

THE APPEALS CHAMBER

Case No: STL-11-01/T/AC/AR126.9

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

Registrar: Mr Daryl Mundis

Date: 26 May 2015

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 EXTENSION OF TIME AND WORD LIMITS FOR FILING
OF INTERLOCUTORY 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 Motion¹ by counsel for Mr Oneissi, seeking an extension of the time and word limits with respect to the filing of their appeal against the Trial Chamber's "Decision on Five Prosecution Motions on Call Sequence Tables and Eight Witness Statements and on the Legality of the Transfer of Call Data Records to UNIIC and STL's Prosecution" of 6 May 2015.² On 20 May 2015, the Trial Chamber certified two issues in that decision for appeal, namely: (1) whether the Trial Chamber erred in concluding that the Independent Commissioner of the United Nations International Independent Investigation Commission and the Prosecutor of the Special Tribunal for Lebanon could legally request and obtain call data records from Lebanese telecommunications companies Alfa and MTC without either Lebanese or international judicial authorization and (2) whether the Trial Chamber erred in concluding that the absence of judicial control does not violate any international human rights standard on the right to privacy, justifying the exclusion of the call data records under Rule 162 of the Rules of Procedure and Evidence ("Rules").³

2. Counsel first request an extension of the seven-day time limit for the filing of their appeal brief to 3 June 2015.⁴ They argue that good cause for such extension exists because "[a]s the telecommunications evidence constitutes the foundation of the Prosecution's evidence, the legality of its collection is a key issue that must be subject to detailed and properly informed scrutiny" and the additional time is needed "to properly evaluate these issues".⁵ In addition, counsel request an enlargement of the 6,000 word limit applicable to interlocutory appeals by 4,000 words to provide the Appeals Chamber with a "full explanation of the factual background and definitions of technical terms".⁶ The Prosecution does not oppose the Motion.⁷

¹ STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/AC/AR126.9, F0001, Defence for Hussein Hassan Oneissi Request for an Extension of Time to File Its Appeal Against the "Decision on Five Prosecution Motions on Call Sequence Tables and Eight Witness Statements and on the Legality of the Transfer of Call Data Records to UNIIC and STL's Prosecution" Dated 6 May 2015 and Extension of the Word Limit, 22 May 2015 ("Motion"). The Motion was filed outside the business hours of the Court Management Services Section, which processed and distributed it on 26 May 2015.

² STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, F1937, Decision on Five Prosecution Motions on Call Sequence Tables and Eight Witness Statements and on the Legality of the Transfer of Call Data Records to UNIIC and STL's Prosecution, 6 May 2015 ("Impugned Decision").

³ STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, 20 May 2015, Transcript, pp. 1-4 ("Certification Decision").

⁴ Motion, para. 11.

⁵ Motion, para. 9.

⁶ Motion, paras 10-11.

⁷ E-Mail from Acting Chief of Prosecutions to Appeals Chamber Legal Officer, 26 May 2015.

3. Pursuant to Rule 9 (A) (i) of the Rules, we 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 20 May 2015, any appeal would ordinarily be due seven days later, on 27 May 2015.⁸ Counsel in effect request a doubling of the time period they are afforded under the Rules to file their appeal. We find that in the special circumstances of this case counsel have demonstrated “good cause”, warranting such extension. In certifying the issues for appeal, the Trial Chamber noted that the “admission into evidence of call sequence tables produced from the Lebanese call data records is integral to the Prosecutor’s case against the five accused”.⁹ Indeed, the issues certified for appeal are of such complexity and significance for the proceedings as a whole that the normal seven-day filing period should be extended to allow counsel to exhaustively assess the matter before filing their appeal.¹⁰ We also note that the original seven-day period was effectively shortened by one official Tribunal holiday.

4. Under Article 5 (3) of the relevant Practice Direction, a party must seek authorization in advance if it seeks an enlargement of the applicable word limits and must provide “an explanation of the exceptional circumstances that necessitate the oversized filing”.¹¹ Here we find that exceptional circumstances exist. The complexity of the factual background to the present litigation, in particular as it relates to the history of the evidence and its technical details, justifies an enlargement of the word limit as requested for that purpose. To ensure fairness, the Prosecutor is granted a commensurate enlargement.

DISPOSITION

FOR THESE REASONS;

PURSUANT to Rules 9 (A) (i) and 126 (E) of the Rules and Article 5 (3) of the Practice Direction;

⁸ See Rule 126 (E).

⁹ Certification Decision, p. 4.

¹⁰ See 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. 20; see also STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/AC/AR126.8, Order by Judge Rapporteur on Request for Extension of Time for Filing of Interlocutory Appeal, 15 May 2014, para. 7.

¹¹ STL, Practice Direction on Filing of Documents Before the Special Tribunal for Lebanon, STL/PD/2010/01/Rev.2, 14 June 2013.

THE APPEALS CHAMBER, deciding unanimously;

GRANTS the Motion;

ALLOWS counsel for Mr Oneissi to file their appeal brief no later than 3 June 2015, 4 pm; and

ENLARGES the word limit for the appeal brief by counsel for Mr Oneissi and the Prosecutor's response, if any, to 10,000 words, respectively.

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

Dated 26 May 2015

Leidschendam, the Netherlands



Judge Ivana Hrdličková
Presiding Judge

