

**THE PRESIDENT**

Case No.: STL-11-01/PT/PRES
Before: Judge David Baragwanath, President
Registrar: Mr Herman von Hebel
Date: 21 November 2012
Original language: English
Classification: Public

THE PROSECUTOR

v.

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

**DECISION AND SCHEDULING ORDER FOLLOWING DEFENCE OFFICE
REQUEST OF 15 NOVEMBER 2012**

Prosecutor:
Mr Norman Farrell

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

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 Guénaël Mettraux





INTRODUCTION

1. On 27 July 2012, the Registry informed the Defence Office of its decision not to permit retainer of Dr Omar Nashabe as a Local Resource Person for the purpose of assisting the Defence of the accused on their forthcoming trial *in absentia* (“Registrar’s Decision”).¹
2. On 31 August 2012, the Head of Defence Office, joined by defence counsel, challenged before me, in my administrative capacity as President and not in my judicial capacity as a member of the Appeals Chamber, the refusal of the Registrar to permit him to appoint Dr Nashabe (“Request for Review”).² For reasons contained in my written decision of 25 September 2012, I declined to determine the dispute in my capacity as President. Since the Trial Chamber is not yet seized of the case pursuant to Rule 95 of the Rules of Procedure and Evidence, I invited the Pre-Trial Judge as the alternative judicial forum to consider dealing with the matter.³
3. On 9 November 2012, the Pre-Trial Judge declared that he is not competent to review the Registrar’s Decision and to decide on the merits of the Request for Review (“Pre-Trial Judge’s Decision”).⁴ I read his decision as disagreeing with my opinion expressed in an administrative capacity (that the issue concerns the fairness of the proceedings and should be determined judicially, rather than by the President acting in an administrative capacity). His decision, which is judicial and not administrative, adopts the view that the issue is to be characterised as an administrative difference between organs which it is the President’s task to resolve.
4. On 15 November 2012, the Defence Office filed a new request before me as President, asking me to declare myself competent to rule on the merits of the Request for Review.⁵ The Registry elected not to respond, while the Prosecutor yesterday reiterated his previous position - that the

¹ Annex F to Supplement to “Request for Review of Registrar’s Decision of 27 July 2012 in Relation to the Assignment of a Local Resource person” (filed on 1 November 2012).

² 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.

³ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PRES, Decision of President on Forum and Redactions, 25 September 2012.

⁴ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Decision on Forum for Review of the Registrar’s Decision in Relation to the Assignment of a Local Resource Person, 9 November 2012.

⁵ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PRES, Defence Office Request for Review of the Registrar’s Decision in Relation to the Assignment of a Local Resource Person Following the Decision of the Pre-Trial Judge Dated 9 November 2012, 15 November 2012.



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matter falls within my authority as President “for the effective functioning of the Tribunal and the good administration of justice”.⁶

DISCUSSION

5. In my capacity as President (*i.e.*, in exercise of the *administrative* authority derived from Article 10 of the Statute of the Tribunal) I had declined to determine the dispute between the Registrar and the Head of Defence Office on the ground that the real issue is one of fair trial, between the interests of the Defence, who claim to need Dr Nashabe’s assistance to secure a fair trial, on the one side, and the persons who seek the protection of the claim for confidentiality, on the other. But such *administrative* decision as to forum must yield to the contrary *judicial* adjudication of the Pre-Trial Judge, from which no appeal has been brought.

6. I must therefore accept the judicial determination that the President is the forum which must deal with the competing claims.

7. I accordingly direct the parties to this litigation to file submissions on the merits in accordance with the timetable stated in the Disposition.

⁶ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PRES, Prosecution Response to Defence Office Request for Review of the Registrar’s Decision in Relation to the Assignment of a Local Resource Person following the Decision of the Pre-Trial Judge Dated 9 November 2012, 20 November 2012.



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DISPOSITION

FOR THESE REASONS;

I

ORDER the parties to this litigation to file submissions on the merits by Friday 7 December 2012;

ORDER the parties to this litigation to file responses to these submissions by Friday 14 December 2012.

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

Dated 21 November 2012,

Leidschendam, the Netherlands

Judge David Baragwanath

President

