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

THE PRE-TRIAL JUDGE

Case No.:	**STL-11-01/PT/PTJ**
The Pre-Trial Judge:	**Mr Daniel Fransen**
The Registrar:	**Mr Herman von Hebel**
Date:	**22 January 2013**
Original language:	**French**
Classification:	**Public**

THE PROSECUTOR
v.
SALIM JAMIL AYYASH,
MUSTAFA AMINE BADREDDINE,
HUSSEIN HASSAN ONEISSI &
ASSAD HASSAN SABRA

DECISION RELATING TO THE SABRA DEFENCE MOTION FOR FURTHER PARTICULARS

Office of the Prosecutor:
Mr Norman Farrell

Legal Representative of Victims:
Mr Peter Haynes

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

Counsel for Mr Mustafa Amine Badreddine:
Mr Antoine Korkmaz

Counsel for Mr Hussein Hassan Oneissi:
Mr Vincent Courcelle-Labrousse

Counsel for Mr Assad Hassan Sabra:
Mr David Young

I. The subject of the decision

1. By way of this decision, the Pre-Trial Judge rules on the motion of Counsel for the Defence of Mr Sabra (the "Defence" and the "Accused") of 30 November 2012 requesting that he order the Prosecution to provide further particulars concerning the charges contained in the indictment of 8 November 2012 (the "Motion").[1]

II. Procedural background

2. On 28 June 2011, the Pre-Trial Judge rendered a decision relating to the indictment of 10 June 2011 issued by the Prosecutor against the Accused and three other persons (the "Indictment").[2]

3. On 25 June 2012, in accordance with Rule 90 of the Rules of Procedure and Evidence (the "Rules"), the Defence filed a preliminary motion relating to the Indictment before the Trial Chamber.[3]

4. On 17 August 2012, the Prosecution filed a request for leave to amend the Indictment (the "Request for Amendment").[4]

5. On 8 November 2012, the Prosecution filed an amended indictment (the "Amended Indictment").[5] The Pre-Trial Judge has yet to rule on the Amended Indictment on account of the request he received in this regard from the Prosecution seeking to be allowed, where appropriate, to make some amendments to it.[6]

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[1] STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Motion for Particulars, 30 November 2012.
[2] STL, *The Prosecutor v. Ayyash et al.*, Case No STL-11-01/I, Decision Relating to the Examination of the Indictment of 10 June 2011 Issued against Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine, Mr Hussein Hassan Oneissi & Mr Assad Hassan Sabra, 28 June 2011.
[3] STL, *The Prosecutor v Ayyash et al*, Case No STL-11-01/PT/TC, Sabra's Preliminary Motion Challenging the Form of the Indictment, confidential, 25 June 2012 with a redacted public version filed on the same day.
[4] STL, *The Prosecutor v. Ayyash et al.*, Case No STL-11-01/PT/PTJ, Prosecution Request for Leave to Amend the Indictment pursuant to Rule 71 (A) (ii), confidential, 17 August 2012 with a redacted public version filed on 18 September 2012
[5] STL, *The Prosecutor v Ayyash et al*, Case No STL-11-01/PT/PTJ, Filing of the Amended Indictment in Compliance with the Decision of 25 October 2012 & Request for Amended Arrest Warrants and Orders/Requests for Transfer and Detention, confidential, 8 November 2012.
[6] Transcript, meeting pursuant to Rule 91(D) and (E), bilingual, confidential, pp. 47-49 (19 December 2012).

6. On 26 November 2012, pursuant to Rule 90 of the Rules, the Defence filed a second preliminary motion relating to the Amended Indictment before the Trial Chamber.[7]

7. On 30 November 2012, the Defence filed the Motion together with confidential annexes.

8. On 5 December 2012, the Trial Chamber deferred consideration of the Defence's second preliminary motion pending the final decision by the Pre-Trial Judge concerning the Amended Indictment.[8]

9. On 20 December 2012, the Prosecution filed a response to the Motion together with a confidential annex (the "Response").[9]

III. The arguments of the Parties

A. The Motion

10. The Defence submits that, as the Prosecution case against the Accused is ambiguous, it has attempted to obtain from the Prosecution further information concerning the charges it presented in the Amended Indictment and set out in the Pre-Trial Brief of 15 November 2012.[10] In view of the fact that its representations were not successful, the Defence presently requests that the Pre-Trial Judge order the Prosecution to provide those particulars.[11]

11. The Defence cites the case law of international criminal tribunals which recognises the validity of such requests for particulars.[12] It states that motions on defects in the form of the indictment provided for by Rule 90 (A) of the Rules only concern "formal" defects in the indictment and not issues relating to its substance.[13] The Defence therefore concludes that the Pre-Trial Judge, who has access to the evidentiary materials supporting the Indictment, has

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[7] STL, *The Prosecutor v Ayyash et al*, Case No STL-11-01/PT/TC, Sabra's Second Preliminary Motion Challenging the Form of the Indict ent, 26 November 2012.
[8] STL, *The Prosecutor v. Ayyash et al.*, Case No STL-11-01/PT/TC, Decision on Sabra's Second Preliminary Motion Challenging the Form of the Indictment, 5 December 2012.
[9] STL, *The Prosecutor v. Ayyash et al.*, Case No STL-11-01/PT/PTJ, Prosecution Response to Sabra Defence Motion for Particulars, 20 December 2012.
[10] Motion, paras 1 to 3.
[11] Motion, para. 4.
[12] Motion, paras 5 and 9.
[13] Motion, para. 11.

jurisdiction under Rules 77 and 89 (B) of the Rules to decide on the Motion, and not the Trial Chamber.[14]

12. In concrete terms, the Defence seeks particulars regarding the following allegations: the conspiracy and membership thereof; the conspiracy prior to the attack; the telephone calls of 17 January 2005 to the home of Mr Abu Adass; the missing report of Mr Abu Adass of 19 January 2005; the delivery of the video cassette and the telephone calls to press agencies after the attack; the *mens rea*; the role and identity of "S15" and the references to Hezbollah and its leader, Mr Hassan Nasrallah.

B. The Response

13. The Prosecution concludes that the Motion should be dismissed.[15] First of all, it submits that such requests for particulars are not provided for by the Rules and that most case law of the international criminal tribunals specifies that preliminary motions are the means by which any issues relating to defects in the form of the indictment should be raised. It points out furthermore that a large number of the issues raised in the Motion had likewise been submitted in the context of two preliminary motions of the Defence pending before the Trial Chamber. As a consequence, it is the Trial Chamber, and not the Pre-Trial Judge, that has jurisdiction to rule on those issues in accordance with Rule 90 (A) (ii) of the Rules.[16] The Prosecution also submits that the Defence is not only seeking further particulars but challenges the process of the confirmation of the indictment, requests the disclosure of evidence and disputes some of it.[17]

14. With regard to the specific requests for particulars made by the Defence, the Prosecution is of the opinion that they are unfounded. However, it states that it is currently examining the issue of the duration of the conspiracy alleged in the Indictment and, where appropriate, will seek leave to amend it.[18]

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[14] Motion para. 12
[15] Response, para. 48.
[16] Response, paras 2 and 5.
[17] Response, para. 4.
[18] Response, paras 24 and 26.

IV. Statement of reasons

15. The Pre-Trial Judge notes first of all that the Defence had the possibility of opposing the grounds and exactness of the Amended Indictment during the consultation process which took place after the document had been filed.[19] On that occasion, the Defence considered that it should not take any position on the subject of the amendments to the Indictment proposed by the Prosecution, as the amendments were not intended to substantially change the charges. It did not put forward other submissions, whilst stating that it reserved the right to raise preliminary motions were the amendments to be authorised.[20]

16. The Defence has moreover raised preliminary motions relating to the Indictment and the Amended Indictment on which the Pre-Trial Judge however has not yet ruled. Indeed, it filed two preliminary motions before the Trial Chamber pursuant to Rule 90 of the Rules.[21] That Rule expressly designates that Chamber as having jurisdiction to rule on well-founded preliminary motions, in particular on defects in the form of the indictment. If the Trial Chamber has not yet ruled on those motions, it is because of the process of the amendment of the Indictment which, as the Prosecution confirmed in its Response, is still ongoing.

17. Furthermore, the Pre-Trial Judge notes similarities between the Motion and the preliminary motions pending before the Trial Chamber. He likewise notes the submission of the Prosecution according to which those similarities would suggest that the Motion could in fact be likened to a preliminary motion.

18. Consequently, the Pre-Trial Judge considers that he does not have jurisdiction to rule on the Motion insofar as the Defence failed to raise those submissions at the time of the Response to the Request for Amendment and that the Trial Chamber is seized of similar issues within the context of preliminary motions.

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[19] In accordance with Rule 8 of the Rules, any response to a request from a party is filed within 14 days following the filing of said request.
[20] STL, *The Prosecutor v. Ayyash et al*, Case No STL-11-01/PT/PTJ, Joint Response to Prosecution Request for Leave to Amend the Indictment, 7 September 2012, paras 5 and 6 (the "Response to the Request for Amendment").
[21] See footnotes of pages 3 and 7 above.

V. Disposition

FOR THESE REASONS,

Pursuant to Rule 77 of the Rules,

THE PRE-TRIAL JUDGE,

DECLARES that he does not have jurisdiction to rule on the Motion.

Done in English, Arabic and French, the French text being authoritative.
Leidschendam, 22 January 2013

[stamp]

[signature]

Daniel Fransen
Pre-Trial Judge