



### THE APPEALS CHAMBER

**Case No:** STL-11-01/T/AC/AR126.7

**Before:** Judge David Baragwanath, Presiding  
Judge Ralph Riachy  
Judge Afif Chamseddine  
Judge Daniel David Ntanda Nsereko, Judge Rapporteur  
Judge Ivana Hrdličková

**Registrar:** Mr Daryl Mundis

**Date:** 4 April 2014

**Original language:** English

**Classification:** Public

#### THE PROSECUTOR

v.

SALIM JAMIL AYYASH  
MUSTAFA AMINE BADREDDINE  
HASSAN HABIB MERHI  
HUSSEIN HASSAN ONEISSI  
ASSAD HASSAN SABRA

#### ORDER BY JUDGE RAPPOREUR ON REQUEST FOR EXTENSION OF TIME AND WORD LIMITS

**Prosecutor:**  
Mr Norman Farrell

**Head of Defence Office:**  
Mr François Roux

**Legal Representatives of Participating Victims:**  
Mr Peter Haynes, Mr Mohammad F. Mattar & Ms Nada Abdelsater-Abusamra

**Counsel for Mr Salim Jamil Ayyash:**  
Mr Eugene O'Sullivan, Mr Emile Aoun & Mr Thomas Hannis

**Counsel for Mr Mustafa Amine Badreddine:**  
Mr Antoine Korkmaz, Mr John Jones & Mr Iain Edwards

**Counsel for Mr Hassan Habib Merhi:**  
Mr Mohamed Aouini, Ms Dorothee Le Fraper du Hellen & Mr Jad Khalil

**Counsel for Mr Hussein Hassan Oneissi:**  
Mr Vincent Courcelle-Labrousse, Mr Yasser Hassan & Mr Philippe Laroche

**Counsel for Mr Assad Hassan Sabra:**  
Mr David Young, Mr Guénaél Mettraux & Mr Geoffrey Roberts



1. The Appeals Chamber is seized with a Motion<sup>1</sup> by counsel for Mr Merhi, seeking an extension of the time and word limits with respect to the filing of their appeal against the Trial Chamber's "Decision on Trial Management and Reasons for Decision on Joinder" of 25 February 2014.<sup>2</sup> Pursuant to Rule 36 (A) of the Rules of Procedure and Evidence ("Rules"), I have been designated the Judge Rapporteur in this matter.

2. Counsel first request a seven-day extension of the time-limit within which they are required to file their appeal. They argue that they require more time, given 1) the complexity of the issues certified for appeal;<sup>3</sup> 2) the fact that they have to adhere to competing time limits with respect to a number of Trial Chamber decisions;<sup>4</sup> and 3) that their team will move offices during three days in the filing period.<sup>5</sup> They assert that an extension would not cause excessive delay.<sup>6</sup> The Prosecutor does not oppose the request on the condition that if the Motion is granted he too is given additional time to respond.<sup>7</sup>

3. Pursuant to Rule 9 (A) (i) of the Rules, I may, *proprio motu* or on good cause being shown, enlarge any time limit prescribed by the Rules. The Trial Chamber certified certain issues arising from its Decision for appeal on 31 March 2014.<sup>8</sup> Given that this Decision was distributed only 1 April 2014, the appeal would ordinarily be due seven days later, on 8 April 2014.<sup>9</sup> Counsel in effect request the doubling of that time period. I am not satisfied that the prospective issues on appeal are that complex, warranting a departure from the normal time limit applicable to interlocutory appeals under Rule 126. Counsel have also failed to demonstrate with specificity how the various decisions issued by the Trial Chamber recently have an impact on the preparation of their appeal. Nevertheless, it appears there are competing deadlines in some

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<sup>1</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/AC/AR126.7, F0002, *Requête de la défense de Merhi aux fins de prorogation de délai et de modification du nombre de mots autorisé*, 3 April 2014 ("Motion").

<sup>2</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, F1424, Decision on Trial Management and Reasons for Decision on Joinder, 25 February 2014.

<sup>3</sup> Motion, para. 7.

<sup>4</sup> *Id.* at para. 8.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Id.* at para. 9.

<sup>7</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/AC/AR126.7, F0003, Prosecution Response to "*Requête De La Défense De Merhi Aux Fins De Prorogation De Délai Et De Modification Du Nombre De Mots Autorisé*", 4 April 2014 ("Response"), paras 2-4.

<sup>8</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, F1472, Decision on Certification of 'Decision on Trial Management and Reasons for Decision on Joinder', 31 March 2014.

<sup>9</sup> See Art. 9 (3) of Practice Direction on Filing of Documents Before the Special Tribunal for Lebanon, STL/PD/2010/01/Rev.2, 14 June 2013 ("Practice Direction").

matters requiring the full attention of counsel. I find that, because of these matters in conjunction with the three-day move of the Defence team into new offices, which necessarily impedes their ability to work, good cause exists to allow for the requested extension.

4. With respect to the Prosecutor's argument that he should be given additional time for his response, I am not satisfied that good cause exists for such variation of the applicable time limits. As explained, counsel for Mr Merhi is granted an extension because of the special circumstances of *their* situation. This does not mean that the Prosecutor is entitled automatically to a similar extension in the absence of other reasons justifying an extension of time.

5. Counsel also request an extension of the word limit from 6,000 words to 10,000 words.<sup>10</sup> They claim that this is required in light of the variety of the issues certified for appeal and that it would be "materially impossible" for them to address these issues under the word limit imposed by the Practice Direction.<sup>11</sup> They also argue that the appellate process would benefit from submissions that are more detailed than normally permitted.<sup>12</sup> The Prosecutor responds that he is not opposed to this request as long as the word limit for his response is also enlarged.<sup>13</sup>

6. The Tribunal's word limits are necessary to ensure the fair and expeditious conduct of the proceedings.<sup>14</sup> While pursuant to Article 5 (3) of the Practice Direction I may vary a word limit for a particular brief, doing so would only be justified by a showing of exceptional circumstances.<sup>15</sup> No such circumstances have been demonstrated in this case. The prospective issues on appeal are not of such complexity to justify an enlargement of the word limit beyond what is ordinarily permitted for interlocutory appeal briefs.<sup>16</sup> I am also not persuaded by the argument that longer briefs on appeal will necessarily assist the Appeals Chamber. On the

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<sup>10</sup> Motion, paras 10-12.

<sup>11</sup> *Id.* at para. 11.

<sup>12</sup> *Ibid.*

<sup>13</sup> Response, paras 2-4.

<sup>14</sup> See, e.g., ICTY, *Prosecutor v. Popović et al.*, IT-05-88-A, Decision on Motions for Extension of Time and for Permission to Exceed Word Limitations, 20 October 2010, p. 5.

<sup>15</sup> See also STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC, F0361, Decision on Defence Requests for Extension of Word and Time Limits, 6 August 2012, para. 15 (requiring "good cause" under the old version of the Practice Direction, which did not explicitly provide for the authorization of a variation of word limits).

<sup>16</sup> See ICTY, *In the case against Hartmann*, IT-02-54-R77.5-A, Decision on Motions to Strike and Requests to Exceed Word Limit, 6 November 2009 ("*Hartmann* Decision"), para. 23 ("It is also well-established that the number of grounds or sub-grounds of appeal, the number of authorities cited, and the extensiveness of the trial record and length of the trial do not inevitably impede an appellant's ability to present salient and cogent appeal briefs within the prescribed word limit, and that these factors do not there, in and of themselves, constitute exceptional circumstances." [fns referring to further case-law omitted]).

contrary, I agree with the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia that “[t]he quality and effectiveness of an appellant’s brief are not contingent on the length of the submissions, but on the cogency and clarity of the arguments presented”.<sup>17</sup> I therefore reject this part of counsel’s Motion.

## DISPOSITION

**FOR THESE REASONS;**

**I**

**GRANT** the Motion in part;

**ALLOW** counsel for Mr Merhi to file their appeal brief no later than 15 April 2014;

**DENY** the Prosecutor’s request for additional time to respond;

**DISMISS** the remainder of the Motion.

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

Dated 4 April 2014

Leidschendam, the Netherlands



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Judge Daniel David Ntanda Nsereko  
Judge Rapporteur



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<sup>17</sup> *Hartmann* Decision, para. 24.