

**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: 22 May 2012
Original language: French
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THE PROSECUTOR

v.

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

**DECISION AUTHORISING THE AYYASH DEFENCE AND THE SABRA
DEFENCE TO FILE A REQUEST FOR RECONSIDERATION**

Office of the Prosecutor:
Mr Norman Farrell

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 Korkmaz
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. 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 8 May 2012, the Trial Chamber issued a Decision on the extension of the word limits in the context of preliminary motions challenging jurisdiction,³ in which it notes that the Sabra Defence requested an extension of the page or word limits relating to a request concerning the Decision of the Chamber of 1 February 2012, but determined that a request concerning the said Decision may not in any circumstances be considered a preliminary motion.⁴ Accordingly, it rejected the request for an extension of the word or page limits.⁵

4. On 16 May 2012, the Ayyash Defence and the Sabra Defence filed a motion for leave to seek reconsideration of the Decision rendered by the Trial Chamber on 1 February 2012 (the “Motion”).⁶ They conclude by requesting that the Chamber: (i) grant leave to file a request for reconsideration of its Decision of 8 May 2012 regarding the applicability of Rule 90 of the Rules and/or (ii) issue a “reasoned decision” as to why the aforementioned rule does not apply to the present circumstances and (iii) grant, pursuant to Rule 140 of the Rules, leave to file a request for reconsideration of its Decision of 1 February 2012.⁷ In support of their request,

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/I/TC, Decision on Extension of Word Limits for the Filing of Preliminary Motions Challenging Jurisdiction, 8 May 2012 (the “Decision of 8 May 2012”).

⁴ Decision of 8 May 2012, para. 16.

⁵ *Ibid* and the disposition of the Decision of 8 May 2012.

⁶ STL, *The Prosecutor v Ayyash et al.*, Case No. STL-11-01/I/TC, Ayyash and Sabra Motion for Leave to Seek Reconsideration, 16 May 2012. The Office of the Prosecutor has stated that it would not reply to the Defence request. [TRANSLATION]: Communication from the Office of the Prosecutor to a legal officer in the Trial Chamber, 21 May 2012.

⁷ Requête, par. 29.



the applicants state in essence that the Decision of 1 February 2012 was issued in “full knowledge” of the fact that the accused had not been represented by counsel;⁸ that the Trial Chamber, in so doing, violated Article 16 (4) (d) of the Statute of the Tribunal;⁹ that the Chamber violated the principle of the equality of arms;¹⁰ that a request regarding *in absentia* proceedings is jurisdictional in nature and must therefore be filed as a preliminary motion under Rule 90 (A) of the Rules;¹¹ that a request regarding *in absentia* proceedings may raise at least two jurisdictional issues: the death of an accused and compliance with internationally recognised standards of human rights;¹² that, in respect of a request for reconsideration pursuant to Rule 140 of the Rules, that request would not be in any manner manifestly unfounded, frivolous or aimed at circumventing the Rules, since it put forward a series of grounds summarised in the Motion.¹³

II. Discussion

5. It is not appropriate to enter into the first and second conclusions of the Motion ((i) and (ii) above¹⁴). In its Decision of 8 May 2012, the Trial Chamber ruled on the fact that a request for reconsideration of the Decision of 1 February 2012 cannot be a preliminary motion within the meaning of Rule 90 of the Rules,¹⁵ and the Presiding Judge sees no valid reason to re-submit that question to the Chamber. Therefore, only the option of a request for reconsideration based on Rule 140 of the Rules remains, under the conditions set out by the Decision of the Presiding Judge of the Trial Chamber of 15 May 2012.¹⁶

6. Rule 140 of the Rules sets forth that a Chamber, may, *proprio motu* or at the request of a Party, and with leave of the Presiding Judge, reconsider a decision, if necessary to avoid

⁸ Motion, para. 8.

⁹ Motion, para. 11.

¹⁰ Motion, para. 12.

¹¹ Motion, para. 18.

¹² Motion, para. 23.

¹³ Motion, paras 24-28.

¹⁴ Para. 4 of this Decision.

¹⁵ Footnote 4 above.

¹⁶ STL, *The Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/TC, Decision Authorising the Badreddine Defence and the Oneissi Defence to File a Request for Reconsideration, 15 May 2012 (the “Decision Authorising”).



injustice. Unless there is a specific provision such as Rule 176 *bis* (C) of the Rules relating to requests addressed to the Appeals Chamber, a request for reconsideration may be filed at any time. 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. With regard to the request for authorisation, the Presiding Judge must undertake a *prima facie* examination. This examination must, in principle, apply to both the procedural and the substantive aspects of the request. It should lead the Presiding Judge to determine, on the one hand, whether the request is not “manifestly unfounded” and, on the other, to verify that it may 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, in terms of the requirements of the case law of international criminal tribunals in this regard.¹⁷

7. It has already been determined that the fundamental importance of the subject justifies that authorisation be granted, unless impediments of a formal nature oppose it.¹⁸ In this case, the filing of a request for reconsideration does not violate any *prima facie* formal impediment.

¹⁷Decision Authorising the Filing of a Request for Reconsideration, para. 10.

¹⁸Decision Authorising the Filing of a Request for Reconsideration, paras. 12 and 14.



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FOR THESE REASONS

THE PRESIDING JUDGE OF THE TRIAL CHAMBER

AUTHORISES the Defence for Mr Salim Jamil Ayyash and the Defence for Mr Assad Hassan Sabra to file a request for reconsideration of the Decision of 1 February 2012 on initiating proceedings *in absentia* against Messrs. Ayyash and Sabra.

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

Leidschendam, 22 May 2012

[signature]

Judge Robert Roth, Presiding

