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 SECOND INTERIM DECISION FILED CONFIDENTIALLY ON 10 SEPTEMBER 2012

Office of the Prosecutor:
Mr Norman Farrell

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 Guénaël Mettraux

INTRODUCTION

1. The Head of Defence Office challenges the refusal of the Registrar to permit him to appoint Dr Omar Nashabe as Local Resource Person for the purpose of assisting the Defence of the accused on their forthcoming trial *in absentia*.[1] He is supported by counsel appointed to represent the accused who sought and to whom I granted joinder. The present issue is whether, as Me Roux submits, I should as President determine the matter as involving a difference between organs of the Special Tribunal for Lebanon[2] or whether, as Mr Registrar von Hebel contends, the issue concerns fairness of the accused's trial and should be dealt with by the Pre-Trial Judge, from whom an appeal may lie.

2. I have concluded:

a. Each of the Pre-Trial Judge, the Trial Chamber and the President may have jurisdiction in respect of a difference of this kind.

b. If the real dispute mainly concerns fairness of trial it should be determined by either the Pre-Trial Judge or the Trial Chamber.

c. If it does not it may be determined by the President.

d. As President I must make my own decision whether I should accept jurisdiction. So I must make my own assessment of the facts to the extent necessary for that purpose.

e. My decision in that capacity is made administratively under Article 10 of the Statute of the Tribunal, in my capacity as President.

f. Fairness requires that the parties have the opportunity to make further submissions as to the facts before I decide whether I should make an administrative decision or invite a judicial decision by either the Pre-Trial Judge or the Trial Chamber.

g. Directions as to further submissions on the present issue and as to confidentiality are contained in the determination. What is said about the principles in this interim decision is expressed tentatively to suggest a focus for submissions which will inform

[1] STL, *Prosecutor v. Ayyash et al*, Case No STL-11-01/PT/PRES, Request for Review of Registrar's Decision of 27 July 2012 in Relation to the Assignment of a Local Resource Person, 31 August 2012.
[2] Article 10 STLSt.

my final decision. I therefore reserve the right to review in their light what is said here. Of course it does not bind any judicial decision-maker.

3. The application of the principles involved in this decision-making process requires an understanding of the facts and their nuances followed by a value judgment which cannot be made in the abstract. I therefore reserve until my final decision whether I should make a determination on the substantive question of whether and, if so, on what basis the Request of the Head of Defence Office should be endorsed.

4. It may be that rather than await my decision or the result of adjudication, the Registry and the Defence Office will be able to find a solution in the light of the present tentative remarks and of the indisputable values which both seek to uphold.

BACKGROUND TO THE CASE

5. On 1 May 2012 at the behest of the Defence Office, the Tribunal entered into a written Contract for the Services of a Consultant or Individual Contractor, with Dr Nashabe. By letter of 10 May 2010 the Registrar terminated that contract for reasons reproduced at paragraph 36 below. Its essence was that the Tribunal could not employ anyone who [REDACTED] had knowingly published a newspaper article in violation of an order by a Tribunal Judge.

6. By letter of 13 July 2012, counsel on behalf of the Head of Defence Office advised the Registrar that, after consultation with counsel for the accused, he sought the Registrar's authority to arrange payment for services provided by Dr Nashabe under a contract between him and Defence counsel in a manner which did not involve the Tribunal in the contractual relationship.

7. Because of the publication [REDACTED] the Registrar declined permission.

8. 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 requested me to hold a hearing on the matter.

9. In a Scheduling Direction of 3 September 2012 I identified four procedural issues:

a. whether I could and should deal with the matter administratively or whether it should be dealt with judicially by a Judge or Chamber;

b. whether the Request and the procedures relating to it should retain the confidential and *ex parte* status sought by the Head of Defence;

c. whether counsel appointed to represent the accused should participate in the matter; and

d. whether the Prosecutor should be permitted to participate.

10. Following written submissions from the Head of Defence Office and the Registrar I commenced a hearing *in camera* without notice to the Prosecutor. Counsel for the accused having applied for joinder of their clients as parties, I made an unopposed order accordingly.[3] I ruled over a Defence objection that Mr Mundis, Chief of Prosecutions within the Office of the Prosecutor, might be present during argument of the current issues, save where Me Roux contended that he should not be informed of certain matters of detail concerning Dr Nashabe's proposed appointment. Mr Mundis elected to reserve the position of the Office of the Prosecutor and made no submissions.[4]

11. Following argument I advised counsel that before giving judgment I wished to consult the Pre-Trial Judge and the Presiding Judge of the Trial Chamber in case referring the matter to either of them would raise issues that had not been considered, and reserved my decision.

12. No particular issue emerged. But the course I have selected of delivering an Interim Decision will provide opportunity for further consideration.

THE RIGHT TO REVIEW

[3] [REDACTED].

[4] At the outset I heard argument on the fourth issue. The Head of Defence opposed participation of the Prosecutor on the ground that the issues did not concern him. I decided that while such proposition was arguable if the matter were to be dealt with administratively, if it concerned the fairness of the trial of the accused one would normally prefer that the accused's opponent be present. Since the answer to the first issue was the major question to be answered, whichever answer was given to the fourth issue might turn out to be wrong. I therefore adopted the approach employed in interim injunction cases of examining which decision on the fourth issue would cause less injustice if it proved to be wrong. On the basis that there would be no prejudice to the Head of Defence Office or to the accused if counsel for the Prosecutor were to be present I decided to permit counsel for the Prosecutor to attend. He withdrew during examination of the detail of what work the Defence wished to instruct Dr Nashabe to perform. In the event, counsel for the Prosecutor did not advance any argument

13. It is common ground, advanced by the Head of Defence Office and endorsed by the Registrar, that the Defence desire for support by a Local Resource Person "implicates a substantive right of the Accused, namely the right to a fair trial – guaranteed by the Statute."[5]

14. It is also undisputed that administrative decisions affecting fair trial rights must be open to review. This principle has been consistently recognized by other international courts. For instance, the President of the International Criminal Tribunal for Rwanda ("ICTR") has held that:

> [...] all modern systems of administrative law have review procedures built in to them to ensure fairness when individual rights or protected interests are in issue, or to preserve the interests of justice.[6]

15. Similarly, the President of the International Criminal Tribunal for the former Yugoslavia ("ICTY") stated that:

> [...] any administrative decision that impinges on the rights of an accused at this Tribunal must be subject to a process of judicial review [...][7]

16. I agree with both statements. When the Judges of this Tribunal perform the legislative task of making rules they must be guided by reference materials:

> [...] reflecting the highest standards of international criminal procedure, with a view to ensuring a fair and expeditious trial.[8]

17. As the Appeals Chamber of this Tribunal stated in *El Sayed*:

> The practice of international judicial bodies shows that the rule endowing international tribunals with inherent jurisdiction has the general goal of remedying possible gaps in the legal regulation of the proceedings. More specifically, it serves ... the ... purpose ... [of] ensur[ing] the fair administration of justice.[9]

That decision, delivered in the context of a claim to inspect documents for the purposes of possible civil litigation, applies *a fortiori* to the present case which concerns the duty of the Tribunal to ensure for the accused the absolute right of fair hearing guaranteed alike by Article 16(2) of the Statute, by fundamental human rights instruments and by all jurisdictions which honour the rule of law.

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[5] Request, para. 24.

[6] ICTR, *Prosecutor v Nzirorera,* Case No. ICTR-98-44-T, The President's Decision on Review of the Decision of the Registrar withdrawing Mr. Andrew McCartan as Lead Counsel of the Accused Joseph Nzirorera, 13 May 2002

[7] ICTY, *Prosecutor v. Delić*, Case No. IT-04-83-PT, Decision on Request for Review, 8 June 2005, para. 6.

[8] Article 28 STLSt.

[9] STL, *In re Application of El Sayed*, Case No. CH/AC/2010/02, Decision of Pre-trial Judge's Order Regarding Jurisdiction and Standing, 10 November 2010 ("Appeals Chamber Decision on Jurisdiction and Standing"), para. 48.

THE ISSUE OF FORUM

18. The pertinent question before me then is who has, or who have, the authority to review an administrative decision of the Registrar. The Tribunal's Rules of Procedure and Evidence are silent on this matter. My discussion of the point is again tentative.

19. By Article 10(1) of the Tribunal's Statute the President, in addition to his judicial functions as a member of the Appeals Chamber, is "responsible for its effective functioning and the good administration of justice". Article 12(1) provides that the Registry is responsible for the administration and servicing of the Tribunal "*[u]nder the authority of the President* [...]" (emphasis added). Many decisions of the Registrar are purely administrative with no consequences for pending litigation. No one other than the President is in a position to review them. The combination of these factors, together with his qualification as a Judge and the duty if necessary in order to do justice to draw on inherent authority,[10] suggests the conclusion that the President has authority to review decisions of the Registrar who may not, unlike Mr Registrar von Hebel be a lawyer of considerable experience in administrative law. Indeed, there a numerous examples in the Rules and other regulations of the Tribunal that confer an express power of review over acts of the Registrar or the Head of Defence Office to the President.[11]

20. But a conclusion that the President has such power would not mean either that others lack such power; or that the President should exercise his power rather than deferring to another decision-maker. That is especially so when the review can conveniently be performed by a Judge or judicial tribunal seized of the case. By Rule 89(B) the Pre-Trial Judge has authority to "take measures necessary to prepare the case for a fair and expeditious trial". The Trial Chamber, 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." The power of these judicial organs must extend to removing any impediment to a fair, impartial and expeditious trial. That must include any legitimate challenge to any decision of an administrator which stands in the way of justice. *Boddington British Transport Police*[12] shows that an accused's absolute right to fair trial is likely to

[10] Appeals Chamber Decision on Jurisdiction and Standing, para. 48

[11] See, Rule 59(D) STL RPE (and *mutatis mutandis*, Rule 51(C)(v) STL RPE), Articles 9, 12, 15 of the STL Directive on the Assignment of Defence Counsel, 20 March 2009.

[12] UK, House of Lords, *Boddington v. British Transport Police* [1999] 2 AC 143.

receive priority over arguments that the power of review lies elsewhere. There is however case-law from other international tribunals that would require consideration before deciding whether and if so in what circumstances the Pre-Trial Judge or the Trial Chamber in the interest of a fair trial might override a decision which the Rules appear to confer on the President.[13]

21. The President thus appears endowed by the Statute and the system as a whole with the authority to review, but must exercise it only for some good reason and then with great care not to interfere with the administration of justice by the Judges.

22. It would follow that each of the Pre-Trial Judge, the Trial Chamber and the President might have authority to review a challenged decision of the Registrar. So there would arise an issue comparable to, if not the same as, the familiar question of *forum conveniens*, discussed by Campbell McLachlan in *Lis Pendens in International Law*:[14] on what principles should a decision-maker decide whether to exercise his jurisdiction when another decision-maker also has actual or potential authority over the case?

23. My tentative view is that regard must be had to all the relevant considerations. For example, since the President has the further role of the Presiding Judge of the Appeals Chamber he must take care not to disqualify himself from dispassionate consideration of any appeal from an ultimate verdict by previously forming views on factual issues that may remain live.

[13] See, e.g.: ICTY, *Prosecutor v. Krajišnik*, Case No. IT-00-39-A, Decision on "Motion Seeking Review of the Decisions of the Registry in Relation to Assignment of Counsel", 29 January 2007, p. 3; ICTY, *Prosecutor v Šešelj*, Case No IT-03-67-T, Decision on the Registry Submission pursuant to Rule 33(B) following the President's Decision of 17 December 2008, 9 April 2009; ICTR, *Nahimana et al. v. the Prosecutor*, Case No. ICTR-99-52-A, Decision on Hassan Ngeze's Motion to Set Aside President Møse's Decision and Request to Consummate His Marriage, 6 December 2005; ICTR, *Nshogoza v. The Prosecutor*, Case No. ICTR-2007-91-A, Decision on Request for Judicial Review of the Registrar's and President's Decisions Concerning Payment of Fees and Expenses, 13 April 2010; see also ICTR, *The Prosecutor v. Rutaganira*, Case No. ICTR-95-IC-AR, Decision on Appeal of a Decision of the President on Early Release, 24 August 2006.

[14] C. McLachlan, *Lis Pendens in International Law*, Collected Courses of the Hague Academy of International Law, Vol. 336 (The Hague: Martinus Nijhoff, 2009).

24. Moreover, there is no explicit provision for any appeal from a decision of the President. For the remaining four Judges of the Appeals Chamber to have to exercise a default jurisdiction of review is a procedure of last resort and should be avoided if practicable.[15]

25. These considerations could suggest that decision-making on any issue involving significant fact-finding should generally be performed by either the Pre-Trial Judge or the Trial Chamber. I note in this regard that the Directive on Assignment of Defence Counsel of the ICTY refers appeals by an accused to the Trial Chamber; those by a suspect to the President.[16] The former is there seen as the preferred forum for decisions closely affecting the trial.

26. Yet on matters bearing largely on administration review by the President may be more efficient and not risk injustice at trial. Thus, whether the President should exercise jurisdiction may depend on the nature of the contested issue. If characterised as more purely administrative and technical in nature, it might properly belong before the President. The more related it is to the fair trial rights of the accused and the conduct of the trial, the more it might properly be before the Pre-Trial Judge or the Trial Chamber.

THE LEGAL CONTEXT

27. The Defence Office of the Tribunal is an important innovation of the Tribunal's Statute, designed to ensure equality of arms with the Prosecutor. Its function is to:

> [...] protect the rights of the defence [and] provide support and assistance to defence counsel and to the persons entitled to legal assistance.[17]

28. Of particular present relevance, such assistance includes "collection of evidence and advice." The independent Head of Defence Office is a high officer appointed by the Secretary-General of the United Nations.[18]

29. The Registrar likewise is a high officer appointed by the UN Secretary-General.[19] Under the authority of the President, the Registry is responsible for the administration and servicing of the

[15] It was adopted in STL, *In re Application of El Sayed*, Case No. CH/AC/2010/01, Decision on the Application to Challenge the Order of the President of the Appeals Chamber to Stay the Order of the Pre-Trial Judge and to Call Upon Amicus Curiae, 8 November 2010.

[16] ICTY, *Prosecutor v. Sljivančanin*, Case IT-95-13/1-PT, Decision on Assignment of Defence Counsel, 20 August 2003, para. 15.

[17] Art. 13(2) STLSt.

[18] Art. 13(1) STLSt.

Tribunal.[20] Its responsibilities include, via its Victims and Witnesses Unit, the provision in consultation with the Office of the Prosecutor of:

> [...] measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses ...and others who are at risk on account of testimony given by such witnesses.[21]

30. The Head of Defence Office submits that the decision as to what support and assistance, including collection of evidence and advice, should be supplied to the defence, is his alone. The Registrar contends that it is for him to decide whether measures are required to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses and others who are at risk on account of testimony given by such witnesses, and that the Registrar's authority trumps that of the Head of Defence where the two conflict.

31. In its extreme form either argument could have its difficulties. The Statute must be read as a whole within the principles of law, including the right to fair hearing subject to measures ordered by the Special Tribunal for the protection of victims and witnesses,[22] which are presumed to apply in all cases unless there is clear language to the contrary.[23] It is likely to follow that the Registrar and the Head of Defence should each act in a manner that both protects the accused's right to a fair hearing and safeguards the protection of victims and witnesses.

32. The difficulty of this case is perhaps less the identification of the legal principles than assessment of the risks to the values for which each side contends and to evaluate what decision a particular situation requires. Different answers may be given in different circumstances.[24]

33. In a case where major values conflict the just response will rarely be found at a high level of abstraction: rather one must examine the competing values within their precise context.[25]

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[19] Art. 12(1) STLSt

[20] Art. 12(1) STLSt.

[21] Art. 12(4) STLSt.

[22] Art. 16(2) STLSt. (stating a general principle of law and public policy).

[23] UK, House of Lords, *R v Secretary of State for the Home Department ex parte Simms* [2000] 2 AC 115 para.131 (per Lord Hoffmann).

[24] As Sedley LJ stated in the context of the European Convention on Human Rights in UK, Court of Appeal, *Douglas v Hello! Ltd* [2001] 1 QB 967 at para. 137: "... a minor but real risk to life, or a wholly unjustifiable invasion of privacy, is entitled to no less regard, by virtue of article 10(2), than is accorded to the right to publish by article 10(1), the consequent likelihood becomes material under section 12(3). Neither element is a trump card. They will be articulated by the principles of legality and proportionality which, as always, constitute the mechanism by which the court reaches its conclusion on countervailing or qualified rights."

THE FACTUAL CONTEXT

The Defence need for a Local Resource Person

34. Trial *in absentia* presents special problems for defence counsel, who have no client to inform them of facts and context let alone provide instructions. While the legal and factual issues have not yet been identified, judicial notice may be taken of the complexity of recent Lebanese social history which could be germane to counsel's proper understanding of the case.

35. Properly, the Registrar did not challenge counsel's need for assistance from what the Head of Defence Office called "a Local Resource Person" to perform the following tasks specified by defence counsel as to be carried out by Dr Nashabe:

[REDACTED]

But the Registrar declined to agree to authorize payment for performance of such services by Dr Nashabe.

36. In oral argument he advised that the reasons were the same as those he had given Dr Nashabe in writing on 10 May 2012 for terminating the contract with Dr Nashabe. [REDACTED].

37. Me Roux did not challenge the facts alleged by the Registrar, although relying on the fact that no proceedings for contempt of the Tribunal were ever brought.

DISCUSSION

38. In accordance with my first Scheduling Order, the argument at the hearing was confined to forum. So the decision on the merits must await further submissions. Moreover, there are insufficient facts to make any determination of what order will do justice to the important values on each side of this case. But, as discussed above, the decision as to forum may be affected by the nature and extent of any outstanding factual issues (i.e., whether they are mostly administrative in nature, or whether their impact on the fair trial rights of the accused should take precedence). I mention therefore areas that the Registrar and the Head of Defence Office might wish to explore further for this purpose.

[25] For French and German authorities on proportionality see B. Kingsbury and S. Schill, *"Investor-State Arbitration as Governance: Fair and Equitable Treatment, Proportionality and the Emerging Global Administrative Law"* in A.J. Van den Berg, *Fifty Years of the New York Convention* (London: Kluwer Law International, 2009), p. 5.

39. The Registrar is of the view that the conduct attributed to Dr Nashabe was of a kind that justifies refusal to allow him access to confidential information or to the Beirut premises of the Tribunal where he might have the opportunity to identify protected victims or witnesses. He is concerned that association with Dr Nashabe might suggest condonation of his conduct, and cause apprehension among victims or witnesses that the Tribunal is other than meticulous in ensuring protection of their identity from unauthorised disclosure. But even if that were so, it would not necessarily follow that Dr Nashabe is wholly disqualified from *any kind of involvement* in the task of providing to the defence support and assistance, including collecting evidence and advice, on terms for which he should receive payment. The following are possible reasons for requiring further information and factual evaluation.

40. First, while most of the task proposed for Dr Nashabe entails the *provision* of information rather than his *receipt* of it, with proper candour, Me Roux and Mr Maas advised that the final item "[p]erform any other relevant duties as instructed by counsel" could entail counsel's provision of confidential information *to* Dr Nashabe and any risk of his wrongly disseminating it that might entail. That makes risk assessment a matter of very real potential importance. Information about the actual risk assessment done by the Defence Office in this respect, and documents pertaining to any conflict of interest review, might conceivably be useful.

41. Secondly, there has been no opportunity provided to the Tribunal to explore with Dr Nashabe the reasons for his publication of the redacted passage. There could be more to it than has so far been suggested. If any justification existed [REDACTED],[26] there might perhaps in logic be some argument for "whistle-blowing" which, while it might expose a whistle-blower to opprobrium and to serious sanctions, can sometimes support a degree of mitigation or perhaps even defence, depending on all the circumstances.[27]

42. Thirdly, as to the Registrar's concern about perceived condonation of Dr Nashabe's conduct which the Defence have sought to meet, there may be room for consideration of whether and to what extent Dr Nashabe could be further distanced from the Tribunal than is done in the draft contract the

[26] [REDACTED].

[27] See *Solicitor-General v Miss Alice* [2007] 2 NZLR 783 (HC) where a solicitor defied a court order, claiming to act in accordance with his duty to a client. But see, however, ICTY, *In the Case Against Florence Hartmann*, Case No. IT-02-54-R77.5-A, Judgment, 19 July 2011, para. 158 (rejecting the proposition that there is a presumption that, despite a judicial ruling to the contrary, there should be unrestricted publicity based on the right to freedom of expression).

Head of Defence Office tendered to the Registrar.[28] Also, while the reasons for the original termination of the contract on 10 May 2012 are stated expressly, those relevant to the decision of 27 July 2012 were not. The Registrar's response to any further facts presented should be put before the decision-maker in writing.

43. Fourthly, while Dr Nashabe's *curriculum vitae* is formidable, there is a logical question whether he is needed to perform the whole of the task or perhaps only particular parts of it.

44. Fifthly, there could be need to appraise the size and nature of any risk to the fairness of the accused's trial against whatever might be the fact-finder's appraisal of the risks which concern the Registrar. Among the options could be reference to the decision-maker of each particular proposal to disclose confidential information.

45. Finally, a court will not seek to dictate the conduct of a legitimate defence. As Mr Registrar properly acknowledged, if the Tribunal is satisfied on net appraisal that there is a legitimate basis for seeking the assistance of Dr Nashabe, the fortuity that the funds for defence are managed by the Registrar is not a factor which could justify withholding payment.

DECISION

46. It is premature to determine what is the appropriate forum for deciding whether and, if so, in what terms the Defence should be permitted to retain Dr Nashabe.

47. The Head of Defence Office and Defence counsel may wish to present an amended application to the Registrar with such further particulars as they may consider would justify utilization of Dr Nashabe's services. The Registrar would be invited to make a fresh decision. If the Registrar declines to change his position, I would then consider whether to retain the matter or leave to the Pre-Trial Judge or to the Trial Chamber to determine whether the Request should be granted in whole, in part, on conditions, or not at all.

48. I therefore direct that the Head of Defence Office and the Registrar file by 14 September 2012, 4 pm, any further submissions on questions of policy, including those contained in this interim decision, and as to the merits. Defence counsel and the Prosecutor may do so if they wish.

[28] Request, Annex C.

CONFIDENTIALITY

49. The Request and the submissions to date of counsel were made in chambers and in the light of the submission of the Head of Defence Office, to which the Registrar agreed, that they should be treated as confidential. For those reasons, although with reluctance, I make an order that this status be maintained until further order by me or the competent decision-maker. Me Roux expressed concern that such order would lapse automatically at some stage. He may be assured that unless and until formally discharged it will continue in force.

50. I am not however minded to suppress this decision. The people of Lebanon are presumptively entitled to follow the litigation within the Special Tribunal for Lebanon.[29] To avoid any possible injustice, I order to withhold publication of this Decision until Monday, 17 September 2012, 4 pm. Any continuation of the interim suppression (non-disclosure) order would be subject to the showing of good cause why and, if so, to what extent the Decision should remain confidential. Submissions in this regard must likewise be filed by Friday, 14 September 2012, 4 pm.

51. Finally, I invite the views of the Head of Defence Office and the Registrar on whether Dr Nashabe should be provided with this Decision and whether he should be permitted to file submissions in relation to the references to him in this litigation.

[29] See STL, *Prosecutor v. Ayyash et al*, Case No. ST-11-01/PT/AC, Decision on the Pre-Trial Judge's Request Pursuant to Rule 68(G), 29 March 2012, para. 12.

SPECIAL TRIBUNAL FOR LEBANON المحكمة الخاصة بلبنان TRIBUNAL SPÉCIAL POUR LE LIBAN

DISPOSITION

FOR THE FOREGOING REASONS, I

INVITE the Head of Defence Office and the Registrar and, if they so wish, Defence Counsel and the Prosecutor, to file by 14 September 2012, 4 pm, any further submissions on the merit of this dispute, as well as on whether good cause exists to warrant maintaining confidentiality of this Decision, whether Dr Nashabe should be provided with this Decision and whether he should be permitted to file submissions in relation to the allegations made against him;

ORDER the lifting of the *ex parte* status of the following filings in this matter:

- Request for Review of Registrar's Decision of 27 July 2012 in Relation to the Assignment of a Local Resource Person, 31 August 2012,
- Interim Scheduling Direction, 3 September 2012,
- Observations de la Défense relative à la requête du Bureau de la Défense en date du 31 août 2012, 5 September 2012,
- Observations du Bureau de la Défense, 5 September 2012,
- Registry Submission in Relation to the President's Interim Scheduling Direction of 3 September 2012, 5 September 2012;

ORDER that these filings however be considered confidential until further order;

ORDER that this Decision be made public on 17 September 2012, 4 pm.

Done in Arabic, English and French, the English version being authoritative.
Dated this eighth day of October 2012,
Leidschendam, the Netherlands

Judge David Baragwanath
President