



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

BEFORE THE PRESIDENT

SPECIAL TRIBUNAL FOR LEBANON

Case No: STL-18-10/MISC.1/PRES

Before: Judge Ivana Hrdličková

Registrar: Mr Daryl Mundis

Date: 29 November 2019

Original language: English

Classification: Confidential

THE PROSECUTOR
v.
SALIM JAMIL AYYASH

**APPLICATION TO RECLASSIFY FROM CONFIDENTIAL TO PUBLIC 'URGENT
APPLICATION TO REVOKE ORDER CONVENING TRIAL CHAMBER II'
OF 25 NOVEMBER 2019**

Prosecutor:
Mr Norman Farrell

Head of Defence Office:
Ms Dorothée Le Fraper du Hellen



1. The President of the Special Tribunal for Lebanon, Judge Ivana Hrdličková, in an order on 6 November 2019, convened Trial Chamber II to hear any future proceedings before the Trial Chamber in *Prosecutor v. Ayyash*.¹ On Monday 25 November 2019, I filed an application before the President asking her to revoke her order, arguing that it was factually, legally and procedurally flawed.²
2. Consistent with the principles of international human rights law I filed my application as a public filing, as I could find no reason to file it confidentially. However, over 24 hours later, on Tuesday 26 November 2019, the President instructed the Special Tribunal's Court Management Services Section (a) to accept the filing and (b) to change its classification from 'public' to 'confidential'.
3. No reasons appear to have been provided for the President's intervention to reclassify my application as 'confidential', beyond those appearing on the distribution email I received, which stated 'As per instruction from the President'. The consequence of her intervention has been to prevent the dissemination of the application beyond the Prosecutor and the Head of Defence Office, whose names were on the cover-sheet of my application. Without knowing the reasons for her instruction to the Registry to reclassify the filing as 'confidential', I can neither know nor understand its rationale. I respectfully submit that it must therefore follow, in the absence of any reasoned justification for the President's instruction, that none existed to reclassify my application as confidential, and that none exists to maintain that classification.
4. Accordingly, I am seeking its immediate reclassification to a public filing, and additionally, this application, which I have had, as a consequence, to file confidentially.
5. Fundamental to public confidence in the administration of justice is transparency in judicial due process and decision-making. Only in the most exceptional, and prescribed, circumstances may a court either operate behind closed doors or suppress from public view evidence or filings in a case.
6. Article 14 (1) of the International Covenant on Civil and Political Rights³ states, relevantly, that in the determination of any criminal charge against him, everyone shall be

¹ STL-18-10/I/PRES, *Prosecutor v. Samil Jamil Ayyash*, F0056, Order Convening Trial Chamber II, 6 November 2019.

² STL-18-10/MISC.1/PRES, *Prosecutor v. Samil Jamil Ayyash*, F0001, Urgent Application to Revoke Order Convening Trial Chamber II, 25 November 2019 (confidential).

³ Adopted 16 December 1966, 999 UNTS 171.

entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. It acknowledges that courts have the power to exclude all or part of the public from a trial,

for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

7. These principles of international human rights law are mirrored in numerous regional and domestic instruments, and in the legislative instruments of international criminal courts and tribunals.⁴ The Special Tribunal's Statute likewise provides the right of the accused persons to a fair and *public* hearing in Article 16 (2). The concept of a hearing includes the proceedings, which may include orders relating to convening a chamber to try a case.

8. My application to the President to revoke her order convening a second trial chamber, however, concerns neither 'morals, public order' or 'national security', nor 'matrimonial disputes' or anything relating to children. And, how its public dissemination could 'prejudice the interests of justice' in the absence of any reasons justifying this could only be a matter of speculation. Further, Rule 136 of the Special Tribunal's Rules of Procedure and Evidence provides that 'All proceedings before a Chamber, other than deliberations of the Chamber, shall be held in public, unless otherwise decided by the Chamber after hearing the Parties.'

9. On 26 November 2019, at 15:25, I filed an application before the Appeals Chamber seeking to appeal the President's decision to convene Trial Chamber II.⁵ I note here that it was only after I filed this application and a courtesy copy was also sent to the Appeals Chamber at the time of the filing, that the President permitted the Court Management Services Section to accept my filing before her, while simultaneously ordering its reclassification as 'confidential'.

⁴ See e.g. Article 6 (1) of the European Convention on Human Rights, which foresees that 'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.'

⁵ STL-18-10/MISC.2/AC, *Prosecutor v. Samil Jamil Ayyash*, F0001, Appeal against Decision of President Convening Trial Chamber II, 26 November 2019.

10. Pertinent to this present application is that my appeal, in essence, encompassed the arguments in my application of 25 November 2019, but to which I added additional legal submissions relevant to an appellate submission.

11. On 28 November 2019, the Appeals Chamber accepted the filing of my appeal and then distributed it as a public filing. As the facts and legal arguments in the appeal are substantially the same as those in my application before the President, the substance, if not the content of my application to revoke the President's order is already public. Under the governing principles of international human rights law, its content provided no reason to classify it as confidential. The same applies to this application to reclassify my application before the President as public.

Relief sought

12. For the above reasons, the President is respectfully requested to immediately reclassify from confidential to public:

- The 'Urgent Application to Revoke Order Convening Trial Chamber II' of 25 November 2019 (STL-18-10/MISC.1/PRES, F0001); and
- This application.

Leidschendam,
The Netherlands
29 November 2019

David Re

Judge David Re
Presiding Judge
Trial Chamber

