



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:** 8 May 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 RAPPORTEUR ON REQUEST FOR LEAVE TO FILE A REPLY**

**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. Counsel for Mr Merhi have filed an appeal<sup>1</sup> against the Trial Chamber's joinder and trial management decision of 25 February 2014.<sup>2</sup> The Prosecutor has filed a response to this appeal.<sup>3</sup> Mr Merhi is now requesting leave to file a reply to the Prosecutor's response.<sup>4</sup>

2. Counsel seek to reply to the following four matters:<sup>5</sup> (1) the Prosecutor's arguments that counsel for Mr Merhi should have requested certification to appeal the Trial Chamber's certification decision if they intended to challenge the scope and interpretation of the certified question,<sup>6</sup> (2) the Prosecutor's arguments relating to the scope of the Appeals Chamber jurisdiction in hearing the appeal and its authority to order certain measures requested by the counsel for Mr Merhi;<sup>7</sup> (3) the Prosecutor's arguments relating to counsel for Mr Merhi's arguments on the purported prejudice they suffered from having been "deprived" of a pre-trial phase;<sup>8</sup> and (4) the Prosecutor's arguments that counsel for Mr Merhi had failed to pursue certain procedural options before the Trial Chamber.<sup>9</sup> Counsel argue that these points constitute new issues that were not put forward in the appeal brief, and that they are relevant to the rights of the Accused and the success of the appeal.<sup>10</sup>

3. The Prosecutor responds that the Request should be dismissed.<sup>11</sup> Relying on the Appeals Chamber's case-law, he argues that the issues raised by the Prosecutor's response to the appeal to which counsel for Mr Merhi seek to reply are not new, but rather arise from the appeal brief submitted by counsel.<sup>12</sup>

---

<sup>1</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC/AR126.7, F0006, Interlocutory Appeal Brief from the Merhi Defence against the Decision on Joinder, 15 April 2014 ("Appeal").

<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> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/AC/AR.126.7, F0008, Prosecution Response to Merhi Defence 'Mémoire d'appel interlocutoire de la Défense de Merhi à l'encontre de la décision sur la jonction', 29 April 2014 ("Prosecutor's Response to Appeal").

<sup>4</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/AC/AR.126.7, F0010, Merhi Defence Request for Leave to File a Reply to the Prosecution Response in the Interlocutory Appeal Regarding Joinder, 2 May 2014 ("Request").

<sup>5</sup> Request, para. 7.

<sup>6</sup> Request, para. 7 (i) (referring to Prosecutor's Response to Appeal, paras 4, 9-12.)

<sup>7</sup> Request, para. 7 (ii) (referring to Prosecutor's Response to Appeal, paras 15-17, 52.)

<sup>8</sup> Request, para. 7 (iii) (referring to Prosecutor's Response to Appeal, paras 44, 46.)

<sup>9</sup> Request, para. 7 (iv) (referring to Prosecutor's Response to Appeal, paras 33, 37.)

<sup>10</sup> Request, para. 8.

<sup>11</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/AC/AR126.7, F0011, Prosecution Response to Merhi Defence Request for Leave to File a Reply, 6 May 2014, paras 2, 10 ("Response").

<sup>12</sup> Response, paras 1, 3-9.

4. The Appeals Chamber has repeatedly held that a reply “must generally be limited to circumstances where new issues arise out of the respondent’s brief” and that “it is not a vehicle for an appellant to simply reiterate or refine the arguments made in the appeal”.<sup>13</sup> It is not the purpose of a reply to cure deficient submissions in the appeal brief: “Failure to make certain arguments in relation to the issues raised by the appeal[] or a desire to present them differently does not justify leave to file reply”.<sup>14</sup>

5. None of the four issues identified by counsel for Mr Merhi meets the required threshold. With respect to the first two issues, I note that counsel for Mr Merhi have raised the issue of certification including the scope of the appeal in their appeal brief.<sup>15</sup> They are not new issues. With respect to the third issue, I note that it, too, was argued in the appeal.<sup>16</sup> Finally, the Prosecutor’s submissions in his response brief on the fourth issue identified by the Defence arise directly from the appeal.<sup>17</sup> They are not new.

6. In sum, all issues listed in the Request have been previously addressed in the appeal. Mr Merhi fails to identify any new issue justifying a leave for reply. Just because the Prosecutor responds to an argument, or does so in a way that counsel disagrees with, does not turn that argument into a new issue warranting an additional filing. I do therefore reject the Request.

---

<sup>13</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC/AR.126.1, F0011, Order on Defence Request for Leave to File a Reply, 8 October 2012, para. 3 (“Order on Reply”); *see also* STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC/AR.126.2, F0006, Order on Defence Request for Leave to File a Reply, 29 October 2012, paras 4, 5; STL, *In the matter of El Sayed*, CH/AC/2012/01, Order on Request by Mr El Sayed for Leave to File a Reply, 7 November 2012.

<sup>14</sup> Order on Reply, para. 3.

<sup>15</sup> Appeal, paras 20-23.

<sup>16</sup> Appeal, paras 40-45.

<sup>17</sup> Appeal, paras. 30, 34-39.

## DISPOSITION

**FOR THESE REASONS;**

**PURSUANT** to Rule 8 of the Rules of Procedure and Evidence;

**I**

**DISMISS** the Request.

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

Dated 8 May 2014

Leidschendam, the Netherlands



---

Judge Daniel David Ntanda Nsereko  
Judge Rapporteur

