



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: **Judge Daniel Fransen**

The Registrar: **Mr. Daryl Mundis, Acting Registrar**

Date: **17 July 2013**

Original language: **English**

Classification: **Public**

### THE PROSECUTOR

v.

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

### ORDER GRANTING THE PROSECUTION REQUEST FOR LEAVE TO REPLY TO THE DEFENCE RESPONSES TO "PROSECUTION FURTHER REQUEST FOR LEAVE TO AMEND THE INDICTMENT"

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

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

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

**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



1. The Pre-Trial Judge is seized of a Prosecution request (the “Request”)<sup>1</sup>, seeking leave to reply to the three responses (the “Responses”) filed by the respective Counsel for Mr. Mustafa Amine Badreddine (“Badreddine Defence”),<sup>2</sup> Mr. Hussein Hassan Oneissi (“Oneissi Defence”)<sup>3</sup> and Mr. Assad Hassan Sabra (“Sabra Defence”)<sup>4</sup> to the Prosecution’s request for leave to amend the indictment in the *Ayyash et al.* case (the “Indictment”).

2. The Prosecution submits that the Responses include four new issues to which the Prosecution has the right to reply, namely:<sup>5</sup>

- i. the alleged requirement to obtain confirmation of any charges against an individual before seeking to identify him in an indictment (“Issue 1”);
- ii. allegations that the Prosecution has been systematically negligent or is seeking tactical advantage by requesting the proposed amendments at this time (“Issue 2”);
- iii. the lack of organisation of the supporting material submitted in support of the Request (“Issue 3”); and
- iv. the challenges to the qualifications of some Prosecution experts (“Issue 4”).

3. The Prosecution seeks leave to file a reply to these four issues because they do not arise from the Request yet the reasoning in the Responses relies upon them as bases for the Pre-Trial Judge to reject it.<sup>6</sup>

4. For Issues 3 and 4, the Prosecution is seeking leave to reply to the Oneissi Defence alone.<sup>7</sup> The Prosecution questions the Oneissi Defence’s submissions that Issue 3 should be considered when evaluating the requirements of Rule 71 of the Rules of Procedure and Evidence (the “Rules”) and the Oneissi Defence’s reliance on this for arguing that the Request should be dismissed, as opposed to seeking an extension of time.<sup>8</sup> With respect to

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<sup>1</sup> STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Prosecution Request Seeking Leave to Reply to Defence Responses to “Prosecution Further Request for Leave to Amend the Indictment”, 15 July 2013. All further references to filings and decisions relate to this case number unless otherwise stated.

<sup>2</sup> *Réponse de la Défense de M Mustafa Amine Badreddine à la “Prosecution Further Request for Leave to Amend the Indictment,”* 10 July 2013.

<sup>3</sup> *Réponse de la Défense à la “Prosecution Further Request for Leave to Amend the Indictment,”* 10 July 2013.

<sup>4</sup> Sabra Response to Prosecution Request for Leave to Amend the Second Amended Indictment, 10 July 2013.

<sup>5</sup> Request, para. 2.

<sup>6</sup> *Id.*, para. 3.

<sup>7</sup> *Id.*, paras 12-13.

<sup>8</sup> *Id.*, para. 12.

Issue 4, the Prosecution submits that this constitutes a new issue, namely “whether Defence challenges to the admissibility of evidence, a matter to be determined at trial by the Trial Chamber, are relevant to and can form a basis for denying a request to amend an indictment.”<sup>9</sup>

5. Both the Oneissi Defence and the Sabra Defence raise arguments related to Issue 1, which the Prosecution avers is a new issue insofar as the Request relies on the requirements for amending an indictment pursuant to Rule 71 of the Rules and does not address the circumstances of Rule 68 of the Rules. The Prosecution further argues that the types of allegations related to Issue 2, made by the Oneissi Defence and the Badreddine Defence, go beyond matters ordinarily raised in relation to amending an indictment, such as concerns related to the preparation of the defence.

6. The Pre-Trial Judge notes that requests to file a reply “must generally be limited to circumstances where new issues arise out of the respondent’s brief”.<sup>10</sup> The Pre-Trial Judge considers that the four issues enumerated by the Prosecution constitute new issues arising out of the Responses since they go beyond the Request limited to the requirements of Rule 71 of the Rules for amending an indictment, as outlined in the Rules.

7. The Pre-Trial Judge, pursuant to his discretion under Rule 9(A)(i) of the Rules, and in order to avoid further delays, grants the request and orders the Prosecution to file its reply by 22 July 2013 at the latest.

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<sup>9</sup> *Id.*, para. 13.

<sup>10</sup> STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/AC/AR126.1, Order on Defence Request for Leave to File a Reply, 8 October 2012, para. 3; Order in Respect of 10 July 2012 Motion by the Defence of Mr. Badreddine, 12 July 2012, para. 3.

**FOR THESE REASONS,**

**THE PRE-TRIAL JUDGE,**

**PURSUANT TO** Rules 8 and 9(A)(i) of the Rules,

**GRANTS** the Request; and

**ORDERS** the Prosecution to file its reply by 22 July 2013 at the latest.

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

Leidschendam, 17 July 2013.



Daniel Fransen  
Pre-Trial Judge

