

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE APPEALS PANEL

Case No.: STL-14-05/A/AP

Before: Judge Ivana Hrdličková, Presiding
Judge Janet Nosworthy
Judge Walid Akoum

Registrar: Mr Daryl Mundis

Date: 30 October 2015

Original language: English

Classification: Public

IN THE CASE AGAINST

***AL JADEED* [CO.] S.A.L./NEW T.V. S.A.L. (N.T.V.)
KARMA MOHAMED TAHSIN AL KHAYAT**

**DECISION ON THE DEFENCE REQUEST FOR EXTENSION OF WORD AND
TIME LIMITS**

***Amicus Curiae* Prosecutor:**
Mr Kenneth Scott

**Counsel for *Al Jadeed* [CO.] S.A.L./
New T.V. S.A.L. (N.T.V.) and
Ms Karma Al Khayat:**
Mr Karim A.A. Khan
Mr Rodney Dixon
Ms Shyamala Alagendra
Ms Maya Habli



I. INTRODUCTION

1. The Appeals Panel is seized with a request by Defence Counsel for *Al Jadeed* [Co.] S.A.L./New T.V. S.A.L. (N.T.V.) (“*Al Jadeed TV*”) and Ms Al Khayat (“Defence”) for an extension of the word and time limits of their response to the *Amicus Curiae* Prosecutor (“*Amicus*”)’s appeal brief (“Defence Response Brief”) and an extension of time for the filing of their appeal brief (“Defence Appeal Brief”).¹ The *Amicus* opposes the extension of the Defence Appeal Brief and opposes the extensions of the Defence Response Brief, in part.²

2. In this decision, the Appeals Panel grants in part an extension of the word and time limits for the Defence Response Brief and denies the extension of time for the Defence Appeal Brief.

II. BACKGROUND

3. On 18 September 2015, the Contempt Judge convicted Ms Al Khayat on one count of contempt, acquitted her of another, and acquitted *Al Jadeed TV* of two counts of contempt.³ Ms Al Khayat was sentenced orally on 28 September 2015 and written reasons were issued on 6 October 2015.⁴ The *Amicus* filed his notice of appeal (“*Amicus Notice of Appeal*”) and appeal brief (“*Amicus Appeal Brief*”) on the acquittals on 5 October 2015 and 20 October 2015, respectively.⁵ The Defence filed its notice of appeal on the conviction of Ms Al Khayat on 21 October 2015.⁶

4. The Defence Request was filed on 27 October 2015 and the *Amicus* Response on 28 October 2015.

¹ STL, *In the Case Against Al Jadeed [Co.] S.A.L./New T.V. S.A.L. (N.T.V.) and Al Khayat*, STL-14-05/A/AP, F0008, Defence Request for Extension of Time and Word Limits, 27 October 2015 (“Defence Request”). All further references to filings and decisions relate to this case number unless otherwise stated.

² F0010, Response to the “Defence Request for Extension of Time and Word Limits”, 28 October 2015 (“*Amicus Response*”).

³ STL, *In the Case Against Al Jadeed [Co.] S.A.L./New T.V. S.A.L. (N.T.V.) and Al Khayat*, STL-14-05/T/CJ, F0176, Public Redacted Version of Judgment, 18 September 2015 (“Trial Judgment”).

⁴ STL, *In the Case Against Al Khayat*, STL-14-05/S/CJ, F0186, Reasons for Sentencing Judgment, 6 October 2015 (“Sentencing Judgment”).

⁵ F0001, Prosecution’s Notice of Appeal, 5 October 2015; STL, *In the Case Against Al Khayat*, STL-14-05/A/AP, F0005, Prosecution’s Appeal Brief, 20 October 2015, confidential (“*Amicus Appeal Brief*”) with a public redacted version filed on 22 October 2015.

⁶ STL, *In the Case Against Al Khayat*, STL-14-05/A/AP, F0005, Defence Notice of Appeal, 21 October 2015.

III. SUBMISSIONS

5. The Defence submits that the *Amicus* Appeal Brief, in terms of detail and length, “tests the reasonableness of the default deadline for response” and notes that the Defence Appeal Brief is due three days after the filing of the Defence Response Brief.⁷ In light of the accused’s right to an adequate time to prepare his or her defence, as per Article 16(4)(b) of the Statute, the Defence requests that the time to file both the Defence Response Brief and the Defence Appeal Brief be extended to 13 November 2015, an extension of eight and five working days respectively.⁸ In addition, the Defence requests permission to file a consolidated Defence Response Brief not exceeding 18,000 words on the basis that the applicable practice direction only envisages prosecution, and not defence, consolidated filings for two or more accused persons, together with the associated word extension. The Defence argues that this constitutes an exceptional circumstance and that the variation of the word limit promotes the efficiency of the proceedings and is in the interest of justice.⁹

6. The *Amicus* submits, initially, that good cause has not been shown to justify any extension of the time limits.¹⁰ He rejects the Defence submission concerning the proximity of its filing deadlines, noting that despite his own various competing obligations, workload and small team, he was able to meet his deadlines without extensions.¹¹ In his view, the *Amicus* Notice of Appeal provided the Defence with ample and detailed notice for them to begin the preparation of the Defence Response Brief, and an extension of the kind sought by the Defence would be unfair.¹² Notwithstanding, the *Amicus* concedes the existence of doubt or confusion as to the word limit in these proceedings and does not oppose a four-day extension for the filing of the Defence Response Brief as well as the Defence’s proposed word extension.¹³ With respect to the Defence Appeal Brief, which concerns a single defendant, one count, and only five grounds of appeal addressing the Trial Judgment – not the Sentencing Judgment – the *Amicus* opposes the extension of time.¹⁴

⁷ Defence Request, para. 14.

⁸ *Id.* at para. 15.

⁹ *Id.* at para. 16.

¹⁰ *Amicus* Response, para. 7.

¹¹ *Id.* at paras 8-9.

¹² *Id.* at para. 9.

¹³ *Id.* at para. 10, fn. 7.

¹⁴ *Id.* at para. 11.

IV. DISCUSSION

7. The Appeals Panel notes, at the outset, that the present appellate contempt proceedings are to be heard expeditiously¹⁵ and are, as corollary, subject to shorter time and word limits than in ordinary appeals of trial judgments. In light of this expedited timeline, and the *Amicus*' position that the Defence Request could have been filed earlier,¹⁶ the Appeals Panel reminds the parties that such requests are to be filed promptly so as to facilitate efficiency in the proceedings.

A. Extension of word limit of consolidated Defence Response Brief

8. Pursuant to Article 5(3) of the Practice Direction on Filings, advance authorization must be sought from the Appeals Panel to exceed the words limits and the requesting party “must provide an explanation of the exceptional circumstances that necessitate the oversized filing”.¹⁷

9. The Appeals Panel recalls that the Defence in this case simultaneously represents two accused – *Al Jadeed* TV and Ms Al Khayat. As was pointed out by both parties, the Practice Direction on Filings only addresses the Prosecution's ability to submit consolidated briefs when prosecuting two or more accused persons and extends the applicable word limits for such briefs on that basis.¹⁸ Article 5(1)(h)(ii) is silent on the Defence's ability to file a consolidated brief when representing two or more accused persons, as well as a commensurate extension of the word limit despite the fact that it, like the Prosecution, can be involved in appellate litigation concerning two or more accused persons in the same case.

10. In the view of the Appeals Panel, and noting that the *Amicus* does not oppose this extension, this situation constitutes an exceptional circumstance. Since the *Amicus* benefits from an extension of the word limit and a consolidated filing, in these circumstances, the Defence may benefit from the same right when it represents multiple accused in this case.

¹⁵ Rule 187(A) STL RPE.

¹⁶ *Amicus* Response, para. 12.

¹⁷ Article 5(3), Practice Direction on Filing of Documents before the Special Tribunal for Lebanon, STL/PD/2010/01/Rev.2, 14 June 2013 (“Practice Direction on Filings”).

¹⁸ Defence Request, para. 16; *Amicus* Response, fn. 7. See Article 5(1)(h)(ii)-(iv), Practice Direction on Filings.

Granting the Defence's request is both fair and consistent with the principle of equality of arms between the parties.¹⁹

B. Extension of time limits

11. Pursuant to Rule 9(A)(i) of the Rules, “a Judge or Chamber may, *proprio motu*, or on good cause being shown by motion, [...] enlarge or reduce any time prescribed by the Rules”.²⁰ In the present case, the Appeals Panel notes that the time limit for the filing of the Defence Appeal Brief is governed by Rule 60 *bis*(M), and that the time limit for the filing of the Defence Response Brief is not prescribed by the Rules, but by Article 8 of the Practice Direction on Appeal Filings.²¹ However, since the Appeals Panel has the power to vary the time limits that are found in the Rules, it also has the power, *a fortiori*, to vary the time limits prescribed by the Practice Direction on Appeal Filings which is issued pursuant to Rule 32(E).²²

12. The Appeals Panel is of the view that factors such as the scope and breadth of an appeal are not, in of themselves, good cause for granting an extension of time.²³ Further, the submissions of the Defence concerning its competing deadlines in this case do “not show[] with specificity how their current workload prevents them from filing a timely appeal brief”.²⁴ In particular, the Defence Appeal Brief focuses on issues that arise only in the Trial Judgment issued on 18 September 2015. The requested extension in this respect is therefore rejected.

13. However, the Appeals Panel is cognisant of the *Amicus*' position that it does not oppose a short extension of time for the Defence Response Brief. The Appeals Panel notes

¹⁹ See generally STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC/R176bis, F0327, Decision on Defence Requests for Reconsideration of the Appeals Chamber's Decision of 16 February 2011, 18 July 2012, para. 18; 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, para. 96.

²⁰ Pursuant to Rule 2(A), the “Rules” are defined as “[t]he Rules of Procedure and Evidence in force”.

²¹ Article 8, Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Special Tribunal for Lebanon, STL/PD/2013/07/Rev.1, 13 June 2013 (“Practice Direction on Appeal Filings”), fn. 5.

²² E.g. ICJ, *Application for Review of Judgment No. 158 of the United Nations Administrative Tribunal*, Advisory Opinion, I.C.J. Reports 166 (1973), Dissenting Opinion of Judge De Castro, p. 277 (relying on the Latin maxim *ie eo quod plus sit, semper in est et minus*); ICJ, *Aegean Sea Continental Shelf Case (Greece v. Turkey)*, Request for the Indication of Interim Measures of Protection, I.C.J. Reports 3 (1976), Separate Opinion of Judge Tarazi, p. 32 (relying on the French maxim *qui peut le plus peut le moins*).

²³ ICTY, *Prosecutor v. Brđanin*, IT-99-36-A, Decision on Appellant's Motion for Extension of Time Limit to File a Consolidated Brief and for Enlargement of Page Limit, 22 June 2005, para. 12.

²⁴ STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/AC/AR126.8, F0004, Order by Judge Rapporteur on Request for Extension of Time for Filing Interlocutory Appeal, 15 May 2014, para. 8.

that novel and, at times, complex legal questions are at issue in this appeal – a number of which arise for the first time in the history of international criminal law.²⁵ When considered in conjunction with the fact that the Defence represents two accused, we find good cause for an extension of the time limit for the Defence Response Brief. However, the Appeals Panel rejects the length of time requested by the Defence and that proposed by the *Amicus*. In the circumstances of this case, an extension of five working days is appropriate.

²⁵ The Appeals Chamber has previously held that complexity is a valid ground for the granting of an extension: STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC/AR90.1, F0019, Decision on Defence Requests for Extension of Word and Time Limits, 6 August 2012, para. 20; STL *Prosecutor v. Ayyash et al.*, STL-11-01/T/AC/AR126.9, F0002, Order on Request for Extension of Time and Word Limits for Filing of Interlocutory Appeal, 26 May 2015, para. 4.

V. DISPOSITION

FOR THESE REASONS,

PURSUANT to Rule 9(A)(i) of the Rules and Article 5(3) of the Practice Direction on Filings;

THE APPEALS PANEL,

GRANTS, in part, the Defence Request,

ALLOWS the filing of a consolidated Defence Response Brief no later than 9 November 2015, 16:00;

EXTENDS the word limit of the Defence Response Brief to no more than 18,000 words; and

DENIES an extension of time for the filing of the Defence Appeal Brief.

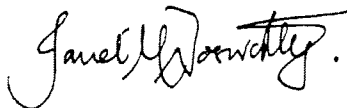
Done in Arabic, English and French, the English version being authoritative.

Dated 30 October 2015

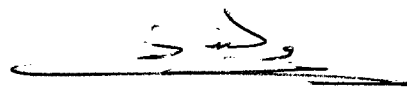
Leidschendam, The Netherlands



Ivana Hrdličková, Presiding Judge



Janet Nosworthy, Judge



Walid Akoum, Judge

