



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE APPEALS CHAMBER

Case No.: STL-11-01/PT/AC/AR126.1

Before: Judge David Baragwanath, Presiding
Judge Ralph Riachy
Judge Afif Chamseddine
Judge Daniel David Ntanda Nsereko, Judge Rapporteur
Judge Kjell Erik Björnberg

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**

ORDER ON DEFENCE REQUEST FOR LEAVE TO FILE A REPLY

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





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1. We are seized with four appeals by counsel for Messrs Ayyash, Badreddine, Oneissi and Sabra against the Trial Chamber's 11 July 2012 "Decision on Reconsideration of the Trial *In Absentia* Decision".¹ The Prosecutor filed a consolidated response to these appeals.² The Appellants are now requesting leave to each file a reply to the Prosecutor's response.³

2. The Appellants argue that the Prosecutor's Response "advances multiple legal and factual arguments that warrant specific refutation, particularly given the importance of the issues before the Appeals Chamber."⁴ They then list a number of issues relating to their appeals.⁵ Considering that the Prosecutor does not suffer any prejudice from this Decision, we have decided not to await his response to the Request.⁶

3. As we have previously held, a reply must generally be limited to circumstances where new issues arise out of the respondent's brief.⁷ A reply is not a vehicle for an appellant to simply reiterate or refine the arguments made in the appeal.⁸ In the instant case, all of the issues listed in the Request

¹ STL, *Prosecutor v Ayyash et al.*, Case No. STL-11-01/PT/AC/AR126.1: Ayyash Joinder in "Sabra's Appeal Against Decision on Reconsideration of the Trial *In Absentia* Decision", 5 September 2012; Appeal of the Badreddine Defence Against the "Decision on Reconsideration of the Trial *In Absentia* Decision", 5 September 2012; Sabra's Appeal Against Decision on Reconsideration of the Trial *In Absentia* Decision, 5 September 2012; Appeal of the Oneissi Defence Against the Trial Chamber Decision on Reconsideration of the Trial *In Absentia* Decision, 5 September 2012.

² STL, *Prosecutor v Ayyash et al.*, Case No. STL-11-01/PT/AC/AR126.1, Prosecution Consolidated Response to Defence Appeals Against "Decision on Reconsideration of the Trial *In Absentia* Decision", 26 September 2012.

³ STL, *Prosecutor v Ayyash et al.*, Case No. STL-11-01/PT/AC/AR126.1, Joint Defence Request for Leave to Reply to the "Prosecution Consolidated Response to Defence Appeals Against 'Decision on Reconsideration of the Trial *In Absentia* Decision'", 5 October 2012 ("Request"), para. 6.

⁴ Request, para. 5.

⁵ *Ibid.*

⁶ See ICTY, *Prosecutor v Rašević et al.*, Case No. IT-97-25/1-AR.11bis.2, Decision on Defence's Motion for Extension of Time, 28 June 2006, p. 2.

⁷ See STL, *Prosecutor v Ayyash et al.*, Case No. STL-11-01/PT/AC/AR90.1, Scheduling Order on Interlocutory Appeal, 27 August 2012, para. 2, STL, *Prosecutor v Ayyash et al.*, Case No. STL-11-01/PT/AC/R176bis, Order by the Judge Rapporteur on Filing of Reply, 4 July 2012, para. 2; See also ICC, *Prosecutor v Katanga et al.*, Case No. ICC-01/04-01/07, Decision on Defence Request for Leave to Submit a Reply, 22 March 2011, para. 8 (noting that the raised issue was "not a new issue" and rejecting the request); ICTY, *Prosecutor v Karadžić*, Case No. IT-95-5/18-T, Decision on the Accused's Motion for Leave to Reply: Intercepted Conversations, 3 September 2010, p. 2 ("noting that issues that have already been addressed by the Accused in his Motion [...] need not be reiterated in the reply, and that only novel issues that arise from the Prosecution's Response should be addressed."); ICTY, *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Order Regarding the Accused's Motion for Leave to Reply and for Extension of Time – Holbrooke Agreement Motion, 22 June 2009, p. 2 (permitting the filing of a reply "but only insofar as the reply addresses new issues arising from that response"); ICTY, *Prosecutor v Brđanin et al.*, Case No. IT-99-36-PT, Decision on Motions by Momir Talić (1) to Dismiss the Indictment, (2) for Release, and (3) for Leave to Reply to Response of Prosecution to Motion for Release, 1 February 2000, para. 17 (holding that "[a] reply is permitted only to permit the moving party to answer issues raised by the respondent to the motion which go beyond the issues raised by the motion itself.")

⁸ See ICC, *Prosecutor v Katanga et al.*, Case No. ICC-01/04-01/07, Decision on the Application of the Defence for Germain Katanga to File a Reply (Regulation 24 of the *Regulations of the Court*), 27 March 2009, paras 2-3 (permitting a reply to "set out [the Defence's] view on the new point of law submitted by the Prosecutor" and stressing "that the forthcoming reply must not reiterate a line of argument already submitted [...]"); ICC, *Prosecutor v. Lubanga Dyilo*,



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have been addressed in the Appellants' briefs. Counsel have not identified any new matter arising from the Prosecutor's Response. Failure to make certain arguments in relation to the issues raised by the appeals or a desire to present them differently does not justify leave to file a reply. We do therefore reject the Request.

4. We note that if further submissions by the parties should be necessary for the proper disposal of the appeal, we retain the power to issue an order to that effect.

DISPOSITION

FOR THESE REASONS;

THE APPEALS CHAMBER; deciding unanimously;

PURSUANT to Rule 8 of the Rules of Procedure and Evidence;

REJECTS the Request.

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

Dated this 8th day of October 2012,

Leidschendam, the Netherlands

Judge David Baragwanath
Presiding



Case No. ICC-01/04-01/06, Decision on the Prosecutor's "Application for Leave to Reply to 'Conclusions de la défense en réponse au mémoire d'appel du Procureur'", 12 September 2006, Separate Opinion of Judge Georghios M. Pikis, para. 1 ("Evidently the Prosecutor regards as "new arguments" points relevant to the strength or weakness of the appeal not foreseen and not addressed by himself. To describe such reasons as "new" is to my mind a misnomer. Every argument relating to the subject-matter of the appeal as defined by the grounds of appeal is from the outset a relevant and foreseeable matter that may be made a subject of the address. Failure on the part of the appellant to deal with it in the document in support of the appeal does not dissociate it from the appeal nor does it qualify it as a new subject.")