



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 appeals¹ against the Trial Chamber's "Decision on the Defence Challenges to the Jurisdiction of the Tribunal" of 27 July 2012.² The Prosecutor has responded to these appeals.³ We have also received submissions in reply from counsel for Mr Badreddine⁴ and observations by the Victims' Legal Representatives.⁵ 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:

9:15 – 10:45	Submissions by Defence counsel for the three Appellants
10:45 – 11:15	<i>Break</i>
11:15 – 12:45	Submissions by Defence counsel for the three Appellants (continued)
12:45 – 14:00	<i>Lunch Break</i>
14:00 – 15:30	Submissions in response by the Prosecutor
15:30 – 16:00	<i>Break</i>
16:00 – 16:20	Submissions by Victims' Legal Representative
16:20 – 17:00	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.

¹ 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.

² 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")

³ 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

⁴ 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.

⁵ 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.



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 126⁶ 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?⁷
- 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”⁸ 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.”⁹

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.”¹⁰

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.

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

⁷ Impugned Decision, paras 38-39.

⁸ 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.

⁹ *Id* at para. 81.

¹⁰ *Id* at para. 88.



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

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 20th day of September 2012.

Leidschendam, the Netherlands

Judge David Baragwanath

Presiding

