

**THE TRIAL CHAMBER**

**Case No:** STL-11-01/T/TC

**Before:** Judge David Re, Presiding  
Judge Janet Nosworthy  
Judge Micheline Braidy  
Judge Walid Akoum, Alternate Judge  
Judge Nicola Lettieri, Alternate Judge

**Registrar:** Mr Daryl Mundis

**Date:** 15 June 2016

**Original language:** English

**Classification:** Public

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**DECISION ON BADREDDINE DEFENCE MOTION FOR ADJOURNMENT OF THE HEARING OF EVIDENCE**

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(Extract from Official Public Transcript of Hearing on 15 June 2016, page 55, line 4 to page 59, line 25)

Following the Trial Chamber's decision on the 9th of June in filing F2620 to certify for interlocutory appeal the issue of whether it was correct in deciding that it was not yet satisfied to the requisite standard that the accused Mr. Mustafa Amine Badreddine was dead, counsel for Mr. Badreddine today filed their interlocutory appeal before the Appeals Chamber.

In their appeal, counsel for Mr. Badreddine have asked the Appeals Chamber to substitute its own decision for that of the Trial Chamber's and to decide that Mr. Badreddine is deceased on the evidence thus far presented and to further suspend the hearing of any evidence in the trial pending the Trial Chamber's decision.

Prosecution counsel informed the Trial Chamber in court today that the Prosecution would be filing a response for suspensive effect of the trial today.

The Appeals Chamber has not yet issued any orders reducing the time limits for the parties to file submissions, and it is unclear when it will deliver its decisions.

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Meanwhile, the Trial Chamber had scheduled hearings this week to continue with the Prosecution's evidence, and in particular to continue with the cross-examination of a Prosecution witness, Mr. Alasdair Macleod, by counsel appearing for Mr. Assad Hassan Sabra in which they were to continue to put their Defence case to him.

However, today in court counsel for Mr. Badreddine made an application to adjourn the hearing of further evidence pending decisions by the Appeals Chamber. The application was supported by counsel for Mr. Oneissi, Mr. Merhi, and Mr. Ayyash, and the head of the Defence Office made observations or submissions supporting the application in main.

The Trial Chamber is available to sit to hear evidence for the remainder of this week and every day remaining this month. It can sit at short notice, if necessary, and particularly so where the witnesses are internal Prosecution witnesses who are readily available to appear. The Trial Chamber does not wish the courtroom to sit idle while it awaits the resolution of the appeal, especially where it has no indication of when an appeal may be decided.

However, it is clear from the appeal filed by counsel for Mr. Badreddine, in particular at paragraph 28 of the “Badreddine Interlocutory Appeal of the ‘Interim Decision on the Death of Mr. Mustafa Amine Badreddine and Possible Termination of Proceedings,’” that lead counsel for Mr. Badreddine has directed his co-counsel not to participate in the proceedings other than to appear in court because lead counsel is sincerely convinced or has an intimate conviction that Mr. Badreddine is deceased which appears to override any decision taken by the Trial Chamber.

The head of the Defence Office supports the position taken by lead counsel for Mr. Badreddine.

The Prosecution has stated that it cannot continue with the evidence if Mr. Badreddine is not effectively represented in and by counsel who are not participating in the trial in any meaningful way. Prosecution counsel suggested an adjournment for the balance of this week. They say an adjournment may assist because the matter may be resolved in a relatively short time.

The head of the Defence Office, while supporting the application by counsel for Mr. Badreddine, suggested that Defence counsel could appear in court but without cross-examining any witnesses and seeking their recall in the future if necessary.

Co-counsel for Mr. Badreddine, however, responded that this would not work. And although this did not necessarily amount to ineffective [Realtime transcript read in error “an

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effective”] representation, whether it would be a matter for the Trial Chamber to decide, but they insisted that the matter be adjourned.

Article 9 of the Code of Professional Conduct for Defence Counsel Appearing Before the Special Tribunal for Lebanon, 9A, provides that:

Defence “. . . Counsel shall provide effective representation of his Client before the Tribunal. Representation is ineffective where one or several acts or omissions of” Defence “Counsel or of a member of the” Defence “. . . Team, materially compromise, or might irreparably compromise, the fundamental interests or rights of the Client.”

Article 33(vii) of the same code in relation to complaints of ineffective representation under the heading "Examination of Witnesses," paragraph A refers to whether -- I withdraw that.

Article 33 of that code, paragraph A says:

“The Head of the Defence Office shall assess whether, on the balance of probabilities, the representation by Defence Counsel would be ineffective, by reference to the following criteria as well as all other Relevant factors:”

One of the relevant factors here is (vii), “Examination of witnesses,” (a), which says:

“Examine witnesses appearing before the Tribunal efficiently and effectively whatever the mode of proceedings adopted by the Trial Chamber under Rule 145.”

The Statute of the Special Tribunal mandates an accused person receiving a fair and expeditious trial. Defence counsel appearing in court without properly participating in the proceedings, which includes not taking objections or cross-examining, does not provide effective representation to an accused person. In those circumstances, the trial would not be fair in respect of that accused person.

The Trial Chamber has an overriding supervisory role and duty to ensure a fair trial overriding, if necessary, any decision taken by the head of the Defence Office in respect to what he may decide effective representation may be. The Trial Chamber cannot force Defence counsel to represent an accused person they have been assigned to represent.

In these circumstances where Defence counsel will not provide effective representation and the Prosecution is submitting that it cannot continue to present evidence because the trial would be unfair, the Trial Chamber is forced to adjourn the hearing of evidence pending a decision or order of the Appeals Chamber.

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As stated, the Trial Chamber is ready to resume 1 the evidence at short notice immediately following any decision or order of the Appeals Chamber.

[...]

Can [this] please be revised. Page 56, line 21, it should say:

“Defence counsel appearing in court without properly participating in the proceedings, which includes not taking objections or cross-examining, does not necessarily amount to ineffective representation to an accused person, although . . .”

[...]

Simply replace the word “effective” with “ineffective,” and that completes that.

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