



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

**THE APPEALS CHAMBER**

**Case No:** STL-11-01/T/AC/AR126.8

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

**Registrar:** Mr Daryl Mundis

**Date:** 15 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**

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**ORDER BY JUDGE RAPPOREUR ON REQUEST FOR EXTENSION OF TIME FOR  
FILING OF INTERLOCUTORY APPEAL**

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**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. The Appeals Chamber is seized with a Motion<sup>1</sup> by counsel for Mr Merhi, seeking an extension of the time with respect to the filing of their appeal against the Trial Chamber's oral decision of 12 May 2014, setting a date for the resumption of trial proceedings.<sup>2</sup> The Trial Chamber decided by majority, with Judge Nosworthy dissenting. The Presiding Judge indicated that "[Judge Nosworthy] may issue a dissenting opinion".<sup>3</sup> The Trial Chamber certified its decision for appeal on the same date.<sup>4</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 request clarification that the time-limit for the filing of their appeal brief runs only from the filing of Judge Nosworthy's dissenting opinion.<sup>5</sup> In addition, they seek a seven-day extension of that time-limit.<sup>6</sup> Counsel argue that they require more time, given 1) that the Impugned Decision was certified immediately and they did not have the usual seven days in which to analyse the decision before requesting certification;<sup>7</sup> 2) the delayed filing of Judge Nosworthy's opinion and that they would need to study it before filing their appeal;<sup>8</sup> 3) the absence of all three Defence counsel between 14 May and 16 May 2014 for "pressing and exceptional reasons" of which they had notified the Trial Chamber;<sup>9</sup> and 4) the scope of the certified question affecting their preparation time.<sup>10</sup> The Prosecutor responds that a seven-day extension of the time-limit is not justified.<sup>11</sup> He does not oppose, however, a three-day extension, commensurate to the time period of counsel's absence from the Tribunal.<sup>12</sup>

3. Subsequent to the filing of the Motion, the Trial Chamber informed the Appeals Chamber that Judge Nosworthy will not provide written reasons for her dissent to the Impugned

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<sup>1</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/AC/AR126.8, F0001, *Requête de la défense de Merhi aux fins de fixation du point de départ et de prorogation du délai de dépôt de son mémoire d'appel contre la décision sur la date de reprise du procès*, 13 May 2014 ("Motion").

<sup>2</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, Status Conference, 12 May 2014, Transcript, pp. 61-74 ("Impugned Decision").

<sup>3</sup> Impugned Decision, p. 74.

<sup>4</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, Status Conference, 12 May 2014, Transcript, pp. 76-79.

<sup>5</sup> Motion, paras 1, 9-11.

<sup>6</sup> Motion, paras 2, 12, 21.

<sup>7</sup> Motion, paras 13-15.

<sup>8</sup> Motion, para. 16.

<sup>9</sup> Motion, para. 17.

<sup>10</sup> Motion, paras 18-20.

<sup>11</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/AC/AR126.8, F0003, Prosecution Response to Merhi Defence Request for Extension of Time to File its Appeal Brief Concerning the Date for the Resumption of Trial, 15 May 2014 ("Response"), paras 2-8.

<sup>12</sup> Response, para. 9.

Decision.<sup>13</sup> Counsel's arguments with respect to such dissent are therefore moot and I need not address them. I note, however, that counsel failed to contact the Trial Chamber on this matter.<sup>14</sup> It would have been better practice to do so before making a submission before the Appeals Chamber in this respect.

4. 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. Given that the Trial Chamber certified an issue in the Impugned Decision for appeal on 12 May 2014, any appeal would ordinarily be due seven days later, on 19 May 2014.<sup>15</sup> Counsel in effect request a doubling of the time period they are afforded under the Rules to file their appeal. However, the arguments as presented in their Motion are not sufficient to demonstrate "good cause", warranting such extension.

5. In particular, I am not persuaded by the claim that counsel require more time because the Trial Chamber certified the Impugned Decision at the time it was issued.<sup>16</sup> The applicable time-limit to file an interlocutory appeal under Rule 126 is seven days following certification. It is irrelevant that such certification was granted immediately. Indeed, under the Rules there are a number of interlocutory appeals that lie as of right, *i.e.* do not require certification, and for which the time-limit is also seven days or even less.<sup>17</sup>

6. The unavailability of all three counsel in this case over a period of three days is similarly not sufficient *per se* to demonstrate good cause. No explanation is provided as to the nature of the "pressing and exceptional reasons" that make it impossible for counsel to perform their role.<sup>18</sup> Moreover, other professional or holiday commitments do not constitute good cause.<sup>19</sup> Counsel assigned to an accused must be expected to properly organize their schedule so that

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<sup>13</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/AC/AR126.8, F0002, Internal Memorandum from Presiding Judge of the Trial Chamber to Presiding Judge of the Appeals Chamber, 14 May 2014 ("Memorandum").

<sup>14</sup> See Memorandum.

<sup>15</sup> See Rule 126 (E).

<sup>16</sup> Motion, paras 13-15.

<sup>17</sup> See Rules 11 (D), 11 (F), 17 (H), 88 (B), 102 (C), 116 (D), 118 (K), 119 (D), 170 (C) (seven days); Rules 81 (C), 92 (D) (three days).

<sup>18</sup> See Motion, para. 17.

<sup>19</sup> See ICTY, *Prosecutor v. Perišić*, IT-04-81-A, Decision on Momčilo Perišić's Motion for an Extension of Time to File His Appeal Brief, 24 November 2011, p. 1; ICTY, *Prosecutor v. Gotovina*, IT-01-45-AR73.1, Decision on Request for Extension of Time, 21 August 2006, p. 3; ICTR, *Prosecutor v. Renzaho*, ICTR-97-31-A, Decision on Renzaho's Motion to Postpone Appeal Hearing, 7 June 2010, para. 9.

priority is given to the accused and the Tribunal. This includes observation of the applicable time-limits for filings on appeal.<sup>20</sup>

7. Counsel have also failed to demonstrate that the prospective issues on appeal will be so complex as to justify a departure from the normal time-limit applicable to interlocutory appeals under Rule 126.<sup>21</sup> Indeed, because certification under that Rule is granted only when there is “an issue that would significantly affect the fair and expeditious conduct of the proceedings”, the seven-day time-limit was set with important matters in mind. In other words, it is inherent in the Rule that this time-limit would be sufficient for preparing an appeal concerning one or more significant issues. I also note that the issue certified for appeal has been extensively litigated before the Trial Chamber.

8. Finally, counsel have not shown with specificity how their current workload prevents them from filing a timely appeal brief.<sup>22</sup> In particular, it is unclear how the two decisions issued by the Trial Chamber and referred to in the Motion have an impact on counsel’s ability to prepare the appeal.<sup>23</sup> I note that the first decision merely invites them to re-file an application before the Pre-Trial Judge,<sup>24</sup> which they have already done.<sup>25</sup> With respect to the second decision, counsel’s argument that this “requires a prompt reaction on their part” seems to relate to the potential filing of a request for certification.<sup>26</sup> But this is true for most decisions issued by the Trial Chamber.

9. Having rejected the arguments by counsel, I nevertheless find *proprio motu*, pursuant to Rule 9 (A) (i) of the Rules, that it is in the interests of justice to grant a short extension. This is based, cumulatively, on the fact that both lead and co-counsel will be absent during the filing period; that they notified the Trial Chamber of their absence a month in advance;<sup>27</sup> and that they

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<sup>20</sup> See ICTY, *Prosecutor v. Lukić and Lukić*, IT-98-32/1-A, Decision on Milan Lukić’s Urgent Motion for Enlargement of Time to File Notice of Appeal, 19 August 2009, paras 11-12 (with further references to other case-law).

<sup>21</sup> See Motion, paras 18-19.

<sup>22</sup> See Motion, paras 20-21.

<sup>23</sup> See Motion, para. 21, fn. 24.

<sup>24</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, F1522, Decision on Merhi Defence Motion Seeking Access to Confidential and *Ex Parte* Pre-Trial Documents, 9 May 2014, Disposition.

<sup>25</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/PTJ, F1528, *Requête de la défense de Merhi sollicitant la levée de la confidentialité et l’accès aux documents confidentiels ex parte de la procédure*, 13 May 2014.

<sup>26</sup> Motion, para. 20 (« [D]eux décisions substantielles [...] lesquelles nécessitent un réaction rapide. »)

<sup>27</sup> Motion, para. 17, fn. 17.

could not necessarily expect that the Impugned Decision would be certified for appeal immediately and therefore could not make the necessary arrangements beforehand.

## DISPOSITION

**FOR THESE REASONS;**

**PURSUANT** to Rules 9 (A) (i) and 126 (E) of the Rules;

**I**

**GRANT** the Motion in part;

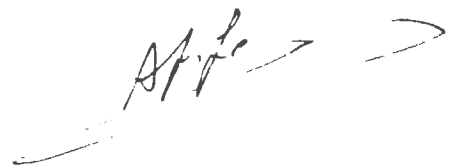
**ALLOW** counsel for Mr Merhi to file their appeal brief no later than 22 May 2014, 4 pm;

**DISMISS** the remainder of the Motion.

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

Dated 15 May 2014

Leidschendam, the Netherlands



Judge Afif Chamseddine  
Judge Rapporteur

