



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

### 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 ON REQUEST FOR SUSPENSIVE EFFECT OF APPEAL

**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 Larochelle

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



1. We are seized with a Motion by counsel for Mr Merhi, seeking the suspension of the Trial Chamber's "Decision on Trial Management and Reasons for Decision on Joinder" of 25 February 2014,<sup>1</sup> pending the Appeals Chamber's resolution of their appeal.<sup>2</sup> Counsel also request that the Prosecutor respond to his Motion within two days.<sup>3</sup>

2. Counsel argue that the specific circumstances of the case require that we suspend the Trial Chamber's Decision until the Appeals Chamber has ruled on their appeal against the Decision.<sup>4</sup> They specifically refer to a suspension of the resumption of trial proceedings, including the admission of new evidence and the hearing of new witnesses, and a suspension of the time limit in which they are required to make submissions with respect to their position on previously admitted evidence.<sup>5</sup> Counsel assert that the continuation of the trial proceedings would have the effect of pre-empting the outcome of their appeal and would not be in the interests of judicial economy.<sup>6</sup> No reasons are presented why the request is filed before their appeal.

3. As the Prosecutor will not suffer any prejudice from the outcome of this decision, and in light of the urgency of the request, we have decided not to await his response to the Motion.<sup>7</sup>

4. Rule 126 (F) of the Rules of Procedure and Evidence ("Rules") on which counsel for Mr Merhi base their Motion, provides that interlocutory appeals filed under this Rule "shall not, of itself, have suspensive effect unless the Appeals Chamber so orders, upon request, in accordance with the Rules." We first note that while the Trial Chamber has certified certain issues arising from its Decision for appeal,<sup>8</sup> counsel for Mr Merhi have not yet filed their appeal brief. We have previously held that "the Appeals Chamber has jurisdiction to issue orders on suspension only *after* an appeal has been filed, on the basis of the reasons set forth in the appeal (save in

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<sup>1</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>2</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/AC/AR126.7, F0001, *Requête de la défense de Merhi sollicitant l'effet suspensif de l'appel interjeté contre la décision sur la jonction*, 3 April 2014 ("Motion"), paras 1, 9.

<sup>3</sup> *Id.* at paras 2, 9.

<sup>4</sup> *Id.* at para. 7.

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

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

<sup>7</sup> See STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC/AR126.1, F0011, Order on Defence Request for Leave to File a Reply, 8 October 2012, para. 2 (with reference to other case-law).

<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.

exceptional circumstances to be demonstrated by the applicant)".<sup>9</sup> This is because the Appeals Chamber normally cannot exercise its appellate jurisdiction before it is actually seized of an appeal. There is currently no appeal before us. Moreover, counsel have not established that there are exceptional circumstances justifying a request to suspend the Trial Chamber's Decision before filing their appeal. We do therefore deny such request. This is without prejudice to counsel for Mr Merhi requesting a suspension of the Trial Chamber's Decision when filing the appeal.

### **DISPOSITION**

**FOR THESE REASONS;**

**PURSUANT** to Rule 126 (F) of the Rules;

**THE APPEALS CHAMBER**, deciding unanimously;

**DISMISSES** the Motion.

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

Dated 4 April 2014

Leidschendam, the Netherlands



Judge David Baragwanath  
Presiding



<sup>9</sup> STL, *In the matter of El Sayed*, CII/AC/2011/01, Order on Urgent Prosecution's Request for Suspensive Effect Pending Appeal, 12 September 2011, para. 4.