



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE APPEALS CHAMBER

Case No.: STL-11-01/PT/AC

Before: Judge David Baragwanath, Presiding
Judge Ralph Riachy
Judge Afif Chamseddine
Judge Daniel David Ntanda Nsereko
Judge Kjell Erik Björnberg

Registrar: Mr Herman von Hebel

Date: 6 August 2012

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

DECISION ON DEFENCE REQUESTS FOR EXTENSION OF WORD AND TIME LIMITS

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





INTRODUCTION

1. We are seized of four requests by Defence counsel for Mustafa Amine Badreddine,¹ Hussein Hassan Oneissi,² Salim Jamil Ayyash³ and Assad Hassan Sabra⁴ for an extension of the word limit of the appeals they wish to file against the Trial Chamber's "Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal" issued on 27 July 2012,⁵ as well as an extension of the time limit to file such appeals.

2. We consider that counsel have shown good cause for both requests and consequently grant the request for extension of word limit in full and the request for extension of time limit in part.

PROCEDURAL BACKGROUND

3. On 1 August 2012, Defence counsel for Messrs Badreddine and Oneissi filed their requests for extension of word and time limits. On 2 August 2012, the Prosecutor filed his response to the two requests.⁶

4. On 3 August 2012, Defence counsel for Mr Ayyash filed a request similar to that of counsel for Messrs Badreddine and Oneissi whereby counsel for Mr Ayyash "adopt and incorporate" the

¹ STL, *Prosecutor v Ayyash et al.*, Case No. STL-11-01/PT/AC, Motion from the Badreddine Defence for an Extension of the Authorized Word and Time Limits in Order to File an Appeal of the "Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal," 1 August 2012 ("Badreddine Request").

² STL, *Prosecutor v Ayyash et al.*, Case No. STL-11-01/PT/AC, The Defence for Mr. Hussein Hassan Oneissi Request for Extension of the Time and Word Limit to File an Appeal to the "Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal," 1 August 2012 ("Oneissi Request").

³ STL, *Prosecutor v Ayyash et al.*, Case No. STL-11-01/PT/AC, The Defence for Mr. Salim Ayyash Request for Extension of the Time and Word Limit to File an Appeal to the "Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal," 3 August 2012 ("Ayyash Request").

⁴ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/AC, The Defence for Mr. Assad Sabra Request for Extension of the Time and Word Limit to File an Appeal to the "Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal," 6 August 2012 ("Sabra Request").

⁵ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/TC, Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal, 27 July 2012 ("Decision on Legality and Jurisdiction").

⁶ STL, *Prosecutor v Ayyash et al.*, Case No. STL-11-01/PT/AC, Prosecution Consolidated Response to the Badreddine and Oneissi Defence Requests for Extension of the Time and Page Limits for Filing Appeals to the Trial Chamber "Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal," 2 August 2012.



arguments submitted by the other teams. In response to this new request, the Prosecutor relied on his earlier response to the other two teams.⁷

5. Today, 6 August 2012, Defence counsel for Messrs Badreddine and Sabra filed two new submissions. Counsel for Mr Sabra joined the other Defence teams and advised that they also “adopt and incorporate” the requests for extension of time and word limits.⁸ Counsel for Mr Badreddine filed “Observations” to the Prosecutor’s response.⁹

SUBMISSIONS OF THE PARTIES

6. All four Defence teams request an extension of the word limit set out in Article 5 of the Practice Direction on Filing of Documents before the Special Tribunal of Lebanon¹⁰ to a maximum of 10,000 words.¹¹ Defence counsel argue that such an extension is necessary because the questions of legality and jurisdiction at issue are particularly complex and require analysis of a number of legal and factual sources.¹² They note that such questions also have a significant impact on the rights of the accused.¹³ Counsel for Mr Badreddine further argues that the additional words are needed in order to challenge both the Trial Chamber’s reasoning that it was not competent to deal with a number of questions raised by the preliminary motion, and its subsequent refusal to address these questions.¹⁴

7. Counsel also request an extension of the time limit within which they are required to file their appeals by calculating the ten-working-day period, as stipulated under Rule 90(C) the Tribunal’s Rules of Procedure and Evidence (“Rules”), not from 30 July 2012, the date on which they were notified of the Trial Chamber’s Decision, but from 21 August 2012, at the end of the Tribunal’s recess. They argue, in effect, that the intervening judicial recess should be treated as official Tribunal

⁷ The Office of the Prosecutor confirmed to the Appeals Chamber’s Associate Legal Officer, by email dated 3 August 2012, that the Prosecutor relies on his earlier response and does not wish to file an additional one.

⁸ Sabra Request, para. 2.

⁹ STL, *Prosecutor v Ayyash et al.*, Case No. STL-11-01/PT/AC, Observations of the Badreddine Defence relating to “Prosecution Consolidated Response to the Badreddine and Oneissi Defence Requests for Extension of the Time and Page Limits for Filing Appeals to the Trial Chamber “Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal,” 6 August 2012 (“Badreddine Reply”).

¹⁰ STL, Practice Direction on Filing of Documents before the Special Tribunal of Lebanon, 23 April 2012 (“Practice Direction on Filings”).

¹¹ Badreddine Request, para. 2; Oneissi Request, para 14.

¹² Badreddine Request, para. 3; Oneissi Request, para 9.

¹³ Oneissi Request, para. 8.

¹⁴ Badreddine Request, para. 3.



holidays and should not be included in the calculation of the ten “working days”.¹⁵ If the judicial recess is not counted in the calculation of “ten working days”, the appellate briefs would be due on 3 September 2012. Counsel for Mr Oneissi additionally argue that the complexity and significance of the appeal are “good cause” for such an extension of the time limit.¹⁶

8. Finally, counsel argue that an extension of word and time limits is necessary to allow them to have adequate time and facilities to prepare their appeals, in keeping with Article 16(4)(b) of the Statute.¹⁷

9. In his response, the Prosecutor argues that the Defence has no standing to file an appeal because the Decision on Legality and Jurisdiction is not a decision on a preliminary motion challenging jurisdiction. The Prosecutor made no submissions in relation to the time and word limit extensions requested by the Defence.

10. In their reply, counsel for Mr Badreddine contend that the question of admissibility of the appeal on the basis of Rule 90(B)(i) is inextricably linked to the merits of the appeal they intend to file. They therefore request the Chamber to take note of the fact that they will develop this issue in the appeal itself.¹⁸

DISCUSSION

11. First, we note that the filing submitted today by Defence counsel for Mr Badreddine is not properly before us. Rule 8 of the Rules provides that a reply may be filed after obtaining leave from the Judge or Chamber. Counsel for Mr Badreddine have titled their filing as “Observations.” It is however a reply to the Prosecutor’s arguments on standing. No request for leave to file such a reply was submitted to the Chamber. Their filing is therefore dismissed.

12. Second, the Prosecutor’s argument regarding standing is not one we can pronounce upon at this stage without further submissions from both parties. In the proceedings before the Trial Chamber, Defence counsel based their arguments on Rule 90 of the Rules. They contended that their submissions were motions challenging the jurisdiction of the Tribunal. The Trial Chamber decided

¹⁵ Badreddine Request paras 4-5, Oneissi Request paras 5-13.

¹⁶ Oneissi Request, paras 7-13.

¹⁷ Badreddine Request, para. 3; Oneissi Request, para. 4; Ayyash Request, para. 3.

¹⁸ Badreddine Reply, paras 3 and 4.



that the arguments the Defence teams raised were challenges not to jurisdiction but to legality. It is however arguable that the findings of the Trial Chamber cannot prevent Defence counsel from appealing the Decision on Legality and Jurisdiction, on the legal basis for which they contended before the Trial Chamber. It will then be this Chamber's task to determine whether that legal basis is correct or not, when we receive the substantive arguments of counsel.

13. In the light of the current time constraints, the requests for extension of time and word limits must be addressed immediately.

14. The length of filings before the Tribunal is determined by Article 5 of the Practice Direction on Filings. Paragraph (i) of the Article provides that "all other appeals" (such as the prospective appeals which are the subject of this Decision) against a decision of a Judge or Chamber shall not exceed 20 pages or 6,000 words, whichever is greater. Article 5 also provides that these limits can be modified by order of the Chamber.

15. Counsel have requested that they be allowed to file appeals against the Trial Chamber's Decision on Legality and Jurisdiction with an extended 10,000 word limit. Such a request must be based on good cause to warrant departure from the limits stipulated under the Practice Direction. Counsel argue, *inter alia*, that the complexity of the legality and jurisdiction issues, as well as their impact on the rights of the accused, justify such an extension. In addition, counsel note that the Trial Chamber granted a similar extension in relation to the briefs submitted before it on the basis that it could benefit from receiving more detailed submissions than would normally be permitted.¹⁹ These arguments satisfy us that there is good cause and we consequently grant counsel's request.

16. The request for extension of time limit is premised on the deadline set out in Rule 90(C) of the Rules, which provides that an appeal of a decision on a preliminary motion challenging jurisdiction must be filed "within ten days of the impugned decision." This is no occasion to discuss jurisdiction or legality or the scope and application of Rule 90. As clearly shown by the Prosecutor's submission, parties disagree on the legal basis of the prospective appeals. At this stage, it is sufficient to say that, whether pursuant to Rule 90 or by analogy to that Rule, a ten-day deadline presumptively applies.

¹⁹ Badreddine Request para. 3; Oneissi Request para. 4.



17. The calculation of this deadline is made on the basis of Rule 7(C), which provides that “[i]n the calculation of time limits under these Rules, only working days shall be included and not official Tribunal holidays and weekend days.” Counsel argue that it is unclear whether the judicial recess period is included as an official Tribunal holiday within the meaning of Rule 7(C). They submit that, in a case of ambiguity, the Chamber should adopt the interpretation most favourable to the rights of the Defence, in this case, a broad interpretation of the Rule that includes judicial recess within the official Tribunal holidays.

18. Official holidays are generally disregarded when calculating time limits. Although considered as a time for refreshment, the judicial recess is not *per se* an official Tribunal holiday. No hearings take place during the recess. However, judicial activity continues, albeit to a limited extent. All organs of the Tribunal continue to function, staff members work throughout the recess period, and Judges continue to address the matters before them whilst on recess.²⁰ Importantly, the Registry continues to accept filings from the parties and decisions rendered by the Chambers during the recess – a fact well demonstrated by the Defence requests that seized us with the present matter.

19. Contrary to the assertion of counsel for Mr Oneissi,²¹ it cannot be said that it is international judicial practice not to include the period of judicial recess in the calculation of time limits. The ICC Appeals Chamber has explicitly stated that “the three week court recess does not generally constitute a suspension of judicial activity.”²² Further, the ICC authority cited by counsel for Mr Oneissi does not support the contention.²³

²⁰ Both the Trial Chamber and the Pre-Trial Judge have issued decisions during the recess period. See STL, *Prosecutor v. Ayyash et al*, Case No. STL-11-01/PT/TC, Decision on Request for Leave to Reply to Prosecution’s Response to Challenges to the Form of the Indictment, 1 August 2012; *Prosecutor v. Ayyash et al*, Case No. STL-11-01/PT/PTJ, Interim Order Relating to the Prosecution’s Request Concerning Interim Protective Measures of 17 July 2012, 2 August 2012

²¹ Oneissi Request, para. 5

²² ICC, *Prosecutor v. Katanga*, Case No. ICC-01/04-01/07, Decision on the “Prosecution’s Urgent Application for Extension of Time to File Document in Support of Appeal”, 18 December 2007, paras 7-9; ICC, *Prosecutor v. Katanga*, Case No. ICC-01/04-01/07, Decision on the Starting Date of the Time Limit Provided for in Rule 155 of the Rules in Relation to the Decisions Issued on 21 December 2007, 21 December 2007, page 2.

²³ The extension granted in this case was a special arrangement made on the agreement of the parties, in part to allow the Defence to travel to Congo to continue their work (See ICC, *Prosecutor v. Katanga*, Case No. ICC-01/04-01/07, Transcript of Hearing held on 9 July 2007, pages 11, 12.) Additionally, the submissions due to be filed concerned matters relating to the conduct of the hearing in progress and as such, there was no need for the Chamber to hear the parties before the hearing resumed after the recess (See ICC, *Prosecutor v. Katanga*, Case No. ICC-01/04-01/07, Transcript of Hearing held on 15 July 2007, pages 76-77; ICC, *Prosecutor v. Katanga*, Case No. ICC-01/04-01/07, Transcript of Hearing held on 9 July 2007, pages 10-12).



20. However, as mentioned above, counsel argue that they require additional time to analyze fully the complex matters addressed in the Decision on Legality and Jurisdiction, and that Article 16(4)(b) of the Statute acknowledges their right to adequate time and facilities for preparation. Pursuant to Rule 9(A)(i) of the Rules, a Chamber may enlarge any time prescribed by the Rules on good cause being shown. Thus, the Defence arguments of complexity and adequate time show good cause warranting an extension of the ten-working-day limit provided for in the Rules.

21. We therefore grant an extension of eight working days to the initial deadline of ten working days, starting from the day counsel received notice of the Decision on Legality and Jurisdiction.

DISPOSITION

FOR THESE REASONS;

THE APPEALS CHAMBER, deciding unanimously;

PURSUANT TO Rule 9(A)(i) of the Rules and Article 5 of the Practice Direction on Filing of Documents before the Special Tribunal for Lebanon and the inherent jurisdiction of the Tribunal to do justice;

GRANTS the request for extension of word limit and allows the four Defence teams to file appeals against the Trial Chamber's "Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal" not exceeding 10,000 words.

GRANTS in part the request for extension of time limit and allows the four Defence teams to file appeals against the Trial Chamber's "Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal" no later than 24 August 2012.

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

Dated this 6th day of August 2012,

Leidschendam, the Netherlands



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TRIBUNAL SPÉCIAL POUR LE LIBAN

A handwritten signature in black ink, appearing to read "David Baragwanath".

Judge David Baragwanath

Presiding

