

The Pre-Trial Judge

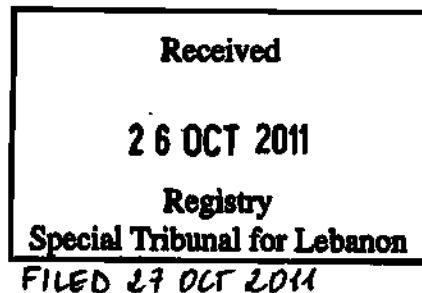


المحكمة الخاصة بلبنان
SPECIAL TRIBUNAL FOR LEBANON
TRIBUNAL SPÉCIAL POUR LE LIBAN

Le Juge de la mise en état

THE PRE-TRIAL JUDGE

Case No.: CH/PTJ/2011/18
The Pre-Trial Judge: Mr Daniel Fransen
The Registrar: Mr Herman von Hebel
Date: 21 October 2011
Original: French
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**SCHEDULING ORDER FOR ENFORCEMENT
OF THE APPEALS CHAMBER DECISION OF 7 OCTOBER 2011**

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 Sáyed (the “Applicant” or “Mr El Sáyed”) and to his counsel certain documents from the criminal file of Mr El Sáyed listed in a Confidential Annex to that decision; that the Pre-Trial Judge also invited the Prosecutor to seize him of any reasoned proposal for redactions of other documents in his possession with a view to their being disclosed to Mr El Sáyed and to his counsel (the “Decision of 12 May 2011”);¹

2. **CONSIDERING** that on 6 July 2011, the Pre-Trial Judge ordered the Prosecutor to disclose to the Applicant and to his counsel, by 14 July 2011 at the latest, a copy of the documents listed in the Confidential Annex to that Decision (the “Decision of 6 July 2011”);²

3. **CONSIDERING** that on 14 July 2011, the Prosecutor filed an application for the suspension of the disclosure of the documents ordered on 6 July 2011;³

4. **CONSIDERING** that on 21 July 2011, the Pre-Trial Judge suspended part of the disposition of the Decision of 6 July 2011 and ordered the Prosecutor “to apply, by 19 August 2011 at the latest, if he deems he should do so, and if need be in consultation with the Victims and Witnesses Unit, for the protective measures that he seeks so as to ensure the protection of the witnesses concerned by the Application and to specify what he deems should happen to the documents mentioned in the Decision of 6 July 2011” (the “Decision of 21 July 2011”);⁴

5. **CONSIDERING** that on 19 August 2011, the Prosecutor requested the continued suspension of his disclosure obligations.⁵

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

² Case No. CH/PTJ/2011/12, Decision on the Proposed Redactions to the Documents in the Criminal File of Mr El Sáyed Submitted by the Prosecutor, 6 July 2011.

³ Case No. CH/PTJ/2011/12, Urgent Prosecution’s Application for Suspension of the Disclosure Order of 6 July 2011, 14 July 2011.

⁴ 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.

⁵ Case No. CH/PTJ/2011/13, Prosecution’s Submissions Following the Pre-Trial Judge’s Decision of 21 July 2011, 19 August 2011.

6. **CONSIDERING** that on 2 September 2011, the Pre-Trial Judge dismissed the Prosecutor's Submissions of 19 August 2011 on the ground that there was nothing to justify in concrete terms the measures recommended by the Prosecutor with reference to the principle of access by the Applicant to the documents in his criminal file, subject to the restrictions laid down which have already given rise to the protection measures allowed; that the Pre-Trial Judge furthermore ordered the Prosecutor to disclose to the Applicant and to his counsel, by 12 September 2011 at the latest, a certified copy of the documents mentioned in the Decision of 6 July 2011 and its Confidential Annex (the "Decision of 2 September 2011");⁶

7. **CONSIDERING** that on 12 September 2011, the Prosecutor lodged an appeal of the Decision of 2 September 2011;⁷

8. **CONSIDERING** that following the Scheduling Order of the President of the Tribunal of 13 September 2011, the Prosecutor filed confidential and *ex parte* submissions before the Appeals Chamber on 21 September 2011, by way of which he presented a risk assessment for each witness and suggested that the Appeals Chamber consult the Victims and Witnesses Unit in this connection (the "Submissions of 21 September 2011");⁸

9. **CONSIDERING** that on 7 October 2011, while allowing in part the Prosecutor's Appeal lodged on 12 September 2011, the Appeals Chamber decided as follows (the "Appeals Chamber Decision of 7 October 2011"):

DIRECTS the Pre-Trial Judge to issue a scheduling order with, inter alia, a time-frame for the Prosecutor to check, with the assistance of VWU if necessary, what redactions would be required to disclose the statements of the persons listed in the confidential and ex parte Annexes B and C, which may include a list setting priorities for decisions to be made.⁹

10. **CONSIDERING** that on 10 October 2011, the Pre-Trial Judge ordered the Prosecutor to inform him of the time-frame he considered necessary in order to file, after consultation with the Victims and Witnesses Unit if appropriate, the suggested redactions of the

⁶ 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.

⁷ Case No. 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.

⁸ Case No. OTP/AC/2011/03, Confidential and *ex parte* Prosecution's Submissions in Compliance with the President's Scheduling Order of 13 September 2011, 21 September 2011.

⁹ 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.

statements of the persons mentioned in Annexes B and C to the Appeals Chamber Decision of 7 October 2011, with a view to their being disclosed to Mr El Sayed¹⁰ (the “Order of 10 October 2011”);

11. **CONSIDERING** that, in response to the Order of 10 October 2011, the Prosecutor explained in his Submissions of 14 October 2011 that it would take 20 working days to conduct a re-review of the 114 documents, totalling 3610 pages that relate to 21 witnesses, in order to determine whether additional redactions are necessary and complete them;¹¹

12. **CONSIDERING** furthermore that the Prosecutor claims that, after consultation with the Victims and Witnesses Unit, the Unit will assist him, on the one hand, by providing him with an independent and impartial assessment of his Submissions of 21 September 2011 and, on the other hand, by reviewing the redactions that he proposed;

13. **CONSIDERING** that on 18 October 2011, upon request of the Pre-Trial Judge, the Registry provided him with a copy of the Prosecutor’s Submissions of 21 September 2011;

14. **CONSIDERING** that the Victims and Witnesses Unit points out that it will take 43 working days to complete its task;

15. **CONSIDERING** that the Prosecutor intends to refer to the Victims and Witnesses Unit with respect to completing its review work, so as to submit its assessment of individual or batches of witness statements to the Pre-Trial Judge on a rolling basis, and thus allow their disclosure to Mr El Sayed;

16. **CONSIDERING** that by way of the Decision of 7 October 2011, the Appeals Chamber recalled the obligation of the Tribunal to ensure that there is no delay in bringing Mr El Sayed’s application to conclusion and that any decision is to be made within a reasonable period;¹²

17. **CONSIDERING** that, with this in mind and in light of the time-frame estimated by the Prosecutor and the Victims and Witnesses Unit, the Pre-Trial Judge considers it

¹⁰ Case No. CH/PTJ/2011/16, Order for Enforcement of the Appeals Chamber Decision of 7 October 2011, 10 October 2011.

¹¹ Case No. CH/PTJ/2011/16, Prosecution’s Submissions in Compliance with the Pre-Trial Judge’s Order of 10 October 2011, 14 October 2011.

¹² The Appeals Chamber Decision of 7 October 2011, para. 25.

imperative that he receive the Prosecutor's submissions on a rolling basis as this work is completed;

18. **CONSIDERING** that, in order to comply with the Decision of 7 October 2011, as it relates to setting priorities with regard to implementing the review procedure,¹³ the Pre-Trial Judge deems that it is appropriate to start with the witnesses to whom Mr El Sayed referred in his initial Application of 17 March 2010 and then proceed with the witnesses appearing thereafter;

19. **CONSIDERING** that, in order to facilitate the review of the documents, it is appropriate that the Prosecutor should provide the Pre-Trial Judge, on a rolling basis and as the work progresses, with individual or batches of witness statements, on the understanding that the Prosecutor's submissions must be exhaustive and include all of the statements of the witness or witnesses concerned;

20. **CONSIDERING** that, in any event, all of the Prosecutor's submissions relating to the statements of the 21 witnesses mentioned must be filed before the Pre-Trial Judge by 10.00 on 30 December 2011 at the latest;

21. **CONSIDERING** moreover that, in the Decision of 7 October 2011, the Appeals Chamber specified that the Prosecutor shall demonstrate that the Victims and Witnesses Unit is happy with the methodology used by the Prosecutor in making the risk assessment, or that, in any event, the Victims and Witnesses Unit agrees with that assessment;¹⁴

22. **CONSIDERING**, as a consequence, that the Pre-Trial Judge deems it appropriate to request the Victims and Witnesses Unit to submit to him by Monday 31 October 2011 at the latest, an independent report concerning, on the one hand, its assignment relating to its assessment of the Prosecution's Submissions of 21 September 2011 and the review of the suggested redactions proposed by the Prosecutor and, on the other hand, the methodology used to complete this assignment;

¹³ *Id.*, disposition, p. 21.

¹⁴ Appeals Chamber Decision of 7 October 2011, para. 34.

PURSUANT TO THE APPEALS CHAMBER DECISION OF 7 OCTOBER 2011,

THE PRE-TRIAL JUDGE,

ORDERS the Prosecutor to file before the Pre-Trial Judge full submissions relating to the witnesses concerned, as and when the work is completed, by 10.00 on 30 December 2011 at the latest, according to the following order of priority:

- witness number 1 of Annex B to the Appeals Chamber Decision of 7 October 2011;
- witness numbers 3, 5, 8, 9, 10, 11, 16, 17, 18, 19 of Annex C, to the same Decision; and
- witness numbers 1, 2, 4, 6, 7, 12, 13, 14, 15 and 20 of Annex C to the same Decision.

ORDERS the Victims and Witnesses Unit to submit by Monday 31 October 2011 at the latest, a report concerning, on the one hand, its assignment relating to the assessment of the Prosecution's Submissions of 21 September 2011 and the review of the suggested redactions proposed by the Prosecutor and, on the other, the methodology used to complete this assignment.

Done in French.

Leidschendam, 21 October 2011

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[signature]

Daniel Fransen
Pre-Trial Judge

