



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE PRESIDENT

Case No: STL-18-10/MISC.1/PRES
Before: Judge Ivana Hrdličková, President
Registrar: Mr Daryl Mundis
Date: 29 November 2019
Original language: English
Classification: Public

THE PROSECUTOR

v.

SALIM JAMIL AYYASH

DECISION ON “URGENT APPLICATION TO REVOKE ORDER CONVENING TRIAL CHAMBER II”

Prosecutor:
Mr Norman Farrell

Head of Defence Office:
Ms Dorothée Le Fraper du Hellen



I. OVERVIEW

1. In my capacity as President of the Special Tribunal for Lebanon (“STL” or “Tribunal”), I am seized with an application¹ requesting me to revoke my order of 6 November 2019, convening the Tribunal’s second Trial Chamber (“Trial Chamber II”).²

2. For the reasons that follow, I dismiss the Application as inadmissible.

II. BACKGROUND

3. On 16 September 2019, the Pre-Trial Judge issued an order lifting the confidentiality of the indictment and of other related documents in the case of *Prosecutor v. Salim Jamil Ayyash* (“*Prosecutor v. Ayyash*”), Case No. STL-18-10.³

4. The United Nations Secretary-General subsequently appointed Judge Anna Bednarek as a Judge of Trial Chamber II to serve on an *ad hoc* basis until any proceedings assigned to Trial Chamber II reach the trial phase.⁴ The Secretary-General also appointed Judges Walid Akoum and Nicola Lettieri to Trial Chamber II, in addition to their appointment as Alternate Judges to the Trial Chamber currently seized of *Prosecutor v. Salim Jamil Ayyash, Hussein Hassan Oneissi, Assad Hassan Sabra and Hassan Habib Merhi*, Case No. STL-11-01 (“Trial Chamber I”).

5. Judge Bednarek accepted her appointment on 3 November 2019.⁵ Judges Akoum and Lettieri accepted their appointments on 4 November 2019.⁶ Further details as to the relevant background can be found in the Order.⁷

6. On 6 November 2019, I issued the Order, which I considered necessary given that the Rules of Procedure and Evidence of the Tribunal (“Rules”) require that certain procedure

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

² See *Prosecutor v. Ayyash*, STL-18-10/I/PRES, F0056, Order Convening Trial Chamber II, 6 November 2019 (“Order”).

³ *Prosecutor v. Ayyash*, STL-18-10/I/PTJ, F0036, Order Relating to the Lifting of the Confidentiality of the Indictment of 14 June 2019 and of Other Related Documents, Public with Confidential and *Ex Parte* Annex, 16 September 2019.

⁴ Order, para. 4.

⁵ *Id.* at fn. 3.

⁶ *Id.* at fn. 4.

⁷ See *id.* at paras 2-4.

during the pre-trial phase be disposed of by a trial chamber.⁸ The Order convened Trial Chamber II to serve as required to perform its duties in the *Prosecutor v. Ayyash* case.⁹

7. On 25 November 2019, Judge David Re, the Presiding Judge of Trial Chamber I (“Applicant”), filed the present Application seeking, *inter alia*, the urgent revocation of the Order.¹⁰ In sum, the Applicant seeks to challenge non-public decision-making processes by relying on principles of administrative law.¹¹

8. On 26 November 2019, the Applicant filed an appeal against the Order before the Appeals Chamber.¹²

III. APPLICABLE LAW

9. Article 2 (2) of the Agreement between the United Nations and Lebanon¹³ foresees the creation of a second Trial Chamber at the request of the Secretary-General or the President of the Tribunal. Article 2 (3) of the Agreement specifies the requisite composition of the second Trial Chamber. Article 2 (5) sets out the procedure by which Lebanese Judges and International Judges are appointed to the Tribunal by the Secretary-General. Article 17 (b) foresees that Judges, other than the Pre-Trial Judge, will be “convened on an ad hoc basis” serving when required to perform their duties, prior to taking office on a date to be determined by the Secretary-General.¹⁴

10. Additionally, in line with similar provisions of other international tribunals, Article 10 (1) of the Statute makes the President “responsible for [the Tribunal’s] effective functioning and the good administration of justice”.¹⁵

⁸ *Id.* at para. 5.

⁹ *Id.* at paras 1, 9, Disposition.

¹⁰ Application, p. 6.

¹¹ *See generally*, Application, paras 10-20.

¹² *Prosecutor v. Ayyash*, STL-18-10/MISC.2, F0001, Appeal Against Decision of President Convening Trial Chamber II, 26 November 2019 (“Appeal”).

¹³ Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon, Annex to United Nations Security Council Resolution S/RES/1757 (2007) (“Agreement”).

¹⁴ Such determination has not yet been made with respect to Judge Bednarek.

¹⁵ *See also* Rule 32 (B) STL RPE; *Prosecutor v. Ayyash et al.*, STL-11-01/PT/PRES, F1132, Decision on Defence Motion for Reconsideration and Rescission of Order Composing the Trial Chamber, 4 October 2013, para. 6 (“Decision on Defence Motion for Reconsideration”).

IV. DISCUSSION

11. It is a general principle recognized in the jurisprudence of this and other international tribunals that a President's administrative decisions are not generally subject to any form of review.¹⁶ Indeed, the STL Appeals Chamber, in upholding the finding of the President in a previous case, has found that "an order of the President composing or re-composing a bench of the Tribunal is a purely administrative matter, and not subject to challenge by the parties".¹⁷ The Appeals Chamber treated that application as frivolous and ordered the Registrar to withhold payment of fees, pursuant to Rule 126 (G) of the Rules.¹⁸ In that case, the President had found that "neither the Statute nor the Rules foresee that an order of the President composing or re-composing a bench of the Tribunal is open to challenge by the parties".¹⁹

12. The same principles are equally applicable to non-parties. No provision of the Agreement, Statute or Rules foresees any possibility of any third party challenging administrative orders of the President. The Application is thus liable to be dismissed as inadmissible on this basis alone.

13. Moreover, irrespective of any request under Article 2 (2) of the Agreement, the appointment of Judges to the Special Tribunal is the ambit of the Secretary-General under Article 2 (5) of the Agreement.²⁰ The appointment of Judges Akoum, Lettieri and Bednarek

¹⁶ See *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC, F1178, Decision on Application by Counsel for Messrs Badreddine and Oneissi against President's Order on Composition of the Trial Chamber of 10 September 2013, 25 October 2013 ("Decision on Appeal against Order on Composition") paras 9-12; Decision on Defence Motion for Reconsideration, paras 13-14; ICTR, *Nshogoza v. The Prosecutor*, ICTR-2007-91-A, Decision on Request for Judicial Review of the Registrar's and President's Decisions Concerning Payment of Fees and Expenses, 13 April 2010, para. 14; ICTY, *Prosecutor v. Lukić et al.*, IT-98-32/1-AR11bis.1, Decision on 'Motion to Disqualify President and Vice-President from Appointing Appeals Chamber and to Disqualify President Judge and Judge Meron from Sitting on Appeals Chamber', 4 May 2007 ("*Lukić et al.* Decision of 4 May 2007"); SCSL, *Prosecutor v. Taylor*, SCSL-2003-01-PT, Decision of the President on Defence Motion for Reconsideration of Order Changing Venue of Proceedings, 12 March 2007, p. 4; see also IRMCT, *Prosecutor v. Mladić*, MICT-13-56-A, Decision on Prosecution Appeal of the Acting President's Decision of 13 September 2018, 4 December 2018, para. 13; ICTY, *Prosecutor v. Krajišnik*, IT-00-39-A, Decision on Prosecution Request for Clarification of President's Order of 16 May 2007, 28 June 2007, paras 2, 6; ICTR, *Nahimana et al. v. Prosecutor*, ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motion Contesting the Decision of the President Refusing to Review and Reverse the Decision of the Registrar Relating to the Withdrawal of Co-Counsel, 23 November 2006, para. 9.

¹⁷ Decision on Appeal against Order on Composition, para. 9; see also, e.g., IRMCT, *Prosecutor v. Karadžić*, MICT-13-55, Decision on Motion for Disqualification and Motion Challenging Jurisdiction, 28 October 2019, para. 11; IRMCT, *Prosecutor v. Karadžić*, MICT-13-55, Decision on Prosecution Motion to Strike Karadžić's Second Motion to Disqualify Judge Theodor Meron, Motion to Disqualify Judge William Sekule, and for Related Orders, 1 November 2018, para. 13; *Lukić et al.* Decision of 4 May 2007, p. 1.

¹⁸ Decision on Appeal against Order on Composition, para. 17.

¹⁹ Decision on Defence Motion for Reconsideration, para. 11.

²⁰ See *id.* at paras 8-9.

“to the second Trial Chamber” was made by the Secretary-General in anticipation of that Chamber being seized of judicial proceedings. That decision is not in the hands of the Tribunal. There is no discretion for the President to decide whether to give effect to the Secretary-General’s decision.

14. In sum, this attempt to litigate discontent with administrative matters through judicial proceedings in the *Prosecutor v. Ayyash* case is misplaced as well as contrary to the jurisprudence of this and other international tribunals. The President has no authority to entertain requests of this type.²¹ The Application must be rejected as frivolous.²²

V. CONFIDENTIALITY

15. The subject matter of the Application and Appeal concerns decision-making processes that are generally not public. Accordingly, I considered it appropriate that the Application initially be classified as confidential until a further determination was made. As the Appeals Chamber took a different approach, however, the question of classification became moot. Reclassification as public followed.

²¹ *Cf. id.* at para. 15.

²² *See* Decision on Appeal against Order on Composition, para. 17.

DISPOSITION

FOR THESE REASONS,

PURSUANT TO Articles 2 and 17 (b) of the Agreement, Articles 8 and 10 (1) of the Statute and Rules 30 and 32 (B) of Rules;

I hereby

DISMISS the Application.

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

Dated 29 November 2019

Leidschendam, the Netherlands



Judge Ivana Hrdličková
President

