



Office of the Prosecutor

Bureau du Procureur

المحكمة الخاصة بلبنان  
SPECIAL TRIBUNAL FOR LEBANON  
TRIBUNAL SPÉCIAL POUR LE LIBAN

مكتب المدعي العام

**BEFORE THE TRIAL CHAMBER**  
**Special Tribunal for Lebanon**

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

Before: **Judge Robert Roth, Presiding**  
**Judge Micheline Braidy**  
**Judge David Re**  
**Judge Janet Nosworthy, Alternate Judge**  
**Judge Walid Akoum, Alternate Judge**

Registrar: **Mr. Herman von Hebel**

Date: **8 May 2012**

Filing Party: **Prosecutor**

Original language: **English**

Classification: **Public**

**THE PROSECUTOR**

v.

**SALIM JAMIL AYYASH,**  
**MUSTAFA AMINE BADREDDINE,**  
**HUSSEIN HASSAN ONEISSI &**  
**ASSAD HASSAN SABRA**

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**Prosecution Response to the**  
**“Sabra Motion for Extension of Page Limit/Word Count In Re *Absentia* Motion”**

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**Office of the Prosecutor:**  
Mr. Norman Farrell

**Counsel for Mr. Salim Jamil Ayyash:**  
Mr. Eugene O’Sullivan  
Mr. Emile Aoun  
**Counsel for Mr. Mustafa Amine Badreddine:**  
Mr. Antoine Korkmaz  
Mr. John Jones  
**Counsel for Mr. Hussein Hassan Oneissi:**  
Mr. Vincent Courcelle-Labrousse  
Mr. Yasser Hassan  
**Counsel for Mr. Assad Hassan Sabra:**  
Mr. David Young  
Mr. Guénaél Mettraux



## I. INTRODUCTION

1. The Prosecution files this Response opposing Counsel for Sabra's Motion for Extension.<sup>1</sup> Rule 90 of the Rules of Procedure and Evidence (Rules) provides an exhaustive list of preliminary motions and does not include a challenge to decisions to proceed *in absentia*. The substantive motion underlying the Motion for Extension is apparently a challenge to the *In Absentia* Decision of the Trial Chamber and, therefore, is not a valid preliminary motion pursuant to Rule 90.<sup>2</sup> Consequently, the Trial Chamber should dismiss the Motion for Extension and its underlying substantive motion because both are without a legal basis for their filing, and absent grounds for judicial relief.
2. At the Status Conference on 12 April 2012, the Pre-Trial Judge, in his oral Order pursuant to Rules 9, 89(B) and (F) and 90(A), set the deadline of 4 May 2012 for the Defence to file preliminary motions relating to jurisdiction pursuant to Rules 90(A) and (E) (Order).<sup>3</sup>
3. On 4 May 2012, Counsel for Sabra attempted to file a motion in regards to the "Trial Chamber's *Absentia* Decision" (Re *Absentia* Motion). Due to the length of the Re *Absentia* Motion, which violated Article 5(1)(a) of the Practice Direction on the Filing of Documents, it was rejected for filing by the Tribunal's Court Management Services Section.<sup>4</sup>
4. That same day, the Counsel for Sabra filed the Motion for Extension seeking an extension of the permitted page and word limits, and requested the Trial Chamber to regard the Re *Absentia* Motion as validly filed. The Counsel for Sabra took notice of the Order of 12 April 2012 in its Motion for Extension.<sup>5</sup> Based on this, and the

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<sup>1</sup> STL, *Prosecutor v. Ayyash et al.*, Case No, STL-11-01/PT/TC, Sabra Motion for Extension of Page Limit/Word Count in Re *Absentia* Motion (Motion for Extension).

<sup>2</sup> STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/TC, Decision to Hold Trial *In Absentia*, 1 February 2012 (*In Absentia* Decision).

<sup>3</sup> STL, *Prosecutor v. Ayyash et al.*, Case No, STL-11-01/PT/PTJ, Status Conference Transcript (Open Session), p. 47.

<sup>4</sup> STL, STL/PD/2010/Rev.1, Practice Direction on Filing of Documents before the Special Tribunal for Lebanon, 23 April 2012 (Practice Direction on Filing of Documents).

<sup>5</sup> Motion for Extension, para. 1.

attempted filing of the Re *Absentia* Motion by the deadline imposed by the Order, the Prosecution understands that Counsel for Sabra seeks to file its Re *Absentia* Motion pursuant to the Order and Rule 90(A).

## II. APPLICABLE LAW

5. Pursuant to Rule 90(A)(i) and (E), “a motion challenging jurisdiction refers exclusively to a motion that challenges an indictment on the ground that it does not relate to the subject-matter, temporal or territorial jurisdiction of the Tribunal, including that it does not relate to the Hariri Attack or an attack of a similar nature and gravity that is connected to it in accordance with the principles of criminal justice.”
6. Further, Rule 90(A)(ii) to (iv) refers to preliminary motions that: allege defects in the form of the indictment; seek the severance of counts joined in one indictment under Rule 70 or seek separate trials under Rule 141; or raise objections based on the refusal of a request for assignment of counsel made under Rule 59(A).

## III. APPLICATION

7. The Re *Absentia* Motion exceeds the scope of the Order of 12 April 2012 and, therefore, cannot be filed pursuant to that Order. Since the Motion for Extension seeks relief in terms of the Re *Absentia* Motion, the Trial Chamber should dismiss it.
8. Rule 90(A) and the Order of 12 April 2012 do not provide for legal challenges to the *In Absentia* Decision. The *In Absentia* Decision did not determine the jurisdiction of either the Tribunal or the confirmed indictment. It also did not address the issues described in Rule 90(A)(ii) to (iv). Rather, the Trial Chamber was seized with the request of the Pre-Trial Judge to determine whether to try the accused *in absentia* pursuant to Article 22 of the Statute and Rule 106.<sup>6</sup>
9. Rule 90(A)(i) to (iv) provides an exhaustive list of preliminary motions. The use of the phrase “preliminary motions, being motions which:” in the chapeau of Rule 90(A) indicates that preliminary motions are strictly defined as those enumerated in

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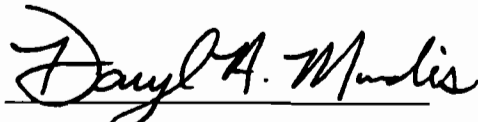
<sup>6</sup> *In Absentia* Decision, para. 1 and Disposition.

Rule 90(A)(i) to (iv). Consequently, Rule 90(A) does not provide grounds for any motion other than those in regards to matters articulated in the Rule.

**IV. RELIEF**

10. For the above reasons, the Prosecution respectfully requests the Trial Chamber to **DISMISS** the Motion for Extension because the underlying Re *Absentia* Motion cannot be filed pursuant to the Order and Rule 90.

Respectfully submitted,

  
FOR Norman Farrell  
Prosecutor

DARIL A. MUNDIS  
CHIEF OF PROSECUTIONS

Signed on this 8th day of May 2012  
Leidschendam, The Netherlands

764
Word count

