

The Pre-Trial Judge



Le Juge de la mise en état

THE PRE-TRIAL JUDGE

Case No.: **STL-11-01/I/PTJ**
The Pre-Trial Judge: **Mr Daniel Fransen**
The Registrar: **Mr Herman von Hebel**
Date: **13 October 2011**
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**ORDER RELATING TO THE PROSECUTOR'S REQUEST FOR CLARIFICATION
OF THE ORDER OF 21 SEPTEMBER 2011 TO MAKE PUBLIC THE
PROSECUTOR'S SUBMISSIONS
CONCERNING THE *AYYASH ET AL.* CASE**

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

Defence Office:
Mr François Roux



1. **CONSIDERING** that, on 28 June 2011, the Pre-Trial Judge issued a decision relating to the indictment of 10 June 2011 (the “Indictment”), according to which Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine, Mr Hussein Hassan Oneissi and Mr Assad Hassan Sabra were indicted in connection with the attack of 14 February 2005 against Mr Rafiq Hariri and other persons (the “Decision relating to the Indictment”)¹ and issued arrest warrants against them;
2. **CONSIDERING** that all those documents were kept confidential in order notably to facilitate the effective arrest of the accused;
3. **CONSIDERING** that the Prosecutor filed amended versions of the indictment of 17 January 2011 on 11 March, 6 May and 10 June 2011 (the “Indictments”);
4. **CONSIDERING** that, on 16 August 2011, further to the report of the Lebanese authorities to the President of the Tribunal announcing that the accused had not been arrested and, after consultation with the Prosecutor, the Pre-Trial Judge ordered the lifting of the confidentiality of the Indictment, its Annexes, the Decision relating to the Indictment and the arrest warrants, subject to the redactions suggested by the Prosecutor;²
5. **CONSIDERING** that, by way of the order of 21 September 2011 (the “Order to Make Public the Prosecutor’s Submissions”), the Pre-Trial Judge considered that it was in the interest of justice to make public the Prosecutor’s confidential and *ex parte* submissions filed in connection with his requests for review of the Indictments, provided that such a decision was not prejudicial to the conduct of the investigation and/or the protection of any person, in accordance with Rule 96 (B) of the Rules of Procedure and Evidence (the “Rules”);³
6. **CONSIDERING** that, in the Order to Make Public the Prosecutor’s Submissions, the Pre-Trial Judge decided that it was appropriate to hear the Prosecutor with regard to

¹ Case No. STL-11-01/I, Decision Relating to the Examination of the Indictment of 10 June 2011 Issued Against Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine, Mr Hussein Hassan Oneissi & Mr Assad Hassan Sabra, 28 June 2011.

² Case No. STL-11-01/I, Order on Lifting the Confidentiality of the Indictment against Messrs. Ayyash, Badreddine, Oneissi and Sabra and Other Documents, 16 August 2011.

³ Case No. STL-11-01/I/PTJ, Order to Make Public the Prosecutor’s Submissions Concerning the *Ayyash et al.* Case, 21 September 2011.

maintaining, in whole or in part, the confidentiality of each of the submissions he has filed since 17 January 2011 in support of his requests for review of the Indictments;

7. **CONSIDERING** that on 7 October 2011, the Prosecutor filed a request for clarification of the Order to Make Public the Prosecutor's Submissions,⁴ in which he refers to a discrepancy in the interpretation between the French and English versions of Rule 96 (B) of the Rules, the first referring to "*tout document*", whereas the second refers to "any filing". According to the Prosecutor, as there is no prescribed definition of the terms "*document*" and "filing", the English version of Rule 96 of the Rules should prevail over the French version insofar as the French version is broader and less precise;

8. **CONSIDERING** that the Prosecutor also requests that the Pre-Trial Judge: 1) confirm that the annexes to the submissions that he has filed do not fall within the scope of the Order to Make Public the Prosecutor's Submissions; 2) clarify whether the submissions mentioned in Rule 96 (B) (i) of the Rules concerning coercive investigative measures – notably the issuance of search warrants and arrest warrants – also fall within the scope of that Order;

9. **CONSIDERING** that the Order to Make Public the Prosecutor's Submissions is in keeping with the desire to render the activities of the Tribunal as public as possible, the principle of which is enshrined, at the pre-trial stage of the proceedings, in Rule 96 (A) of the Rules;

10. **CONSIDERING** however that, as set forth by Rule 96 (B) of the Rules, making these documents public may not be done if this is prejudicial to the interests of the investigation or the protection of any person;

11. **CONSIDERING** that with regard to exceptions to the principle, it is appropriate nevertheless to justify these conditions with grounds, the assessment of which, at this stage, the Prosecutor is best placed to make;

12. **CONSIDERING** that the Pre-Trial Judge is of the opinion that the Order to Make Public the Prosecutor's Submissions in principle relates to all the Prosecutor's confidential and *ex parte* submissions filed in the context of his investigations regarding the review of the Indictments issued since 17 January 2011, including the applications for the issuance of arrest

⁴ Case No. STL-11-01//PTJ, Prosecutor's Request for Clarification on the Scope of the Order by the Pre-Trial Judge dated 21 September 2011, 7 October 2011.

warrants and for protective measures that the Prosecutor himself included in his general submissions regarding the review of the Indictment;

13. **CONSIDERING** therefore that the annexes to the submissions should also in principle be made public “provided that, in accordance with Rule 96 (B) of the Rules, such a decision is not prejudicial to the conduct of the investigation and/or the protection of any person”;⁵

14. **CONSIDERING** that these annexes comprise three categories of documents, which are: (1) the Indictments; (2) the documents filed in support of them; and (3) any other document;

15. **CONSIDERING** that, as regards the documents in the first and third categories, the Prosecutor is invited to submit his observations concerning how they might be made public, in whole or in part, within the time limit set forth in the Order to Make Public the Prosecutor’s Submissions;

16. **CONSIDERING** that the documents in the second category however do not fall within the scope of the Order to Make Public the Prosecutor’s Submissions and should not be made public at this stage in the proceedings on the grounds that they are subject to the specific legal provisions set out in Rule 110 (A) (i) of the Rules;

⁵ Order to Make Public the Prosecutor’s Submissions, para. 8.

THE PRE-TRIAL JUDGE,

Pursuant to Rules 77 and 96 of the Rules,

REMINDS the Prosecutor that he should file, by 10.00 on 21 October 2011 at the latest, his observations with regard to maintaining, in whole or in part, the confidentiality of each of the submissions he has filed since 17 January 2011 relating to the review of the Indictments, the protective measures and the arrest warrants, and certain of their annexes, in accordance with the clarifications provided previously herein and, where appropriate, include with his observations suggested redactions and the reasons for them if he wishes that his submissions and certain of their annexes remain partially confidential.

Done in French.

Leidschendam, 13 October 2011

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[signature]

Daniel Fransen
Pre-Trial Judge

