

**BEFORE THE TRIAL CHAMBER****Case No:** STL-11-01/PT/TC

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

Registrar: Mr. Herman von Hebel**Date:** 23 August 2012**Original language:** English**Type of document:** Public**THE PROSECUTOR**

v.

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

**DECISION CERTIFYING FOR APPEAL THE "DECISION ON THE
 DEFENCE CHALLENGES TO THE JURISDICTION AND
 LEGALITY OF THE TRIBUNAL"**

Office of the Prosecutor:
 Mr. Norman Farrell

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

Defence Office:
 Mr. François Roux

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

**Legal Representatives of
 Participating Victims:**
 Mr. Peter Haynes
 Mr. Mohammad F. Mattar
 Ms. Nada Abdelsater-Abusamra

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

Counsel for Mr. Assad Hassan Sabra:
 Mr. David Young
 Mr. Guénaël Mettraux





1. The Defence for Mr. Mustafa Amine Badreddine and Mr. Hussein Hassan Oneissi, on 8 August 2012, filed requests for certification to appeal the Trial Chamber's "Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal" of 27 July 2012.¹ The requests were made under Rule 90 (B) (ii) of the Tribunal's Rules of Procedure and Evidence ("Disposal of Preliminary Motions"). The Prosecution did not oppose the requests for certification but argued that they could not be made under that Rule.²
2. On 1 August 2012, Defence counsel for Mr. Badreddine and Mr. Oneissi indicated their intention to appeal the decision, but pursuant to Rule 90 (B) (i) (as an appeal against a decision relating to a challenge to jurisdiction, as a preliminary motion, under which an appeal would lie as of right without requiring the Trial Chamber to certify an appeal) by asking the Appeals Chamber to extend both the word limit and the time for filing such an appeal.³ The Prosecution opposed that motion, arguing that no appeal lay as of right and that certification for an appeal was required, as the appeal involved an issue of the Tribunal's legality rather than a challenge to jurisdiction under Rule 90.⁴ The Appeals Chamber extended the time for filing an appeal and the word limit, but without ruling whether the right to appeal was under Rule 90 (B) (i) or required certification under Rule 126 (C).⁵

¹ STL, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, Case No. STL-11-01/PT/TC, Requête de la Défense de M. Badreddine aux fins de certification de l'appel de la « Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal », 8 août 2012; The Defence for Hussein Hassan Oneissi Request for Certification to Appeal the "Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal", 27 August 2012", 8 August 2012.

² STL-11-01/PT/TC, Prosecution Consolidated Response to Requests of the Defence for Badreddine and Oneissi for Certification to Appeal the Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal, 17 August 2012.

³ STL-11-01/PT/AC, Requête de la Défense de Badreddine aux fins d'extension du nombre de mots autorisé et de prorogation de délai en vue du dépôt d'un appel de la « Decision on the Defence Challenges to the Jurisdiction & Legality of the Tribunal », 1 août 2012; 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.

⁴ STL-11-01/PT/AC, Prosecution Consolidated Response to the Badreddine Defence and Oneissi Defence Requests for Extensions of 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.

⁵ STL-11-01/PT/AC, Decision on Defence Requests for Extension of Word and Time Limits, 6 August 2012.

**Appeal under Rule 90 (B)**

3. Rule 90 (B) (i) provides that decisions on preliminary motions are without interlocutory appeal “save in the case of motions challenging jurisdiction”. In its decision the Trial Chamber held that the defence motions were not challenges to jurisdiction as defined in Rule 90 (A) (i) (or preliminary motions).⁶ If this is correct – a matter for the Appeals Chamber’s determination – certification by the Trial Chamber would be required before an appeal could be filed.
4. If the four Defence motions were not “preliminary motions” as exhaustively defined in Rule 90 (A), the basis for certification cannot be Rule 90 (B) (ii). And if the Trial Chamber correctly decided that the motions were ordinary motions that should have been decided *in limine litis* now rather than later in the proceedings, the basis for certification must be in Rule 126.

Appeal under Rule 126 (C)

5. Rule 126 (C) provides, relevantly, that a Chamber may certify an appeal of a decision if it “involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which an immediate resolution by the Appeals Chamber may materially advance the proceedings”.
6. The decision (as to either the legality or jurisdiction of the Tribunal) involves an issue that would significantly affect the fair and expeditious conduct of the proceedings. No trial could occur if the Tribunal lacked legality or jurisdiction. An immediate resolution of this issue by the Appeals Chamber will therefore materially advance the proceedings. It is an issue that the Trial Chamber should certify for appeal.

⁶ STL-11-01/PT/TC, Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal, 27 July 2012, para. 32.



SPECIAL TRIBUNAL FOR LEBANON

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FOR THESE REASONS the Trial Chamber:

GRANTS the Defence of Mustafa Amine Badreddine and Hussein Hassan Oneissi certification to appeal its “Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal”.

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

23 August 2012,
Leidschendam,
The Netherlands

Judge Robert Roth, Presiding

Judge Michel Brundage

Judge David Re

