

**The Pre-Trial Judge**

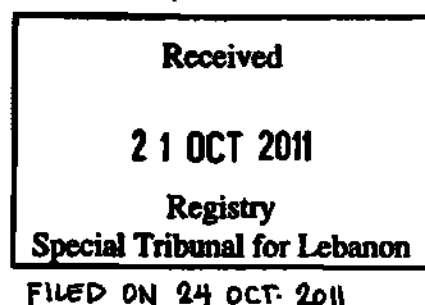


المحكمة الخاصة بلبنان  
SPECIAL TRIBUNAL FOR LEBANON  
TRIBUNAL SPÉCIAL POUR LE LIBAN

**Le Juge de la mise en état**

**THE PRE-TRIAL JUDGE**

Case No.: CH/PTJ/2011/17  
The Pre-Trial Judge: Mr Daniel Fransén  
The Registrar: Mr Herman von Hebel  
Date: 17 October 2011  
Original: French  
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**ORDER FOR ENFORCEMENT  
OF THE APPEALS CHAMBER DECISION OF 19 JULY 2011**

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**Counsel:**  
Mr Akram Azoury  
Mr Antoine Korkmaz

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

**Defence Office:**  
Mr François Roux



1. **CONSIDERING** that on 12 May 2011, the Pre-Trial Judge of the Special Tribunal for Lebanon (the “Tribunal”) ordered the Prosecutor to disclose to Mr El Sayed (the “Applicant”) and to his counsel certain documents from the criminal file of the Applicant that were detailed in a Confidential Annex to the Decision; that the Pre-Trial Judge also invited the Prosecutor to apprise him of and state the reasons for any proposed redactions of other documents with a view to their disclosure to the Applicant and his counsel (the “Decision of 12 May 2011”);<sup>1</sup>
2. **CONSIDERING** that in the Decision of 12 May 2011, the Pre-Trial Judge deemed that, under Rule 111 of the Rules of Procedure and Evidence (the “Rules”), three categories of documents should be exempt from disclosure: (1) correspondence between the Lebanese authorities and the United Nations Independent Investigation Commission (the “Commission”); (2) the internal memoranda of the Commission; and (3) investigators’ notes<sup>2</sup> (“Categories 1, 2, and 3”);
3. **CONSIDERING** that on 20 May 2011, the Applicant entered an appeal of the Decision of 12 May 2011 in order to obtain access to the documents in categories 1, 2, and 3 (the “Applicant’s Appeal”);<sup>3</sup>
4. **CONSIDERING** that on 19 July 2011, the Appeals Chamber allowed the Applicant’s Appeal and “refer[red] the case back to the Pre-Trial Judge with directions to ensure that the classifications of documents under categories 1, 2, and 3, are made appropriately and expeditiously in the light of [its] decision” (the “Appeals Chamber Decision of 19 July 2011”);<sup>4</sup>
5. **CONSIDERING** that in the intervening period, on 6 July 2011, in his enforcement of the uncontested part of the disposition of the Decision of 12 May 2011, the Pre-Trial Judge ordered the Prosecutor to disclose to the Applicant certain documents, including witness statements (the “Decision of 6 July 2011”);<sup>5</sup> that there was an ensuing debate of the matter of

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<sup>1</sup> Case No. CH/PTJ/2011/08, Decision on the Disclosure of Materials from the Criminal File of Mr El Sayed, 12 May 2011.

<sup>2</sup> *Ibid*, paras 33 and 36.

<sup>3</sup> Case No. CH/PTJ/2010/01 [*sic*], 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, 20 May 2011.

<sup>4</sup> Case No. CH/AC/2011/01, Decision on Partial Appeal by Mr El Sayed of Pre-Trial Judge’s Decision of 12 May 2011, 19 July 2011, Disposition.

<sup>5</sup> Case No. CH/PTJ/2011/12, Decision on the Proposed Redactions to the Documents in the Criminal File of Mr El Sayed Submitted by the Prosecutor, 6 July 2011.

whether, and subject to what conditions, the documents should be disclosed to the Applicant (the “Matter of the witness statements”);

6. **CONSIDERING** that the Matter of the witness statements was the subject of many written submissions between the months of July and September 2011,<sup>6</sup> including the Prosecution’s appeal of the Pre-Trial Judge’s decision on the matter handed down on 12 September 2011;<sup>7</sup>

7. **CONSIDERING**, therefore, that the Pre-Trial Judge deemed that it was not appropriate to enforce the Appeals Chamber Decision of 19 July 2011 until such time as the Appeals Chamber had ruled on the Matter of the witness statements; that a ruling on the Matter of the witness statements could in fact have an effect on those matters relating to the enforcement of the Appeals Chamber’s Decision of 19 July 2011;

8. **CONSIDERING** that on 7 October 2011 the Appeals Chamber ruled on the Matter of the witness statements;<sup>8</sup>

9. **CONSIDERING** that it is henceforth appropriate to take the measures necessary to enforce the Appeals Chamber Decision of 19 July 2011;

10. **CONSIDERING** that, to that end, the Prosecutor is invited to: (1) re-examine the classification of the documents that have been placed in Categories 1, 2, and 3 in the light of the Appeals Chamber Decision of 19 July 2011 and specifically with regard to their content, function, purpose, and origin;<sup>9</sup> (2) submit to the Pre-Trial Judge those documents that could be disclosed to the Applicant and his counsel after redaction, if appropriate; (3) submit to the Pre-Trial Judge those documents that could be inspected by the Applicant and/or by his counsel; and (4) provide the Pre-Trial Judge with a spreadsheet indicating precisely, on the one hand, the respective title and content of the above-mentioned documents, and, on the other hand, category changes, if any, applied to the documents since the Appeals Chamber Decision of 19 July 2011.

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<sup>6</sup> Cf. Case No. CH/PTJ/2011/12, Urgent Prosecution’s Application for Suspension of the Disclosure Order of 6 July 2011, 14 July 2011; Case No. CH/PTJ/2011/13, Decision Relating to the Prosecution’s Urgent Application of 14 July 2011 for Suspension of the Decision of 6 July 2011 and to the Prosecution’s Further Submissions of 15 and 21 July 2011, 21 July 2011; Case No. CH/PTJ/2011/15, Decision Relating to the Prosecution’s Second Application for Suspension of the Decision of 6 July 2011, 2 September 2011.

<sup>7</sup> Case OTP/AC/2011/02, Prosecution’s Appeal of the Pre-Trial Judge’s Decision of 2 September 2011 and Request for Suspensive Effect pending Appeal, 12 September 2011.

<sup>8</sup> Case No. CH/AC/2011/02, Order Allowing in Part and Dismissing in Part the Appeal by the Prosecutor Against the Pre-Trial Judge’s Decision of 2 September 2011 and Ordering the Disclosure of Documents, 7 October 2011.

<sup>9</sup> Appeals Chamber Decision of 19 July 2011, para. 117.

**FOR THESE REASONS,**

**PURSUANT TO THE APPEALS CHAMBER DECISION OF 19 JULY 2011,**

**THE PRE-TRIAL JUDGE,**

**ORDERS** the Prosecutor, by 15 November 2011 at the latest, to:

- re-examine the classification of the documents that have been placed in Categories 1, 2, and 3 in the light of the Appeals Chamber Decision of 19 July 2011;
- submit to the Pre-Trial Judge those documents that could be disclosed to the Applicant and his counsel, with redactions, if appropriate;
- submit to the Pre-Trial Judge those documents that could be inspected by the Applicant and/or by his counsel; and
- provide the Pre-Trial Judge with a spreadsheet indicating precisely, on the one hand, the titles and, on the other hand, the contents of the above-mentioned documents and any changes in category that may have been applied to the documents following the Appeals Chamber Decision of 19 July 2011.

Done in French.

Leidschendam, 17 October 2011.

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Daniel Fransen  
Pre-Trial Judge

