



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**

Date: **7 August 2013**

Original language: **English**

Classification: **Public**

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

**ORDER ON THE DEFENCE REQUEST FOR A VARIANCE OF THE DEADLINE
FOR RE-FILED THE DEFENCE PRE-TRIAL BRIEFS**

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



I. INTRODUCTION

1. The Pre-Trial Judge hereby grants the joint request by Counsel for Messrs Salim Jamil Ayyash and Mustafa Amine Badreddine (the “Ayyash and Badreddine Defence”), seeking *inter alia* to vary the deadline set for the four defence teams in the *Ayyash et al.* case (the “Defence”) to file their respective updated pre-trial briefs (the “Request”).¹

II. DISCUSSION

2. On 5 July 2013, the Pre-Trial Judge rendered a decision ordering the Defence to file updated respective pre-trial briefs by 15 August 2013 (the “5 July 2013 Decision”).² In that same decision, the Pre-Trial Judge also ordered the Prosecution to file updated submissions pursuant to Rule 91(G) of the Rules of Procedure and Evidence (the “Rules”), according to the Amended Indictment dated 6 February 2013 (the “6 February 2013 Indictment”),³ by 15 July 2013. However, he specified the following:

The Pre-Trial Judge takes note that on 26 June 2013, he was seized of a Prosecution request to amend the 6 February 2013 Indictment, and said request is still pending.⁴ Nevertheless, he considers it appropriate to continue proceedings in relation to the pre-trial briefs on the basis of the confirmed 6 February 2013 Indictment. [...] If necessary, the Parties will be given the opportunity to complete or further update their Rule 91 filings according to whether the requested amendments are authorised.⁵

3. On 15 July 2013, the Prosecution filed its updated Rule 91 submissions, noting that if the pending amendments to the 6 February 2013 Indictment are granted, it would seek leave to amend its pre-trial brief accordingly.⁶

4. On 31 July 2013, the Pre-Trial Judge granted leave⁷ to the Prosecution to amend the 6 February 2013 Indictment and the new amended indictment dated 21 June 2013 was filed on 2 August 2013 (the “21 June 2013 Indictment”).⁸

¹ STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Ayyash and Badreddine Joint Request for a Variance of the Deadline Set for Re-filing of the Defence Pre-Trial Brief, 2 August 2013. All further references to filings and decisions relate to this case number unless otherwise stated.

² Decision on the “Prosecution Motion Regarding the Defective Defence Pre-Trial Briefs”, 5 July 2013.

³ Prosecution’s Filing of the Signed Version of the Amended Indictment in Compliance with the Pre-Trial Judge’s Decision of 12 April 2013 & Request for Amended Arrest Warrants and Orders/Requests for Transfer and Detention, with Confidential Annexes A and B, 17 April 2013.

⁴ Prosecution Further Request for Leave to Amend the Indictment, Confidential, 21 June 2013, with a Public Redacted Version dated 1 July 2013 (the “Request for Leave to Amend the Indictment”).

⁵ 5 July 2013 Decision, para. 32.

⁶ Prosecution’s Submission Pursuant to Rule 91, Confidential with Confidential Annexes A to H, 15 July 2013, para. 2. A Public Redacted Version of the submission was filed on 7 August 2013.

5. On 2 August 2013, the Ayyash and Badreddine Defence filed the Request, asking that the Prosecution be ordered to file updated Rule 91 submissions in accordance with the 21 June 2013 Indictment and that the Defence's deadline for its pre-trial briefs be varied to a date subsequent to the Prosecution's filing.⁹

6. On 7 August 2013, the Legal Representative of Victims filed a response, taking no position in relation to the Request, but submitting that it is in the interest of the participating victims that the trial date set by the Pre-Trial Judge¹⁰ not be further postponed.¹¹

7. On 7 August 2013, the Prosecution also filed a response to the Request (the "Response"), initially arguing that "it does not appear necessary to further amend the Prosecution's Pre-Trial Brief",¹² and subsequently requesting a six-week delay period if the Pre-Trial Judge deemed it in the interest of justice that the Prosecution file an updated pre-trial brief.¹³ The Prosecution submits that "other pending matters" prevent it from updating its pre-trial brief earlier, which "will require a restructuring of the whole document."¹⁴ It does not object to the Defence filing their respective pre-trial briefs at a later date in response to the Prosecution's updated pre-trial brief.¹⁵

8. The Pre-Trial Judge takes note of the Prosecution's arguments that there is no express provision, under the Statute or the Rules, requiring that the pre-trial brief be amended following the amendment of the indictment. However, he also emphasises his discretion to order the filing of an updated pre-trial brief if he considers doing so to be in the interest of justice, or if he considers that a pre-trial brief does not meet the requirements of Rule 91.¹⁶

⁷ Corrected Version, *Décision portant sur la requête du 21 juin 2013 du Procureur en modification de l'acte d'accusation du 6 février 2013*, Confidential, 31 July 2013, with a Public Redacted Version issued on 2 August 2013.

⁸ Prosecution's Filing of the Signed Version of the Amended Indictment in Compliance with the Pre-Trial Judge's Decision of 31 July 2013 & Request for Amended Arrest Warrants and Orders/Requests for Transfer and Detention, 2 August 2013.

⁹ Request, para. 4.

¹⁰ *Ordonnance fixant provisoirement une nouvelle date d'ouverture du procès*, 2 August 2013.

¹¹ Response of the Legal Representative of Victims to the Ayyash and Badreddine Joint Request for a Variance of the Deadline Set for Re-filing of the Defence Pre-Trial Briefs, 7 August 2013.

¹² Prosecution Response to "Ayyash and Badreddine Joint Request for a Variance of the Deadline Set for Re-filing of the Defence Pre-Trial Brief", 7 August 2013, para. 5.

¹³ *Id.*, para. 6.

¹⁴ *Ibid.*

¹⁵ *Id.*, para. 7.

¹⁶ ICTY, *Prosecutor v. Tolimir*, Case No. IT-05-88/2-PT, Decision on Accused's Preliminary Motion Pursuant to Rule 72(A)(ii), 10 February 2010, para. 17.

9. In this respect, the Pre-Trial Judge recalls that it is in the interest of justice for the Parties' pre-trial briefs to be "current, relevant, and drafted in a manner that is useful to the Pre-Trial Judge in putting together a complete [Rule 95] file".¹⁷ Indeed, the particular procedural setting of this Tribunal accentuates the importance of having comprehensive and updated pre-trial briefs, as exemplified by the Rule 95 requirement for the Pre-Trial Judge to submit a complete file to the Trial Chamber after having duly reviewed the Parties' Rule 91 submissions.

10. As for the time period requested by the Prosecution, the Pre-Trial Judge considers, in preparing for a fair and expeditious trial, "other pending matters" do not justify granting a six-week delay. Furthermore, the Pre-Trial Judge notes that in the Request for Leave to Amend the Indictment, the Prosecution listed as many as 13 reasons as to why the proposed amendments will not unduly delay the proceedings,¹⁸ including that the proposed amendments do not introduce any new charges or otherwise change any confirmed charges.¹⁹ He therefore finds that a six-week delay to update the Prosecution pre-trial brief to better reflect the amendments made in the 21 June 2013 Indictment is excessive. Noting the Prosecution's submissions that the re-drafting of its pre-trial brief will essentially require "not only incorporating any changes as a result of the amendments to the Indictment but determining whether any reductions in the present Pre-Trial Brief are required"²⁰, the Pre-Trial Judge finds that this "restructuring of the whole document"²¹ is not extensive and can be completed by 19 August 2013 at the latest.

11. Considering the delay accorded to the Defence to file their respective pre-trial briefs in relation to the 6 February 2013 Indictment,²² the Pre-Trial Judge considers that an additional delay of two weeks following the filing of the updated Prosecution pre-trial brief is sufficient to allow the Defence to file their pre-trial briefs in relation to the 21 June 2013 Indictment, in compliance with Rule 91(I) and pursuant to the 5 July 2013 Decision.

12. Similarly, pursuant to Rule 91(H), the Pre-Trial Judge invites the Legal Representative of Victims to file, should he deem it necessary, updated versions of the lists of witnesses and exhibits he would like the Trial Chamber to use at trial.

¹⁷ 5 July 2013 Decision, para. 27.

¹⁸ Request for Leave to Amend the Indictment, para. 17.

¹⁹ *Id.*, para. 17(i)-(ii).

²⁰ Response, para. 6.

²¹ *Ibid.*

²² 5 July 2013 Decision, Disposition.

FOR THESE REASONS,

THE PRE-TRIAL JUDGE,

PURSUANT TO Rules 77(A), 91, and the 5 July 2013 Decision,

GRANTS the Request;

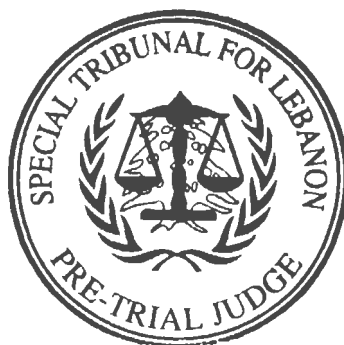
ORDERS the Prosecution to file an updated pre-trial brief, as well as updated witness and exhibit lists, in compliance with Rule 91(G) by 19 August 2013 the latest;

INVITES the Legal Representative of Victims to file updated witness and exhibit lists by 23 August 2013; and,

ORDERS the Defence to each file a pre-trial brief in compliance with Rule 91(I) by 2 September 2013 at the latest.

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

Leidschendam, 7 August 2013



Daniel Fransen
Pre-Trial Judge

