



## THE APPEALS CHAMBER

**Case No.:** STL-11-01/PT/AC/AR90.1

**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:** 20 September 2012

**Original language:** English

**Classification:** Public

### THE PROSECUTOR

v.

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

### SCHEDULING ORDER FOR APPEALS HEARING

**Prosecutor:**  
Mr Norman Farrell

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

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

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

**Head of Defence Office:**  
Mr François Roux

**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





1. We are seized of three Defence appeals<sup>1</sup> against the Trial Chamber's "Decision on the Defence Challenges to the Jurisdiction of the Tribunal" of 27 July 2012.<sup>2</sup> The Prosecutor has responded to these appeals.<sup>3</sup> We have also received submissions in reply from counsel for Mr Badreddine<sup>4</sup> and observations by the Victims' Legal Representatives.<sup>5</sup> In a previous Scheduling Order we informed the parties that an oral hearing on the appeals will take place in the Antonio Cassese Courtroom on 1 October 2012. The present Order addresses the modalities of the hearing.

2. We note that the three appeals address a number of issues that overlap or are similar in substance. For this reason, and in the interests of judicial economy, we allocate a three-hour block of time to the three Defence teams, which they may apportion among themselves as they find appropriate. We set the following schedule:

<b>9:15 – 10:45</b>	Submissions by Defence counsel for the three Appellants
<b>10:45 – 11.15</b>	<i>Break</i>
<b>11.15 – 12:45</b>	Submissions by Defence counsel for the three Appellants (continued)
<b>12.45 – 14:00</b>	<i>Lunch Break</i>
<b>14:00 – 15.30</b>	Submissions in response by the Prosecutor
<b>15:30 – 16:00</b>	<i>Break</i>
<b>16:00 – 16:20</b>	Submissions by Victims' Legal Representative
<b>16:20 – 17:00</b>	Submissions in reply by Defence counsel for the three Appellants

We remind the parties that during the appeals hearing they may argue the grounds of appeal in any order they consider suitable for their presentations. However, counsel should not repeat verbatim or merely summarize the arguments in their briefs, which we have already read.

<sup>1</sup> See STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/AC/AR90.1, Scheduling Order on Interlocutory Appeals, 27 August 2012, fn. 2.

<sup>2</sup> 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 ("Impugned Decision")

<sup>3</sup> STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/AC/AR90.1, Prosecution Consolidated Response to Ayyash, Badreddine and Oneissi Defence Appeals of the Trial Chamber's "Decision on the Defence Challenges to Jurisdiction and Legality of the Tribunal", 14 September 2012

<sup>4</sup> STL, *Prosecutor v. Ayyash et al*, Case No. STL-11-01/PT/AC/AR90.1, Réplique de la Défense de M. Badreddine à « Prosecution Consolidated Response to Ayyash, Badreddine and Oneissi Defence Appeals of the Trial Chamber's "Decision on the Defence Challenges to Jurisdiction and Legality of the Tribunal" », 19 September 2012.

<sup>5</sup> STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/AC/AR90.1, Observations of the Legal Representative of Victims on the Interlocutory Appeal Briefs and Responses to the Trial Chamber's Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal, 19 September 2012.



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3. In addition, we invite the parties, without prejudice to any other issue which they or the Appeals Chamber may wish to address, to discuss the following matters:

- 1) Is the issue of whether the appeals are admissible determined by the nature of the dispute or is it dependent on the procedural avenue applied by the Trial Chamber?
- 2) Are the appeals based on Rule 90 or Rule 126<sup>6</sup> of the Rules or on the inherent jurisdiction of the Tribunal to do justice?
- 3) In the event that the appeals are based on Rule 126:
  - a) Is the requirement under Rule 126(B) that the case be assigned to the Trial Chamber satisfied?
  - b) What is the impact of Rule 126(A), which provides that this Rule applies to all other motions “other than preliminary motions”?
  - c) Was the Trial Chamber correct to rule that the Defence motions were admissible because the Defence had argued that the Tribunal was not established by law?<sup>7</sup>
- 4) Counsel for Mr Badreddine argues that the “[Trial] Chamber has [...] not genuinely reviewed what it considered necessary to verify: the conformity of the [Security] Council act with the “Purposes and Principles” of the United Nations”<sup>8</sup> and that “when the [Security] Council characterises acts of terrorism as a “threat to peace”, it is only insofar as there is risk that such acts could lead to [...] international order [being] disturbed.”<sup>9</sup>

He further argues that “the possibilities of resorting to international justice are limited [...] [to] crimes [...] on an extremely large scale” whereas the “facts the Tribunal is required to hear and determine, in this case, are not international crimes: the subject matter of the jurisdiction of the Tribunal falls under internal Lebanese law.”<sup>10</sup>

Can the Prosecutor explain the basis on which he challenges these submissions?

We emphasize that our raising these issues for clarification in no way expresses any view upon them or on the admissibility or merits of the appeals.

<sup>6</sup> We note that counsel for Mr. Ayyash did not seek certification of the Impugned Decision.

<sup>7</sup> Impugned Decision, paras 38-39.

<sup>8</sup> See STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/AC/AR90.1, Appellate Brief of the Defence for Mr Badreddine Against the “Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal”, 24 August 2012, para. 63.

<sup>9</sup> *Id* at para. 81.

<sup>10</sup> *Id* at para. 88.



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**DISPOSITION**

**FOR THESE REASONS**

**THE APPEALS CHAMBER**, deciding unanimously,

**ISSUES** the timetable for the appeals hearing on 1 October 2012 as set out in paragraph 2 of this Order; and

**INVITES** the parties to address the issues set out in paragraph 3 of this Order.

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

Dated this 20<sup>th</sup> day of September 2012.

Leidschendam, the Netherlands

Judge David Baragwanath  
Presiding

