



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

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
RECONSIDERATION OF THE TRIAL *IN ABSENTIA* DECISION”**

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. On 1 February 2012, the Trial Chamber decided, under Rule 106 of the Tribunal's Rules of Procedure and Evidence, to proceed to try the four Accused, Mr. Salim Jamil Ayyash, Mr. Mustafa Amine Badreddine, Mr. Hussein Hassan Oneissi and Mr. Assad Hassan Sabra *in absentia*.¹
2. Defence counsel for each of the four Accused subsequently requested the Trial Chamber to reconsider this decision.² On 11 July 2012, the Trial Chamber dismissed these requests.³
3. On 20 July 2012, counsel for the four Accused each sought certification under Rule 126 (C) to appeal the decision.⁴ The Prosecution, on 9 August 2012, filed a response asking the Trial Chamber to dismiss the motions to the extent that they seek certification to appeal issues not directly arising from the decision.⁵
4. 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".
5. Here, the issue of whether the Trial Chamber should have reconsidered its decision to proceed to a trial *in absentia* is one that falls squarely within Rule 126 (C) in that it would first, significantly affect the fair and expeditious conduct of the proceedings or the outcome of the

¹ *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, Case No. STL-11-01/I/TC, Decision to Hold Trial *In Absentia*, 1 February 2012.

² STL-11-01/PT/TC, 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, 22 mai 2012; Demande de la défense de M. Oneissi en réexamen de la décision d'ouverture d'une procédure par défaut du 1^{er} février 2012, 24 mai 2012; Sabra Motion for Reconsideration of the Trial Chamber's Order to Hold a Trial in Absentia, 23 May 2012; Ayyash Motion Joining Sabra Motion for Reconsideration of the Trial Chamber's Order to Hold a Trial in Absentia, 24 May 2012.

³ STL-11-01/PT/TC, Decision on Reconsideration of the Trial *In Absentia* Decision, 11 July 2012.

⁴ STL-11-01/PT/TC, Sabra Motion for Certification for Leave to Appeal Decision on Reconsideration of the Trial *In Absentia* Decision, 20 July 2012; Demande de certification relative à la décision sur le réexamen de la décision portant ouverture d'une procédure par défaut, 20 juillet 2012; Requête de la Défense de M. Badreddine aux fins de certification de l'appel de la «*Decision on Reconsideration of the Trial In Absentia Decision*», 20 juillet 2012; Defence for Salim Jamil Ayyash's Joinder in the Sabra Motion for Certification for Leave to Appeal Decision on Reconsideration of the Trial *In Absentia* Decision, 20 July 2012.

⁵ STL-11-01/PT/TC, Prosecution Consolidated Response to Defence Requests for Certification for Leave to Appeal Decision on Reconsideration of the Trial *In Absentia* Decision, 9 August 2012.



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trial and, second, materially advance the proceedings if it were immediately resolved by the Appeals Chamber.

6. Regarding the Prosecution's contention that the Trial Chamber should not certify for appeal issues not arising from the decision, the Trial Chamber here is certifying for appeal the decision itself, namely the decision not to reconsider the decision to proceed to trial *in absentia*. The Appeals Chamber, not the Trial Chamber, has the task of determining which arguments are admissible on appeal.

FOR THESE REASONS the Trial Chamber:

GRANTS the Defence of the four Accused certification to appeal the "Decision on Reconsideration of the Trial *In Absentia* Decision".

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

23 August 2012,
Leidschendam,
The Netherlands

Judge Robert Roth, Presiding

Judge Micheline Braddy

Judge David Re

