



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

The Pre-Trial Judge

Case No.: **STL-18-10/PT/PTJ**

The Pre-Trial Judge: **Judge Daniel Fransén**

The Registrar: **Mr David Tolbert, Acting Registrar**

Date: **25 February 2021**

Original language: **English**

Classification: **Public**

THE PROSECUTOR
v.
SALIM JAMIL AYYASH

**ORDER SETTING A TENTATIVE DATE
FOR THE START OF TRIAL PROCEEDINGS**

Office of the Prosecutor:
Mr Norman Farrell

Counsel for Mr Salim Jamil Ayyash:
Mr Emile Aoun & Ms Anta Guissé

**Legal Representative of Participating Victims
(attack carried out against Mr Hamade):**
Mr Nidal Jurdi

**Legal Representative of Participating Victims
(attack carried out against Mr Hawi):**
Mr Antonios Abou Kasm

**Legal Representative of Participating Victims
(attack carried out against Mr El-Murr):**
Mr Adel Nassar



I. Introduction

1. By way of this order, the Pre-Trial Judge sets 16 June 2021 as the tentative date for the start of trial proceedings in accordance with Rule 91 (C) of the Rules of Procedure and Evidence (“Rules”).

II. Procedural background

2. During the Status Conference of 16 September 2020, the Pre-Trial Judge established a working plan setting deadlines for the Parties and the Legal Representatives of Participating Victims (“LRVs”) to file their submissions under Rule 91 of the Rules. He also envisaged 28 April 2021 as a tentative date for the start of trial proceedings.¹

3. On 4 November 2020, the Pre-Trial Judge granted the Prosecution’s request for an extension of the deadline to file its submissions under Rule 91 (G) of the Rules by 11 December 2020.²

4. On 20 November 2020, the Prosecution filed the first part of its submissions pursuant to Rule 91 (G) of the Rules, including its Pre-Trial Brief and partial witness and exhibit lists.³ On 27 November, 4 December and 11 December 2020, the Prosecution filed the second, third and fourth parts of its submissions pursuant to Rule 91 (G) of the Rules.⁴

5. On 3 December 2020, the Pre-Trial Judge partially granted the Defence request for an extension of time and ordered the Defence to file its Pre-Trial Brief pursuant to Rule 91 (I) of the Rules by 23 April 2021.⁵ The Pre-Trial Judge further granted written requests from the Legal Representative of Participating Victims (attack against Mr Hawi) (“LRV2”) and the Legal Representative of Participating Victims (attack against Mr El-Murr) (“LRV3”) to extend the filing

¹ STL, *Prosecutor v. Ayyash*, Case No. STL-18-10/PT, Status Conference, Transcript of 16 September 2020, pp 64 and 66 (EN). Any further references to transcripts, filings and decisions relate to this case unless otherwise indicated. See also F0249, Corrected Version of the Decision Relating to the Requests of the Defence and the Legal Representatives of Victims LRV2 and LRV3 for an Extension of Time to File the Documents under Rule 91 (H) and (I) of the Rules of 3 December 2020, 4 December 2020 (“Extension of Time Decision”), para. 35.

² Status Conference, Transcript of 4 November 2020, p. 68 (EN).

³ F0246, Prosecution’s Submission Pursuant to Rule 91, 20 November 2020.

⁴ F0247, Prosecution’s Submission Pursuant to Rule 91 (Part 2), 27 November 2020; F0250, Prosecution’s Submission Pursuant to Rule 91 (Part 3), 4 December 2020; F0257, Prosecution’s Submission Pursuant to Rule 91 (Part 4) and the Corrigendum for the Annexes A to H to F0246 "Prosecution’s Submission Pursuant to Rule 91", filed 20 November 2020, 11 December 2020.

⁵ Extension of Time Decision. See F0242, Defence Request for Extension of Time to file its Pre-Trial Brief, 11 November 2020.

deadline for their Rule 91 (H) submissions,⁶ noting that, for reasons of fairness, all three LRVs could file their Rule 91 (H) witness and exhibit lists by 29 January 2021, even though the Legal Representative of Participating Victims (attack against Mr Hamade) (“LRV1”) had not requested an extension.⁷

6. In the same decision, on 3 December 2020, taking into account the timetable adjustments which had been necessary to accommodate the COVID-19 pandemic, the Pre-Trial Judge considered that the tentative start date of 28 April 2021 was no longer reasonable.⁸

7. During the Status Conference of 3 February 2021, the Pre-Trial Judge consulted the Parties and the LRVs on a new start date for trial.⁹ The Defence argued that it would be impossible to be ready for trial before September 2021, pointing to logistical challenges.¹⁰ The Defence also argued that a fair trial cannot be achieved through virtual proceedings.¹¹

8. During the same Status Conference, the Prosecution, LRV1 and LRV2 chose not to comment on a possible date for starting trial.¹² LRV3 submitted that “it would be wise to allow the Defence sufficient time to do its job whilst setting certain bounds to ensure that we don't find ourselves in a situation which persists extensively in time.”¹³

9. In accordance with Rule 91 (C) of the Rules, on 19 February 2021, the Pre-Trial Judge consulted with the President and Presiding Judge of Trial Chamber II, and with the Registrar, on 22 February 2021, regarding the tentative date for the start of trial proceedings. This consultation resulted in consensus regarding the said date.

10. On 25 February 2021, the Pre-Trial Judge was informed that the United Nations Secretary-General extended the mandate for the Special Tribunal from 1 March 2021 for a further period of two years, or until the completion of the cases, if sooner, or the exhaustion of available funds, if sooner.¹⁴

⁶ F0241, The Legal Representative of Victims’ Request for Extension of Time to File Its Lists of Witnesses and Exhibits, 11 November 2020; F0236, Request for Extension of Deadline for Rule 91 (H) Filings, 10 November 2020.

⁷ Extension of Time Decision, para. 34 and Disposition.

⁸ Extension of Time Decision, para. 35. See also Status Conference, Transcript of 16 December 2020, p. 55 (EN).

⁹ Status Conference, Transcript of 3 February 2021, p. 52 (EN).

¹⁰ Status Conference, Transcript of 3 February 2021, pp 53-54 and 59-62 (EN).

¹¹ Status Conference, Transcript of 16 December 2020, p. 10 (EN). See also Status Conference, Transcript of 3 February 2021, pp 62-63 (EN).

¹² Status Conference, Transcript of 3 February 2021, pp 55 (Prosecution), 56 (LRV1) and 57 (LRV2) (EN).

¹³ Status Conference, Transcript of 3 February 2021, pp 58-59 (EN).

¹⁴ STL Press Release, “UN Secretary General extends mandate of the Special Tribunal for Lebanon”, 25 February 2021 (available at: <https://www.stl-tsl.org/en/media/press-releases/un-secretary-general-extends-mandate-of-the-special-tribunal-for-lebanon>).

III. Applicable law

11. Rule 91 (C) of the Rules provides that the Pre-Trial Judge, “in consultation with the Parties, the Registrar, the Presiding Judge of the Trial Chamber and, if necessary, the President, shall set a tentative date for the start of trial proceedings at least four months prior to that date”.

12. The Pre-Trial Judge must also consider the rights of the Accused and specifically the right to “have adequate time and facilities for the preparation of his or her defence” pursuant to Article 16 (4) (b) of the Tribunal’s Statute.

IV. Statement of reasons

13. The Parties and the LRVs have been on notice that the trial proceedings would potentially commence on 28 April 2021 since the Status Conference of 16 September 2020. Subsequently, extensions were given to all participants for the submissions pursuant to Rule 91 (G) to (I) of the Rules, including an eight week extension granted to the Defence to file its Pre-Trial Brief.¹⁵ At the 3 February 2021 Status Conference, the Pre-Trial Judge referred to this eight week extension, stating that the commencement of trial proceedings could be expected to be delayed by eight weeks from the initial date of 28 April 2021.¹⁶

14. With regard to the submissions by the Defence about its readiness for trial, the Pre-Trial Judge notes that, like every other participant in this case, the Defence has experienced, and is still experiencing, logistical difficulties in preparing for trial in light of the COVID-19 pandemic. The right of the Accused to have adequate time and facilities for the preparation of his defence is an important element of the guarantee of a fair trial and the application of the principle of the equality of arms.¹⁷ However, the Pre-Trial Judge also has a duty to ensure that the proceedings are expeditious, as well as fair.¹⁸ This is particularly the case where, as in the present case, the timeline for the resolution of the factors raised by the Defence¹⁹ remains uncertain. Furthermore, the Defence will have the opportunity to continue its preparations following the start of the trial proceedings and may also choose to request additional time for its preparation from Trial Chamber II.

¹⁵ See Extension of Time Decision, paras 31-32.

¹⁶ Status Conference, Transcript of 3 February 2021, p. 52 (EN).

¹⁷ Article 16 (4) (b) of the Statute; Extension of Time Decision, para. 23.

¹⁸ Article 18 (2) of the Statute; Rule 89 (B) of the Rules. See also Article 16 (4) (c) of the Statute.

¹⁹ See Status Conference, Transcript of 3 February 2021, pp 54 and 60 (EN).

15. Moreover, as the Pre-Trial Judge has held previously, the question of whether a remote trial is compatible with fair trial rights is a matter for future determination by Trial Chamber II, once the modalities of the trial are known.²⁰ It does not warrant any further delay at the present stage.

16. Finally, the Pre-Trial Judge is cognisant that under Rule 91 (C) of the Rules, an appropriate date for the start of trial would ordinarily be set four months in advance.²¹ However, under Rule 9 (A) (i) of the Rules, the Pre-Trial Judge has the discretion to reduce this time limit on a *proprio motu* basis. In light of the conclusions reached above, as well as the fact that the mandate for the Special Tribunal has been extended for a two year period only, or possibly less in case of exhaustion of available funds, and Trial Chamber II requires sufficient time to complete the trial and judgment, the Pre-Trial Judge considers a reasonable date for the start of trial to be 16 June 2021, even if this date is slightly short of the four month period prescribed by Rule 91 (C) of the Rules.

V. Disposition

FOR THESE REASONS,

PURSUANT TO Rules 9 (A) (i) and 91 (C) of the Rules,


THE PRE-TRIAL JUDGE,

SETS the tentative date for the start of trial proceedings for 16 June 2021 in the courtroom of the Special Tribunal for Lebanon.

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

Leidschendam, 25 February 2021




Daniel Fransen
Pre-Trial Judge



²⁰ See Status Conference, Transcript of 16 December 2020, p. 13 (EN); Status Conference, Transcript of 3 February 2021, pp 62-63 (EN).

²¹ See Status Conference, Transcript of 3 February 2021, pp 52-53 (EN).