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:	**Judge Daniel Fransen**
The Registrar:	**Mr. Herman von Hebel**
Date:	**17 September 2012**
Original language:	**English**
Classification:	**Public**

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

ORDER GRANTING THE PROSECUTION REQUEST FOR LEAVE TO REPLY TO THE DEFENCE JOINT RESPONSE TO THE PROSECUTION REQUEST FOR LEAVE TO AMEND THE INDICTMENT

Office of the 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

1. By way of this order, the Pre-Trial Judge decides on the Prosecution's Request of 13 September 2012 for Leave to File a Reply[1] to the Defence's Joint Response[2] to the Prosecution's Request for Leave to Amend the Indictment.[3]

I. Procedural Background

2. On 28 June 2011, the Pre-Trial Judge rendered a decision on the Prosecution's request to confirm the 10 June 2011 Indictment.[4]

3. On 17 August 2012, the Prosecution filed the Request for Leave to Amend the Indictment, seeking the Pre-Trial Judge's authorisation to amend the 10 June 2011 Indictment pursuant to Rule 71(A)(ii) of the Rules of Procedure and Evidence (the "Rules").

4. On 7 September 2012, the four Defence teams filed the Joint Response, in which they take no position on the Prosecution's proposed amendments to the Indictment.[5] They do, however, seek to reserve their right "to raise any issue pertaining to the proposed amended indictment should leave be granted to amend."[6] They further allege that they can "challenge the form of any amendment", including those not resulting in new charges.[7] Finally, should leave to amend be granted, the Defence teams argue that they "should be permitted to withdraw their initial challenge and file a new one that pertains to the Indictment as amended or to file supplementary submissions".[8] With respect to such submissions, they request that the Pre-Trial Judge "set a time limit under Rule 89(F) for supplementary or substitute submissions on the form of the amended indictment".[9]

5. On 13 September 2012, pursuant to Rule 8, the Prosecution filed the Request for Leave to File a Reply.

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[1] STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Prosecution Request for Leave to Reply to the "Joint Response to Prosecution Request for Leave to Amend the Indictment", 13 September 2012 (the "Request for Leave to File a Reply").
[2] STL, *Prosecutor v. Ayyash et al*, Case No. STL-11-01/PT/PTJ, Joint Response to Prosecution Request for Leave to Amend the Indictment, 7 September 2012 (the "Joint Response").
[3] STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Prosecution Request for Leave to Amend the Indictment Pursuant to Rule 71(A)(ii), 17 August 2012 (the "Request for Leave to Amend the Indictment").
[4] STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/PTJ, 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.
[5] Joint Response, para. 5.
[6] *Ibid*, para. 6.
[7] *Ibid*, para. 7.
[8] *Ibid*, para. 8.
[9] *Ib.*

II. Reasons for the Decision

6. The Prosecution seeks leave to reply to the new issues raised by the Defence in the Joint Response, namely "the purported right to challenge the form of amendments that do not contain new charges, the purported reservation, and the various requests".[10] The Prosecution submits that these issues will affect future proceedings and the Tribunal would benefit from a reply on the matter.

7. The Pre-Trial Judge notes that this matter concerns *inter alia* the interpretation of Rule 71(F), and more specifically whether "new charges" should be read restrictively.[11] This interpretation may ultimately affect the rights of the accused, especially their right to have adequate time for the preparation of their defence. In addition, this matter will affect the practical outcome of granting leave to amend the Indictment. The Pre-Trial Judge therefore considers that the subject matters covered by the new issues raised by the Defence in their filing amount to exceptional circumstances justifying a reply. Hence, it would be in the interest of justice to allow the Prosecution to file a reply on these issues.

8. In order to avoid any further delays, and considering the pending Request for Leave to Amend the Indictment, the Pre-Trial Judge uses his discretion under Rule 9(A)(i) and orders the Prosecution to file its reply by 20 September 2012 at the latest.

9. The Pre-Trial Judge notes that, following his decision of 14 September 2012 regarding the classification of the filings in this matter,[12] the present order is classified as public.

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[10] Request for Leave to File a Reply, para. 2.
[11] Joint Response, para. 6.
[12] STL, *Prosecutor v. Ayyash et al*, Case No. STL-11-01/PT/PTJ, *Décision portant sur la classification de la Requête du Procureur en Amendement du 17 août 2012, sur la Requête du Procureur en Modification de la Classification de la Réponse Conjointe de la Défense du 10 septembre 2012 et sur la Réponse Conjointe de la Défense du 11 septembre 2012*, 14 September 2012.

FOR THESE REASONS,

THE PRE-TRIAL JUDGE,

PURSUANT TO Rules 8 and 9(A)(i) of the Rules,

GRANTS the Prosecution Request for Leave to Reply to the Defence Joint Response to Prosecution Request for Leave to Amend the Indictment; and

ORDERS the Prosecution to file its reply by 20 September 2012 at the latest.

Done in Arabic, English and French, the English version being authoritative.
Leidschendam, 17 September 2012

SPECIAL TRIBUNAL FOR LEBANON
PRE-TRIAL JUDGE

Daniel Fransen
Pre-Trial Judge

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