SPECIAL TRIBUNAL FOR LEBANON المحكمة الخاصة بلبنان TRIBUNAL SPÉCIAL POUR LE LIBAN

THE PRE-TRIAL JUDGE

Case No.:	**STL-11-01/PT/PTJ**
The Pre-Trial Judge:	**Mr Daniel Fransen**
The Registrar:	**Mr Herman von Hebel**
Date:	**19 July 2012**
Original language:	**French**
Classification:	**Public**

THE PROSECUTOR
v.
SALIM JAMIL AYYASH,
MUSTAFA AMINE BADREDDINE,
HUSSEIN HASSAN ONEISSI &
ASSAD HASSAN SABRA

ORDER SETTING A TENTATIVE DATE FOR THE START OF TRIAL PROCEEDINGS

Prosecutor:
Mr Norman Farrell

Victims' Legal Representative:
Mr Peter Haynes

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

Counsel for Mr Mustafa Amine Badreddine:
Mr Antoine Korkmaz

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

Counsel for Mr Assad Hassan Sabra:
Mr David Young

STL Official Translation

I. Introduction

1. By way of this order, the Pre-Trial Judge sets a tentative date for the start of trial proceedings in accordance with Rule 91 (C) of the Rules.

II. Procedural background

2. On 28 June 2011, the Pre-Trial Judge rendered a decision relating to the indictment of 10 June 2011 issued by the Prosecutor (the "Indictment"). In accordance with that decision, Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine, Mr Hussein Hassan Oneissi and Mr Assad Hassan Sabra (the "Accused") were charged in connection with the attack of 14 February 2005 which resulted in the death of Mr Rafic Hariri and other persons and injured others.[1]

3. On 1 February 2012, the Trial Chamber decided to initiate *in absentia* proceedings against the Accused.[2]

4. On 2 February 2012, the Head of Defence Office assigned counsel responsible for defending the interests of the Accused.[3]

5. On 16 February 2012, the Prosecution stated that it had disclosed to Counsel for the Defence – some in their entirety, others in redacted form – the evidentiary materials filed in support of the Indictment.[4]

6. On 8 May 2012, the Pre-Trial Judge granted the status of victims participating in the proceedings to 58 of the 73 persons who had applied.[5]

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[1] STL, *The 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

[2] STL, *The Prosecutor v Ayyash et al*, Case No STL-11-01/I/TC, Decision to Hold Trial *In Absentia*, 1 February 2012

[3] 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.

[4] STL, *The Prosecutor v Ayyash et al*, Case No STL-11-01/PT/PTJ, Notice Regarding the Prosecution's Compliance with the Pre-Trial Judge's Orders of 24 January and 7 February 2012, 16 February 2012

[5] STL, *The Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/PTJ, Decision on Victims' Participation in the Proceedings, public document with confidential and *ex parte* annex, 8 May 2012

7. On 16 May 2012, the Registrar appointed the Legal Representative for victims participating in the proceedings.[6]

8. On 5 June 2012, the Prosecutor informed the Pre-Trial Judge that he had disclosed on 4 and 5 June 2012 to Counsel for the Defence and to the Victims' Legal Representative all the supporting materials attached to the Indictment in their entirety.[7] Only four items, transmitted previously to Counsel for the Defence in a redacted version, are still subject to redactions pending a final decision on that matter.[8]

9. During a Pre-Trial Conference held on 12 June 2012 (the "Pre-Trial Conference"), the Pre-Trial Judge consulted the Parties on the tentative date to start trial proceedings.

10. On 12 July 2012, the Pre-Trial Judge consulted the President of the Tribunal, the Presiding Judge of the Trial Chamber and the Registrar on the subject of the date for starting proceedings. They gave their responses on 12, 13 and 16 July 2012 respectively.

III. Applicable law

11. Rule 91 (C) of the Rules, which is applicable in the case at hand, is worded in the following manner:

> The Pre-Trial Judge, in consultation with the Parties, the Registrar, the Presiding Judge of the Trial Chamber and, if necessary, the President, shall set a tentative date for the start of trial proceedings at least four months prior to that date.

12. In order to set a tentative date for the start of trial proceedings, the Pre-Trial Judge must also take into consideration the provisions relating to the rights of the Accused and, more specifically, Article 16 (4) (b) of the Statute which sets forth that the Accused must "have adequate time and facilities for the preparation of [their] defence [...]".

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[6] STL, *The Prosecutor v Ayyash et al*, Case No STL-11-01/PT/PTJ, Designation of Victims' Legal Representatives, 16 May 2012.
[7] STL, *The Prosecutor v Ayyash et al*, Case No STL-11-01/I, Prosecution Request for Leave to Withdraw its Application of 21 December 2011 and Modify its Application of 15 March 2011 for Protective Measures, 5 June 2012, para 5.
[8] *Ibid*

13. In this respect, international case law has indicated, on several occasions, that the minimum time granted to Counsel for the Defence in order to prepare their case and conduct their investigations cannot be assessed in the abstract.[9] It depends on the specific circumstances of the case in point and, in particular, on the following criteria: (i) the size and complexity of the case in question; (ii) the number and nature of the counts imputed; (iii) the seriousness of the crimes concerned; (iv) the amount and substance of the materials disclosed by the Prosecutor; and (v) the resources available to the Defence.[10]

14. In his consideration, the Pre-Trial Judge must evaluate the interests of the opposing parties. Therefore, in addition to the aforementioned factors, which are guarantors of a fair trial, he must also take into consideration the need to hold an expeditious trial within a reasonable time, in accordance with Articles 21 and 28 of the Statute and Rule 89 (B) of the Rules. It is appropriate in this respect to recall that the Appeals Chamber of the International Criminal Tribunal for Rwanda considered that:

> Time and resource constraints exist in all judicial institutions and it is legitimate for a Trial Chamber to ensure that the proceedings do not suffer undue delays and that the trial is completed within reasonable time. However, the Appeals Chamber stresses that these considerations should never impinge on the rights of the parties to a fair trial.[11]

IV. The consultation process

15. As indicated in paragraph 9 above, the Pre-Trial Judge consulted the Parties during the Pre-Trial Conference. On that occasion, the Prosecution stated that it could start the

[9] ICTY, *The Prosecutor v Krajišnik*, Case No. ICTY-00-39-A, Appeal Chamber Judgement, 17 March 2009, para 80, SCSL, *The Prosecutor v Taylor*, Case No SCSL-2003-01-T, Decision on Defence Notice of Appeal and Submissions Regarding the 4 May 2009 Oral Decision Requiring the Defence to Commence Its Case on 29 June 2009, 23 June 2009, para 19

[10] ICTR, *The Prosecutor v Ngirabatware*, Case No ICTR-99-54-A, Decision on Augustin Ngirabatware's Appeal of Decisions Denying Motions to Vary Trial Date, 12 May 2009, para 28, see also, ICTY, *The Prosecutor v S Milošević*, Case No IT-02-54-AR73 6, Decision on the Interlocutory Appeal by the *Amici Curiae* against the Trial Chamber Order Concerning the Presentation and Preparation of the Defense Case, 20 January 2004, paras 8-19, see also, ECHR, Case of *Twalib v Greece* (42/1997/826/1032), Judgment of 9 June 1998, para. 40.

[11] ICTR, *The Prosecutor v Ngirabatware*, Case No ICTR-99-54-A, Decision on Augustin Ngirabatware's Appeal of Decisions Denying Motions to Vary Trial Date, 12 May 2009, para 31

presentation of its evidence relating to the Indictment in December 2012.[12] However, it pointed out that that date was dependent on new circumstances, such as the possible submission of an amended indictment.[13]

16. Counsel for the Defence indicated that they could not start proceedings before autumn 2013, not only because of the significant workload – due notably to the volume of the evidentiary material and the complexity of the case – but also because of the difficulties encountered with regard to the investigation, the disclosure of evidence and the nature of *in absentia* trials, which does not allow for them to take instructions from the Accused. They were also of the opinion that it was premature to set a starting date for the trial at this stage of the proceedings given that there was a possibility that, in the near future, an amended indictment might be filed.[14]

17 In response to the consultation of 12 July 2012 on the subject of the date for trial proceedings to commence, the President of the Tribunal, the Presiding Judge of the Trial Chamber and the Registrar raised no objection in respect of the date proposed by the Pre-Trial Judge.

V. Statement of reasons

18. It results from the above-mentioned consultation process that, according to the Parties, it would be premature to set the tentative date for the start of trial proceedings so soon for reasons linked to, on the one hand, the possible amendment of the counts (A) and on the other, to difficulties linked to the preparation of the Defence (B). After having examined those submissions, the Pre-Trial Judge shall apply the criteria mentioned in paragraph 13 above to the case at hand (C).

19. As a preliminary matter, the Pre-Trial Judge wishes to emphasise that, in the context of the proper administration of justice, it is in the interest of the Parties, the Victims participating in the proceedings and of the other parties to the proceedings to set a tentative

[12] STL, *The Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/PTJ, Public Report of the Pre-Trial Conference Held in Closed Session on 12 June 2012, 13 July 2012, p. 5
[13] *Id*, p. 6.
[14] *Id*, p. 5.

date for the start of trial proceedings as soon as possible. Indeed, proceeding in this way allows all the actors to anticipate future deadlines and to better prepare for the trial.

A. The possible amendment of the counts

20. The Pre-Trial Judge considers that the possibility of a request from the Prosecutor to amend the counts mentioned in the Indictment – in whatever form – has no bearing on setting a tentative date for the start of trial proceedings relating to that Indictment. Indeed, although the Prosecutor previously requested such an amendment which was rejected,[15] that request is, at present, a supposition, given that the Pre-Trial Judge has not been seized of it. Furthermore, should that supposition become a reality, the Pre-Trial Judge would again have to examine, notably, whether or not it is appropriate to authorise that amended indictment and, if so, whether or not to separate the new facts or the accused mentioned therein.

21. Furthermore, if such hypothetical circumstances were to be taken into consideration in order to set the date for the start of trial proceedings, other circumstances of the same nature that might have a bearing on the scheduling of the proceedings, such as the arrest of an Accused or the prosecution of other persons, should likewise be taken into account, at the risk of constantly postponing that date.

22. In that context, the Pre-Trial Judge considers that those aleatory circumstances cannot hinder the course of justice and prevent a tentative date for the start of trial proceedings relating to the Indictment from being set now. If the need arises, that date could be re-examined in the light of new circumstances that might arise in the interim.

B. Difficulties linked to the preparation of the Defence

23. Among the arguments cited by Counsel for the Defence is that of the problems regarding the disclosure of materials relating to the case in question[16] which constitute, according to international case law, one of the factors that might have a bearing on the preparation of the Defence and, as a consequence, the date for the start of trial proceedings.

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[15] STL, *The Prosecutor v Ayyash et al*, Case No STL-11-01/PT/PTJ, Decision Relating to the Prosecution Request of 8 February 2012 for Leave to File an Amended Indictment, 13 March 2012.
[16] STL, *The Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/PTJ, Public Report of the Pre-Trial Conference Held in Closed Session on 12 June 2012, 13 July 2012, p. 5

24. In this respect, the Pre-Trial Judge recalls that the materials filed in support of the Indictment were disclosed by the Prosecution to Counsel for the Defence on 16 February 2012, some in redacted form.[17] The materials disclosed in redacted form were subsequently transmitted without redactions on 4 and 5 June 2012, with the exception of four of them which still have limited redactions which are unlikely to render them unusable by Counsel for the Defence.[18]

25. The Pre-Trial Judge also emphasises that, since the Pre-Trial Conference, the Prosecutor has initiated the process of disclosing exculpatory material in accordance with Rule 113 of the Rules. He has, moreover, disclosed to Counsel for the Defence the documents referred to in Rule 88 (F) of the Rules. Furthermore, the Prosecutor has announced that the disclosure of the statements mentioned in Rule 110 (A) (i) and (ii) of the Rules should take place in the coming weeks.

26. It results from the foregoing that Counsel for the Defence have in their possession at present most of the materials needed to prepare an effective defence of the Accused, with the remaining documents to be disclosed to them in the near future.

C. Application of the assessment criteria

27. In order to determine the tentative date for the start of trial proceedings, aside from considerations linked to the disclosure of materials mentioned above, it is appropriate to apply to the case at hand the criteria set out by international case law with regard to the respect of the rights of the Defence recalled in paragraph 13 above.

28. In this regard, in light of the observations presented by Counsel for the Defence, in order to assess the time needed for the preparation of the defence, the Pre-Trial Judge has duly considered the size and complexity of the case, the number and nature of the counts mentioned in the Indictment, the amount and substance of the materials disclosed by the

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[17] STL, *The Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/PTJ, Notice Regarding the Prosecution's Compliance with the Pre-Trial Judge's Orders of 24 January and 7 February 2012, 16 February 2012 See also, STL, *The Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/PTJ, Order Relating to the Motion from the Defence for Mr Sabra for Compliance with the Pre-Trial Judge's Order of 24 January 2012 and Scheduling of a Time Frame for Presenting Observations on the Prosecution's Application of 21 December 2011, 23 March 2012, Disposition

[18] STL, *The Prosecutor v Ayyash et al*, Case No. STL-11-01/I, Prosecution Request for Leave to Withdraw its Application of 21 December 2011 and Modify its Application of 15 March 2011 for Protective Measures, 5 June 2012, para 5

Prosecutor and the seriousness of the crimes concerned He has also taken into consideration the resources and means that Counsel for the Defence have at their disposal, of the fact that they have not taken instructions from the Accused, as well as the amount of time they will have been in possession of the relevant evidence prior to the start of the trial.

29. In light of all those considerations and factors, the Pre-Trial Judge considers that, having regard to the need for an expeditious and fair trial, the date for the start of trial proceedings could reasonably be set tentatively for 25 March 2013 without prejudice notably to the decisions of the Trial Chamber and, where appropriate, to the Appeals Chamber with regard to preliminary motions.

VI. The disposition

FOR THESE REASONS,

Pursuant to Rule 91 (C) of the Rules,

THE PRE-TRIAL JUDGE,

SETS the tentative date for the start of trial proceedings for 25 March 2013 in the courtroom of the Special Tribunal for Lebanon.

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

Leidschendam, 19 July 2012

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[signature]

Daniel Fransen
Pre-Trial Judge