Prosecution claims, none of those submissions shows that the procedure is *prima facie* manifestly unfounded or that it is aimed at circumventing the Rules. The Presiding Judge is not able to come to such a decision solely within the context of his preliminary examination. It is for the Chamber to deal with the Prosecution’s submissions in its forthcoming decision regarding reconsideration.

14. In all other respects, there is no reason of a procedural nature that *prima facie* prevents a request for reconsideration from being filed. Authorisation will therefore be granted.

15. Needless to say, the Prosecution will be able to reply to the requests for authorisation, if they are filed. The standard time limit of fourteen days set out in Rule 8 of the Rules will be applied, unless otherwise decided by the Chamber.

16. The request for an extension of the page limits contained in the Annex to the application for authorisation of the Badreddine Defence was forwarded to the Trial Chamber, which will issue its decision in the near future.

²¹ See footnotes 5 and 9 above.

²² See footnotes 11-16 above.



FOR THESE REASONS

THE PRESIDING JUDGE OF THE TRIAL CHAMBER

AUTHORISES the Defence for Mr Mustafa Amine Badreddine to file a request for reconsideration of the Decision of 1 February 2012 to initiate the trial *in absentia* against Mr Badreddine;

AUTHORISES the Defence for Mr Hussein Hassan Oneissi to file a request for reconsideration of the Decision of 1 February 2012 to initiate the trial *in absentia* against Mr Oneissi.

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

Leidschendam, 15 May 2012

[signature]

Judge Robert Roth, Presiding

