



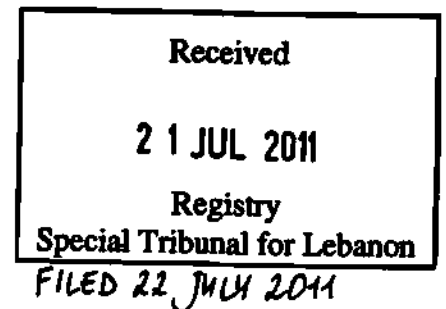
The Pre-Trial Judge

Le Juge de la mise en état

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

THE PRE-TRIAL JUDGE

Case No: CH/PTJ/2011/12
The Pre-Trial Judge: Mr Daniel Fransen
The Registrar: Mr Herman von Hebel
Date: 6 July 2011
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**DECISION ON THE PROPOSED REDACTIONS TO THE DOCUMENTS IN
THE CRIMINAL FILE OF MR EL SAYED SUBMITTED BY THE
PROSECUTOR**

Counsel:
Mr Akram Azoury

Office of the Prosecutor:
Mr Daniel A. Bellemare, QC

Defence Office:
Mr François Roux

STL Official Translation



I. Procedural background:

1. On 17 March 2010, Mr Jamil El Sayed (“the Applicant” or “Mr El Sayed”), represented by his counsel, Mr Akram Azoury, filed a Request with the Special Tribunal for Lebanon (“the Tribunal”), the purpose of which was the “Request for release of evidentiary material related to the crimes of libellous denunciations and arbitrary detention”.¹
2. On 12 May 2011, the Pre-Trial Judge rendered a Decision on the disclosure of materials from the criminal file of Mr El Sayed (the “Decision of 12 May 2011”).²
3. On 20 May 2011, M. El Sayed lodged a partial appeal of the Decision of 12 May 2011.³
4. On 25 May 2011, the Prosecutor filed an urgent request for clarification of various points of the Decision of 12 May 2011 and the suspension of the inspection of documents 20, 40 and 53 ordered in that decision.⁴
5. On 26 May 2011, the Pre-Trial Judge, in the interests of justice, ordered the suspension of the part of the Decision of 12 May 2011 relating to the inspection of the said documents until his ruling on the Prosecutor’s Request⁵. He also granted leave to Mr El Sayed to submit observations in this regard.

¹ Public redacted version of Memo No. 112. The Request: Request for Release of Evidentiary Material Related to the Crimes of Libellous Denunciations and Arbitrary Detention, CH/PTJ/2010/01, 17 March 2010.

² Decision on the Disclosure of Materials from the Criminal File of Mr El Sayed, CH/PTJ/2011/08, 12 May 2011 (“the Decision of 12 May 2011”).

³ Partial Appeal of the Pre-Trial Judge’s Decision on the Disclosure of Materials from the Criminal File of Mr El Sayed of 12 May 2011, CH/PTJ/2010/01, 20 May 2011.

⁴ Prosecution’s Submission of Information, Request for Clarification and Suspension of the Inspection of Documents 20, 40 and 53, and Request for Witness Protection following the Pre-Trial Judge’s Decision on the Disclosure of Materials from the Criminal File of Mr El Sayed, CH/PTJ/2011/08, 25 May 2011.

⁵ Order Relating to the Suspension of Part of the Provision of the Decision on the Disclosure of Materials from the Criminal File of Mr El Sayed of 12 May 2011, CH/PTJ/2011/09, 26 May 2011.

6. On 3 June 2011, the Pre-Trial Judge rendered a Decision and an Order. In his Decision, he called on the Prosecutor to clarify his position in connection with two documents in the file, documents 20 and 53 (the “Decision of 3 June 2011”).⁶ In his Order, the Pre-Trial Judge gave leave for the suspension of the obligation for the Prosecutor to file for 3 June 2011 a complete revised spreadsheet of the documents referred to in the Decision of 12 May 2011. However, he ordered the Prosecutor to file the inventoried documents that he has already re-examined, accompanied as appropriate by the relevant suggested redactions, on 7 June 2011 at the latest. He also ordered the Prosecutor to file, as and when his revision task has been completed, any of the other documents, accompanied as appropriate by the relevant suggested redactions, on 24 June 2011 at the latest, the date by which the Prosecutor was due to draw up a report relating to the fulfilment of his obligations (the “Order of 3 June 2011”).⁷

II. Submissions by the Prosecutor and Mr El Sayed:

7. On 27 May 2011, the Prosecutor submitted proposed redactions for 34 documents identified in the Decision of 12 May 2011 based on criteria for safeguarding the ongoing investigation, witnesses or third parties, and national or international security. The Prosecutor also identified instances of “internal work product” within some of these documents. With regard to seven documents in Arabic for which the English translation had not yet been finalised, the Prosecutor indicated that he reserved the right to submit further proposed redactions.⁸
8. On 7 June 2011, the Prosecutor filed 20 documents, containing proposed redactions, which he had initially considered to be irrelevant to Mr El Sayed’s

⁶ Decision on Prosecutor’s Request for Suspension and Clarification of the Decision on the Disclosure of Materials from the Criminal File of Mr El Sayed and Witness Protection Measures, CH/PTJ/2011/10, 3 June 2011.

⁷ Order relating to the Second Request by the Prosecutor for Suspension of Part of the Disposition of the Decision on the Disclosure of Materials from the Criminal File of Mr El Sayed of 12 May 2011 and for Extension of Time, CH/PTJ/2011/11, 3 June 2011.

⁸ Prosecution’s Filing Concerning Limitations and Restrictions on Documents for Disclosure to the Applicant in accordance with the 12 May 2011 Decision of the Pre-Trial Judge, CH/PTJ/2011/08, 27 May 2011, paras. 3 and 4.

request and which were re-examined in light of the criteria stipulated in the Decision of 12 May 2011.⁹

9. On 8 June 2011, the Prosecutor filed proposed redactions for documents 20 and 53 pursuant to the Decision of 3 June 2011.
10. On 16 June 2011, the Prosecutor submitted 45 additional documents pursuant to the Order of 3 June 2011. These documents had been deemed irrelevant and were re-examined in light of the criteria of the Decision of 12 May 2011. Of these documents, the Prosecutor maintains that document no. 51 is not a witness statement, but rather an internal work product and therefore is not subject to disclosure. With regard to documents in Arabic for which the English translation had not yet been finalised, the Prosecutor indicated that he reserved the right to submit further proposed redactions once they had been translated in full.¹⁰
11. On 17 June 2011, the Prosecutor submitted proposed redactions for eight documents which had been translated from Arabic into English pursuant to the Decision of 12 May 2011.¹¹
12. On 23 June 2011, Mr El Sayed responded to the Prosecutor's arguments of 16 June 2011 regarding the status of document no. 51 by stating that if this was a list of questions put to a witness then it should be disclosed.¹²
13. On 24 June 2011, the Prosecutor filed a Report on the fulfilment of his obligations in which he listed the documents which had already been disclosed to Mr El Sayed

⁹ Prosecution's Submissions of Materials Following the Pre-Trial Judge's 3 June 2011 Order, CH/PTJ/2011/11, 7 June 2011.

¹⁰ Prosecution's Additional Submissions of Materials following the Pre-Trial Judge's 3 June 2011 Decision, CH/PTJ/2011/11, 16 June 2011.

¹¹ Prosecution's Submission of Translated Documents following the Pre-Trial Judge's 12 May 2011 Decision, CH/PTJ/2011/08, 17 June 2011.

¹² Observations from General El Sayed on "Prosecution's Additional Submissions of Material Following the Pre-Trial Judge's 3 June 2011 Decision" of 16 June 2011, CH/PTJ/2011/11, 23 June 2011.

and his counsel, the proposed redactions for certain documents, the documents which were being revised and those which were awaiting translation.¹³

14. On the same day, the Prosecutor filed 43 additional documents containing proposed redactions. He re-examined these documents, which he had initially deemed irrelevant, in light of the criteria of the Decision of 12 May 2011.¹⁴
15. On 1 July 2011, the Prosecutor filed proposed redactions for eight documents which had been translated from Arabic into English pursuant to the Decision of 12 May 2011.¹⁵

III. Statement of reasons:

16. The Pre-Trial Judge recalls that the jurisdiction of the Tribunal and the standing of the Applicant to exercise his right to access the materials which justified his detention were recognised in the Order of 17 September 2010.¹⁶ Given that this right is not absolute, however, some restrictions on the disclosure of materials from the criminal file may be applied, in particular, to avoid compromising an ongoing or future investigation or undermining fundamental interests, such as the physical well-being of persons concerned by these documents, or affecting national or international security.¹⁷
17. In his Decision of 12 May 2011, the Pre-Trial Judge ordered the Prosecutor to: 1) submit to him the following documents listed in the Confidential Annex: 1, 7, 10, 11, 16, 17, 19, 29, 36, 39, 41, 42, 49, 50, 52, 55, 65, 145, 159, 178, 183, 447, 449, 450, 460 to 465 inclusive, 467, 468, 471 and 472 containing the suggested

¹³ Prosecutor's Report on the Fulfilment of His Obligations Flowing from the "Decision on the Disclosure of Materials from the Criminal File of Mr El Sayed" and Subsequent Decisions, CH/PTJ/2011/11, 24 June 2011.

¹⁴ Prosecution's Further Additional Submission of Materials Following the Pre-Trial Judge's 3 June 2011 Decision, CH/PTJ/2011/11, 24 June 2011.

¹⁵ Prosecution's Additional Submission of Translated Documents Following the Pre-Trial Judge's 12 May 2011 Decision, CH/PTJ/2011/08, 1 July 2011.

¹⁶ Order of 17 September 2010; Decision on Appeal of Pre-Trial Judge's Order Regarding Jurisdiction and Standing, CH/AC/2010/02, 10 November 2010.

¹⁷ Decision of 12 May 2011, para. 27.

redactions based on the criteria for the safeguarding of the investigation, the witnesses or third parties, or national or international security, with a view to their being disclosed to the Applicant and to his counsel; 2) to re-examine, in light of the aforementioned criteria, the witness statements among the 885 documents that he had identified initially, or other documents that he might have identified since then, including the handwritten documents in Arabic that are in his possession and to submit a revised spreadsheet of these documents containing the relevant suggested redactions, as appropriate; 3) within 15 days of the translation by the offices of the Registry of documents 4, 5, 6, 8, 9, 12, 13, 21, 22, 24, 26 to 28 inclusive, 30, 31, 34, 35, 43 to 45 inclusive, 56, 57, 206, 437, 443, 444, 451 and 456, to disclose them to the Applicant and to his counsel, or if appropriate, to seize the Pre-Trial Judge with any reasoned proposal for them to be inspected in their entirety or to be redacted with a view to their being disclosed to the Applicant and to his counsel.

18. The Pre-Trial Judge notes that the partial appeal of the Decision of 20 May 2011 lodged by Mr El Sayed does not include the examination of proposed redactions. He therefore has jurisdiction to rule on the disclosure of documents covered by this Decision.
19. The Pre-Trial Judge notes that the Prosecutor “is the only one who has in-depth knowledge of the file relating to Mr El Sayed”¹⁸ which allows him to assess not only the documents which must be disclosed to him, but also the proposed redactions of some of the information included in those documents. In this regard, he has examined the proposed redactions submitted by the Prosecutor to ensure that they were motivated by the need to safeguard the investigation, the witnesses or third parties, and national or international security.
20. Having conducted this examination, the Pre-Trial Judge considers that once they have been redacted as proposed by the Prosecutor, the following documents must be disclosed to Mr El Sayed and to his counsel: 1, 2, 3, 5, 6, 7, 9, 10, 11, 13, 14, 16,

¹⁸ Decision of 12 May 2011, para. 28.

17, 19, 20, 24, 25, 26, 28, 29, 32, 33, 37, 39, 41, 42, 44, 45, 46, 47, 49, 50, 52, 53, 54, 55, 56, 65, 145, 159, 178, 183, 444, 447, 449, 450, 460, 461, 462, 463, 464, 465, 467, 468, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 548, 549, 550 and 551.

21. With regard to documents 36 and 547, the Pre-Trial Judge notes that the translation thereof is not yet complete. He therefore considers that the position of the Prosecutor to be allowed to examine these documents in full with a view to finalising the proposed redactions, if necessary, is justified.
22. The Pre-Trial Judge notes that documents 30 and 532 have been redacted to such an extent that they are illegible. Moreover, it would appear that they do not come under the witness statement category. Thus the Pre-Trial Judge hereby orders the Prosecutor to clarify the status of these documents.
23. With regard to document no. 51, the Pre-Trial Judge notes that it appears to be a list of questions and that there is nothing to indicate that they were actually put to a witness. As a result, in so far as document no. 51 falls within the category of an internal work product, it is not subject to the disclosure obligation.
24. In addition, the Pre-Trial Judge underlines that the documents which will be disclosed by the Prosecutor to the Applicant and to his counsel may only be used for legitimate grounds and provided the presumption of innocence, the rights of the defence and the privacy of third persons are respected.¹⁹

¹⁹ Decision of 12 May 2011, para. 32.

IV. Disposition:

FOR THESE REASONS,

THE PRE-TRIAL JUDGE,

ORDERS the Prosecutor to disclose to Mr El Sayed and to his counsel on 14 July 2011 at the latest, through the Registry of the Tribunal, a certified copy of the following documents listed in the Confidential Annex: 1, 2, 3, 5, 6, 7, 9, 10, 11, 13, 14, 16, 17, 19, 20, 24, 25, 26, 28, 29, 32, 33, 37, 39, 41, 42, 44, 45, 46, 47, 49, 50, 52, 53, 54, 55, 56, 65, 145, 159, 178, 183, 444, 447, 449, 450, 460, 461, 462, 463, 464, 465, 467, 468, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529²⁰, 530, 531, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 548, 549, 550 and 551;

ORDERS the Prosecutor to clarify the status of documents 30 and 532;

RULES that document no. 51 is not subject to the disclosure obligation;

ORDERS the Prosecutor to draw up a report relating to the fulfilment of his obligations by 21 July 2011 at the latest;

REMINDS the Prosecutor to examine, on the basis of the principles and criteria set out in the Order of 17 September 2010 and in the Decision of 12 May 2011, in addition to documents 36 and 547 once they have been translated, any document from the criminal file relating to the Applicant that may come to his attention later and to disclose those which he considers can be disclosed in their current state and, if necessary, to submit to the Pre-Trial

²⁰ This document appears to include tracked changes and must therefore be finalised before disclosure.

Judge any document the access to which he wishes to restrict, accompanied by his reasons for doing so and suggestions regarding such restriction; and

REMINDS the Applicant and his counsel that the documents disclosed or submitted for inspection may only be used for legitimate grounds, provided that the presumption of innocence, the rights of the defence and the privacy of third parties are respected.

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

Leidschendam, 6 July 2011.

[signature]

Daniel Fransen
Pre-Trial Judge

