



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE PRESIDENT

Case No.: STL-11-01/PT/PRES

Before: Judge David Baragwanath, President

Registrar: Mr Herman von Hebel

Date: 8 October 2012

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

**PUBLIC REDACTED VERSION OF INTERIM SCHEDULING DIRECTION
FILED CONFIDENTIALLY AND *EX PARTE* ON 3 SEPTEMBER 2012**

Head of Defence Office:
Mr François Roux

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

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

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





I. Introduction

1. On Friday 31 August 2012, I received a 'Request for Review of Registrar's Decision of 27 July 2012 in Relation to a Local Resource Person' filed by the Head of the Defence Office ('Request'). The Head of the Defence Office requests me to hold a hearing on the matter and to order the Registrar to agree to a framework proposed by the Defence Office for the employment of Dr Omar Nashabe through a Legal Services Contract between Lead Counsel and Dr Nashabe himself.

2. Four procedural issues arise. They are:

- (1) Whether I can and should deal within the matter administratively or whether it should be dealt with judicially by a Judge or Chamber;
- (2) Whether the Request and the procedures relating to it should retain confidential and *ex parte* status;
- (3) Whether counsel appointed to represent the accused should participate in the matter;
- (4) Whether the Prosecutor should be permitted to participate.

Issue (1) Whether I can and should deal within the matter administratively or whether it should be dealt with judicially

3. The Statute gives me two roles. One is as a member and Presiding Judge of the Appeals Chamber. The other, as President of the Tribunal, is administrative and requires me to be responsible for the Tribunal's 'effective functioning and the good administration of justice'.¹

¹ Articles 10(1) and 12(1) of the Statute
Case No. STL-11-01/PT/PRES



4. The two roles potentially conflict. Since the Request describes the challenged decision as ‘administrative’,² and because there has been no judicial decision at first instance followed by appeal, I infer that the request is to me as President, not as appellate judge.

5. But because of the absolute right of an accused to fair trial,³ my practice as President is to treat the judicial role as dominant. So, while I have made no decision as to the present Request, and invite further responses from Head of Defence and the Registrar before doing so, the fact that the Head of Defence advises that there is a potential fair trial issue⁴ may be a pointer to placing such issue on the judicial track.

6. In my present administrative capacity, I am provisionally attracted to conducting a threshold enquiry into whether I can properly determine the issues administratively. I therefore seek assistance from the Head of Defence and the Registrar to identify the character of the issues: in particular whether they are an element of the fair trial which is the right of the accused under both Article 16 of the Statute and the general law; or whether they are administrative and might turn on an application of the provisions cited in the Request (including Articles 10 and 12 of the Tribunal’s Statute, Article 12(1), as well as Rules 32(C) and 48(A) of the Rules of Procedure and Evidence, as well as case law from other courts and tribunals).

7. Dr Nashabe’s proposed appointment [REDACTED].⁵ That might be thought to raise an issue of fairness of trial, particularly in this specific case, where counsel have been appointed to ensure ‘full representation of the interests and rights of the accused’ pursuant to Article 22(2) of the Statute.

8. In that event the issues might require a judicial decision, not one that is administrative.

9. In terms of Rule 89(B), the Pre-Trial Judge is competent to ‘take any measures necessary to prepare the case for a fair and expeditious trial’, which might be thought to include matters related to the appointment of persons assisting counsel. The Trial Chamber,

² Request, para. 24.

³ Relied upon in Request para. 72.

⁴ Request para. 51.

⁵ [Redacted].



pursuant to Rule 130, has similar authority to ‘give directions on the conduct of the proceedings as necessary and desirable to ensure a fair, impartial, and expeditious trial.’

10. To make a decision as to classification requires me to know to some extent the values in issue between the Head of Defence and the Registrar, which will have to be evaluated and either reconciled or prioritized. I gather from the Request that [REDACTED]; and against that the value of protecting legitimate values of confidentiality⁶ including access to the STL premises where victims and witnesses might be; and whether such matters are for the Head of Defence to determine⁷ or whether a judge should resolve them.

11. I therefore consider it appropriate hear arguments from the parties on whether I should deal with this matter administratively.

(2) Whether the Request and the procedures relating to it should retain confidential and *ex parte* status;

(3) Whether counsel appointed to represent the accused should participate in the matter;

(4) Whether the Prosecutor should be permitted to participate.

12. The Head of the Defence Office filed the Request as ‘confidential and *ex parte*’, [REDACTED]. The answers to questions (2), (3) and (4) may be influenced to the answer to question (1), above. If it is to be dealt with judicially, as affecting the right to the accused to a fair trial, it may be thought that counsel appointed to represent the accused, who have received the Request and to whom this Direction is copied, should have the opportunity to participate in the process leading to a resolution of the matter.

13. In that event, since the values in issue may include those represented by the Prosecutor, cause would need to be shown why the fair trial rights of the accused require that the matter be dealt with *ex parte* without notice to the Prosecutor.

14. The principle of open justice raises questions as to whether in any event this Request should be dealt with as confidential and *ex parte*.

⁶ Request, paras 11 and 12.

⁷ Request, para. 23(c).



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FOR THE FOREGOING REASONS**I**

INVITE the Head of the Defence Office and the Registrar or his nominee to respond to the matters raised in this Scheduling Order by written submissions filed by 2 pm tomorrow Tuesday, 4 September 2012 and to attend my Chambers to discuss these matters on Thursday, 6 September at 9.30 am or such other time as may be agreed with my Chef de Cabinet;

DIRECT that the *ex parte* and confidential status of the Request and this Order continue until my further direction.

Dated this 8th day of October 2012,
Leidschendam, the Netherlands

Judge David Baragwanath

President

