



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

**THE TRIAL CHAMBER**

Case No.: **STL-11-01/PT/TC**

Before: **Judge Robert Roth, Presiding  
Judge Micheline Braidy  
Judge David Re  
Judge Janet Nosworthy, Alternate Judge  
Judge Walid Akoum, Alternate Judge**

The Registrar: **Mr Herman von Hebel**

Date: **18 April 2013**

Original language: **French**

Classification: **Public**

**THE PROSECUTOR**

v.

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

---

**ORDER AUTHORISING THE DEFENCE TO FILE PRELIMINARY MOTIONS  
CHALLENGING DEFECTS IN THE FORM OF THE AMENDED INDICTMENT OF 6  
FEBRUARY 2013**

---

**Office of the Prosecutor:**  
Mr Norman Farrell

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

**Legal Representative of  
Victims:**  
Mr Peter Haynes

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

**Counsel for Mr Hussein Hassan Oneïssi:**  
Mr Vincent Courcelle-Labrousse  
Mr Yasser Hassan

**Counsel for Mr Assad Hassan Sabra:**  
Mr David Young  
Mr Guénaël Mettraux





SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

## I. Purpose of the decision

1. On 12 April 2013, the Pre-Trial Judge granted leave to the Prosecution to amend the indictment filed in June 2011. This decision rendered the motions filed on 25 June 2012 by Defence Counsel regarding the original indictment redundant. Defence Counsel have been granted a further time-limit to file motions against the amended indictment if they wish to do so.

## II. Procedural background

2. On 10 June 2011, the Prosecution filed an indictment against Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine, Mr Hussein Hassan Oneissi and Mr Assad Hassan Sabra for their involvement in the terrorist attack in Beirut on 14 February 2005 (the “Indictment of 10 June 2011”).<sup>1</sup> That Indictment was confirmed by the Pre-Trial Judge on 28 June 2011.<sup>2</sup>
3. On 25 June 2012, Counsel for Messrs Badreddine, Oneissi and Sabra filed preliminary motions (the “Preliminary Motions of 25 June 2012”) under Rule 90 (A) (ii) of the Rules of Procedure and Evidence (“the Rules”) alleging defects in the form of the Indictment of 10 June 2011.<sup>3</sup> The Prosecution responded with submissions filed on 25 July 2012.<sup>4</sup>

<sup>1</sup> STL, *The Prosecutor v. Ayyash et al*, Case No STL-11-01/I/PTJ, Indictment, confidential, 10 June 2011. A public redacted version dated the same day was filed on 16 August 2011.

<sup>2</sup> STL, *The Prosecutor v. Ayyash et al*, Case No STL-11-01/I/PTJ, 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, confidential, 28 June 2011. A public redacted version dated the same day was filed on 16 August 2011. This decision confirms the charges in the indictment of 10 June 2011, apart from the attempt to cause the death of 231 other persons which is not included in the constituent elements of the act of terrorism but in those of attempted intentional homicide.

<sup>3</sup> STL, *The Prosecutor v. Ayyash et al*, Case No. STL-11-01/PT/TC, Preliminary Motion Submitted by the Defence for Mr Mustafa Amine Badreddine on the Basis of Rule 90 (A) (ii) of the Rules of Procedure and Evidence, 25 June 2012; STL, *The Prosecutor v. Ayyash et al*, Case No. STL-11-01/PT/TC, The Defence for Hussein Hassan Oneissi Preliminary Motion on Defects in the Form of the Indictment, 25 June 2012; 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 public redacted version dated the same day.

<sup>4</sup> STL, *The Prosecutor v. Ayyash et al*, Case No STL-11-01/PT/TC, Prosecution Consolidated Response to the Defence Motions Alleging Defects in the Form of the Indictment, confidential, 25 July 2012, with a public redacted version dated the same day.



4. On 17 August 2012, the Prosecution sought leave from the Pre-Trial Judge to amend the Indictment of 10 June 2011 pursuant to Rule 71 (A) (ii) of the Rules.<sup>5</sup>
5. On 7 September 2012, Defence Counsel for Messrs Ayyash, Badreddine, Oneissi and Sabra (the “Defence Counsel” or “the Defence”) filed a joint response (the “Joint Response”) in which they stated that they agreed with the Prosecution that a decision by the Trial Chamber (the “Chamber”) on the aforementioned preliminary motions should be stayed until the Pre-Trial Judge had ruled on the amended Indictment in accordance with the Prosecution Request of 17 August 2012.<sup>6</sup> In the Joint Response, (i) they reserved the right to raise any issue pertaining to the amended indictment should it be confirmed by the Pre-Trial Judge and; (ii) they announced that they intended to file preliminary motions challenging the form of the amended indictment, whether or not the amended indictment included new charges.<sup>7</sup>
6. On 12 September 2012, the Chamber rendered an interim decision, in which it postponed its decision on the preliminary motions until the Pre-Trial Judge had ruled on the Prosecution Request of 17 August 2012.<sup>8</sup>
7. On 20 September 2012, the Prosecution filed a Reply to the Joint Response.<sup>9</sup> It concluded that the Defence conclusions be dismissed and that the Prosecution request for leave to amend the Indictment of 10 June 2011 filed on 17 August 2012 be granted. It argued in support of its decision: (i) that the Defence cannot “reserve their rights” but should have declared any objection to the amended indictment in its Joint Response;<sup>10</sup> and (ii) that under

---

<sup>5</sup> 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 (the “Prosecution Request of 17 August 2012”). A public redacted version was filed on 18 September 2012.

<sup>6</sup> 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, para. 8.

<sup>7</sup> *Id.*, paras 6 to 8.

<sup>8</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No STL-11-01/PT/TC, Interim Decision on Alleged Defects in the Form of the Indictment, confidential, 12 September 2012.

<sup>9</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No STL-11-01/PT/PTJ, Prosecution Reply to the “Joint Response to Prosecution Request for Leave to Amend the Indictment”, 20 September 2012 (the “Prosecution Reply to the Joint Response”).

<sup>10</sup> *Id.*, paras 2 and 3.



Rule 71 (F) of the Rules, a challenge pertaining to defects in the form of an amended indictment is only admissible if said indictment includes new charges.<sup>11</sup>

8. The Pre-Trial Judge subsequently sought clarification from the Prosecution,<sup>12</sup> then granted the Prosecution Request of 17 August 2012 whilst requesting minor modifications to the indictment.<sup>13</sup> The Prosecution complied,<sup>14</sup> before filing another request for leave to include further amendments<sup>15</sup> before the Pre-Trial Judge. Defence Counsel for Messrs Sabra and Oneissi filed responses to this request,<sup>16</sup> to which the Prosecution, having sought leave to do so from the Pre-Trial Judge,<sup>17</sup> replied on 14 March 2013.<sup>18</sup>
9. In the interim, Defence Counsel for Mr Sabra filed a second preliminary motion challenging the form of the Indictment of 8 November 2012,<sup>19</sup> for which the Chamber decided to defer its consideration pending a final decision by the Pre-Trial Judge on the Indictment of 8 November 2012.<sup>20</sup>

---

<sup>11</sup> *Id.*, para. 5.

<sup>12</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No STL-11-01/PT/PTJ, Order for Clarification of Certain Proposed Amendments in the Prosecution's Request for Leave to Amend the Indictment of 17 August 2012, 4 October 2012.

<sup>13</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No STL-11-01/PT/PTJ, Decision on the Prosecution Request of 17 August 2012 for Leave to File an Amended Indictment, 25 October 2012 (the "Decision of 25 October 2012").

<sup>14</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No STL-11-01/PT/PTJ, Prosecution Submissions Pursuant to the "Order for Clarification of Certain Proposed Amendments in the Prosecutor's Request for Leave to Amend the Indictment of 17 August 2012", confidential, 15 October 2012; 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, with an indictment dated 8 November 2012 appended (the "Indictment of 8 November 2012").

<sup>15</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No STL-11-01/PT/PTJ, Prosecution Request for Leave to Include Further Amendments to its Proposed Amended Indictment, 6 February 2013, with an indictment dated 6 February 2013 appended (the "Indictment of 6 February 2013").

<sup>16</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No STL-11-01/PT/PTJ, Sabra Response to Prosecution Motion to Amend the Amended Indictment, 19 February 2013; Defence Response to the Prosecution Request for Leave to Include Further Amendments to its Proposed Amended Indictment, confidential, 20 February 2013.

<sup>17</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No STL-11-01/PT/PTJ, Order Granting the Prosecution Request for Leave to Reply to Defence Responses to the Prosecution's Further Amendments to the Proposed Amended Indictment, confidential, 6 March 2013.

<sup>18</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No STL-11-01/PT/PTJ, Prosecution Reply to "Sabra Response to Prosecution Motion to Amend the Amended Indictment", confidential, 14 March 2013.

<sup>19</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No STL-11-01/PT/TC, Sabra's Second Preliminary Motion Challenging the Form of the Indictment, 26 November 2012 ("Sabra's Second Preliminary Motion").

<sup>20</sup> 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.



10. Defence for Mr Sabra also filed before the Pre-Trial Judge a motion for particulars.<sup>21</sup> Having noted similarities between this motion and the preliminary motions pending before the Chamber,<sup>22</sup> the Pre-Trial Judge declared that he did not have jurisdiction to rule on the Motion for Particulars.<sup>23</sup>
11. On 12 April 2013, the Pre-Trial Judge granted leave for the amendments to the Indictment of 10 June 2011 as they appeared in the Indictment of 6 February 2013 and declared that the Indictment of 6 February 2013 cancelled and replaced that of 10 June 2011.<sup>24</sup> The signed version of the Indictment of 6 February 2013 was filed by the Prosecution on 17 April 2013.<sup>25</sup>

### III. Applicable law

12. Rule 90 (A) (ii) of the Rules allows the parties to submit preliminary motions alleging defects in the form of the indictment before the Chamber. Normally it is for the Pre-Trial Judge to set time-limits for the making of preliminary motions in accordance with Rule 89 (F) of the Rules.
13. If the indictment is being amended to include new charges, the Defence has a further period of twenty-one days in which to file preliminary motions in respect of the new charges under Rule 71 (F) of the Rules.

### IV. Statement of reasons

---

<sup>21</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No STL-11-01/PT/PTJ, Motion for Particulars, 30 November 2012.

<sup>22</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No STL-11-01/PT/PTJ, Decision Relating to the Sabra Defence Motion for Further Particulars, 22 January 2013, para. 17.

<sup>23</sup> *Id.*, Disposition.

<sup>24</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No STL-11-01/PT/PTJ, *Décision relative aux Requêtes du Procureur du 8 novembre 2012 et du 6 février 2013 aux fins de déposer un acte d'accusation modifié*, 12 April 2013 (the "Decision of 12 April 2013").

<sup>25</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No STL-11-01/PT/PTJ, Prosecution's Filing of the Signed Version of the Amended Indictment in Compliance with the Pre-Trial Judge's Decision of 12 April 2014 & Request for Amended Arrest Warrants and Orders/Requests for Transfer and Detention, 17 April 2013, with the signed version of the Indictment of 6 February 2013 appended as a confidential annex.



14. The Motions of 25 June 2012 filed before the Chamber relating to the Indictment of 10 June 2011 are now redundant, since the Pre-Trial Judge granted leave to the Prosecution to amend the indictment,<sup>26</sup> before the Chamber had ruled on them. The same applies to Mr Sabra's Second Preliminary Motion.<sup>27</sup> In the Decision of 25 October 2012, the Pre-Trial Judge considered that it was for the Chamber to rule on the proceedings based on the preliminary motions pursuant to Rule 90 (A) (ii) of the Rules, and to set a time-limit for filing potential new preliminary motions relating to the amended indictment.<sup>28</sup>
15. In the Decision relating to the Prosecution requests of 12 April 2013 which granted leave to the Prosecution to amend the indictment, the Pre-Trial Judge observed that the Indictment of 6 February 2013 did not contain new charges.<sup>29</sup> As the Prosecution argues,<sup>30</sup> the Rules do not explicitly grant the Defence the right to submit further preliminary motions if there are no new charges. Not to grant such a right in the present case would, however, amount to a denial of justice since the Chamber cannot rule on preliminary motions challenging the form of an indictment which no longer exists in the same form.<sup>31</sup> Defence Counsel should therefore be permitted, should they deem it necessary, to file any preliminary motion on the basis of Rule 90 (A) (ii) of the Rules, arguing defects in the form of the Indictment of 6 February 2013, the signed version of which was filed by the Prosecution on 17 April 2013. Should it wish to avail itself of this right, Defence for Mr Sabra is requested to file a consolidated motion reiterating, where necessary, the information in its Second Preliminary Motion, together with its Motion for Particulars, on which the Pre-Trial Judge considered he did not have jurisdiction to rule. The time-limit for filing all motions is 3 May 2013.

**FOR THESE REASONS,** the Trial Chamber:

---

<sup>26</sup> Decision of 25 October 2012.

<sup>27</sup> Para. 9 of the foregoing.

<sup>28</sup> Decision of 25 October 2012, paras 38-39.

<sup>29</sup> Decision of 12 April 2013, paras 31, 33 and 34. See also the Decision of 25 October 2012, para. 40.

<sup>30</sup> Prosecution Reply to the Joint Response, para. 5.

<sup>31</sup> Cf. previous paragraph.



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

- (i) **DECLARES MOOT** the Preliminary Motions filed on 25 June 2012 by Counsel for the Defence for Messrs Mustafa Amine Badreddine, Hussein Hassan Oneissi and Assad Hassan Sabra;
- (ii) **CALLS UPON** Defence counsel for Messrs Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi and Assad Hassan Sabra to file, should they deem it necessary, all motions relating to the Indictment of 6 February 2013 filed on 17 April 2013 on the basis of Rule 90 (A) (ii) of the Rules no later than 3 May 2013.

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

Leidschendam, 18 April 2013.

[stamp]

[signature]

---

Judge Robert Roth, Presiding

[signature]

---

Judge Micheline Braidy

[signature]

---

Judge David Re

