

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

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The Pre-Trial Judge: Mr Daniel Fransen
The Registrar: Mr Herman von Hebel
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**DECISION RELATING TO MR EL SAYED'S OBSERVATIONS OF 17 AUGUST
2011 CONCERNING THE ENFORCEMENT OF THE DECISION OF 12 MAY 2011**

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I. Procedural background

1. 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 listed in a Confidential Annex. 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 the Applicant and to his counsel (the “Decision of 12 May 2011”).¹

2. In accordance with the Decision of 12 May 2011, the Prosecutor filed submissions concerning other documents to be disclosed, after redaction if applicable, on 7,² 8,³ 16,⁴ 17⁵ and 24 June 2011⁶ as well as on 1 July 2011.⁷

3. 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”).⁸

4. On 14 July 2011, the Prosecutor filed an application for the suspension of the disclosure of the documents ordered on 6 July 2011.⁹

5. On 21 July 2011, the Pre-Trial Judge suspended temporarily a 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

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

² Case No. CH/PTJ/2011/11, Prosecution’s Submissions of Materials Following the Pre-Trial Judge’s 3 June 2011 Order, 7 June 2011.

³ Case No. CH/PTJ/2011/10, Prosecution’s Submissions of Materials Following the Pre-Trial Judge’s 3 June 2011 Order, 8 June 2011.

⁴ Case No. CH/PTJ/2011/11, Prosecution’s Additional Submissions of Materials Following the Pre-Trial Judge’s 3 June 2011 Order, 16 June 2011.

⁵ Case No. CH/PTJ/2011/08, Prosecution’s Submission of Translated Documents Following the Pre-Trial Judge’s 12 May 2011 Decision, 17 June 2011.

⁶ Case No. CH/PTJ/2011/11, Prosecution’s Additional Submissions of Materials Following the Pre-Trial Judge’s 3 June 2011 Decision, 24 June 2011.

⁷ Case No. CH/PTJ/2011/08, Prosecution’s Further Submission of Translated Documents Following the Pre-Trial Judge’s 12 May 2011 Decision, 1 July 2011.

⁸ 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.

⁹ Case No. CH/PTJ/2011/12, Urgent Prosecution’s Application for Suspension of the Disclosure Order of 6 July 2011, 14 July 2011.

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”).¹⁰

6. On 17 August 2011, the Applicant filed observations regarding the documents disclosed by the Prosecutor in execution of the Decision of 12 May 2011 in which he pointed out that he had not received certain documents (the “Applicant’s Observations”).¹¹

7. On 19 August 2011, the Prosecutor filed confidential and *ex parte* submissions in which he requested, on the merits, the continued suspension of the obligation to disclose the witness statements (the “Request for Suspension”).¹²

8. On 2 September 2011, the Pre-Trial Judge dismissed the Prosecutor’s Request for Suspension 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. In addition, he 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”).¹³

9. On 7 September 2011, the Prosecutor responded to the Applicant’s Observations of 17 August 2011 relating to the disclosure of the disputed documents (the “Prosecutor’s Response”).¹⁴

10. On 12 September 2011, the Prosecutor lodged an appeal of the Decision of 2 September 2011.¹⁵

¹⁰ 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.

¹¹ Case No. CH/PTJ/2011/13, Interim Observations of General El Sayed on the Documents Effectively Disclosed by the Prosecutor on 17 August 2011 in Execution of the Decision of 12 May 2011, 17 August 2011.

¹² Case No. CH/PTJ/2011/13, Prosecution’s Submissions Following the Pre-Trial Judge’s Decision of 21 July 2011, confidential and *ex parte*, 19 August 2011.

¹³ Case No. CH/PTJ/2011/15, Decision Relating to the Prosecution’s Second Application for Suspension of the Decision of 6 July, 2 September 2011.

¹⁴ Case No. CH/PTJ/2011/13, Prosecution’s Response to “Interim Observations of General El Sayed on the Documents Effectively Disclosed by the Prosecutor on 17 August 2011 in Execution of the Decision of 12 May 2011”, confidential with confidential Annexes A and B and confidential and *ex parte* Annexes C and D, 7 September 2011.

¹⁵ 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.

11. On 12 September 2011, the Appeals Chamber suspended the Decision of 2 September 2011 pending a ruling on the substance of the appeal.¹⁶

12. On 22 September 2011, the Prosecutor filed, confidentially and *ex parte*, proposed redactions for documents 21, 31, 34, 43, 206 and for certain parts of document 437 which had been translated following the Decision of 12 May 2011. The Prosecutor also pointed out that he disclosed document 552 to Mr El Sayed on 19 September 2011 (the “Prosecutor’s Submission”).¹⁷

13. On 22 September 2011, the Pre-Trial Judge instructed the Registrar to prepare, in accordance with Rule 48 (C) of the Rules of Procedure and Evidence (“the Rules”), a summary report indicating the number of each document that had been disclosed by way of the Registrar to the Applicant and to his counsel and specifying the dates on which they were disclosed and received. He also invited the Applicant, if he so wished, to reply to the Prosecutor’s Response of 7 September 2011.¹⁸

14. On 27 September 2011, the Registrar filed a report in accordance with the instructions of 22 September 2011, in which he stated that he did not have information concerning the exact contents of the documents mentioned by the Prosecutor in the transmission letter since, in accordance with his limited role of intermediary, he did not carry out that verification.¹⁹

15. On 30 September 2011, the Applicant filed a reply to the Prosecutor’s Response (the “Applicant’s Reply”).²⁰

16. On 7 October 2011, the Appeals Chamber allowed in part the appeal lodged by the Prosecutor on 12 September 2011 (the “Appeals Chamber Decision of 7 October 2011”).²¹

¹⁶ Case No. CH/AC/2011/01, Order on Urgent Prosecution’s Request for Suspensive Effect Pending Appeal, 12 September 2011.

¹⁷ Case No. CH/PTJ/2011/08, Prosecution’s Submission of Translated Documents Following the Pre-Trial Judge’s Decision of 12 May 2011 & Clarification to the Applicant’s Interim Observations, 22 September 2011.

¹⁸ Internal memorandum from the Pre-Trial Judge to the Chief of Court Management Services Section, 22 September 2011.

¹⁹ Registrar’s Report in response to Pre-Trial Judge’s Internal Memorandum of 22 September 2011, confidential, 27 September 2011.

²⁰ Case No. CH/PTJ/2011/13, General El Sayed’s Reply to Prosecution’s Response to “Interim Observations of General El Sayed on the Documents Effectively Disclosed by the Prosecutor on 17 August 2011 in Execution of the Decision of 12 May 2011” of 7 September 2011, 30 September 2011.

²¹ 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.

II. Statement of reasons

a. Allegations of non-disclosure of documents

17. According to the Applicant, the requests for release that he submitted to the Lebanese courts during his detention and the replies of those courts were not disclosed to him by the Prosecutor.²²

18. The Prosecutor responds that, on 20 May 2011, the following documents mentioned in the Confidential Annex to the Decision of 12 May 2011 concerning the Applicant's requests for release were disclosed to him: 225, 228, 238, 240, 263, 272, 276, 282, 283, 287, 289, 290, 291, 292, 293, 294, 296, 299, 300, 309, 311, 322, 326, 331, 339, 341, 344, 348, 350, 351, 366, 367, 369, 374, 375, 380, 384, 389, 391, 392, 398, 408, 413, 421, 423, 424, 425 and 428. Furthermore, the Prosecutor states that he found the replies of the Lebanese authorities to these requests in a 990-page document in Arabic which is currently being translated by the Language Services Section of the Tribunal.²³

19. Insofar as the Applicant no longer referred to that point in his Reply, the Pre-Trial Judge infers from this that, unless proven otherwise, the Prosecutor did indeed disclose those documents, with the exception of the 990-page document.²⁴

20. The Applicant states furthermore that documents 182, 237 and 433 mentioned in the Confidential Annex to the Decision of 12 May 2011 were not disclosed to him.²⁵ He claims in his Reply that documents 237 and 433 should have been disclosed to him without redactions, in accordance with the Decision of 12 May 2011.²⁶

21. The Prosecutor acknowledged that he had not disclosed documents 237 and 433 to the Applicant, adding however that he had informed the Applicant in his report relating to the

²² The Applicant's Observations, para. 2.

²³ The Prosecutor's Response, paras 5 to 7.

²⁴ See below, para. 67.

²⁵ The Applicant's Observations, para. 3.

²⁶ The Applicant's Reply, para. 2.

fulfilment of his obligations of 24 June 2011 (the “Report of 24 June 2011”).²⁷ According to the Prosecutor, document 433 is apparently a *duplicata* of another document which is currently being reviewed by his office. Furthermore, as document 237 must be redacted before disclosure, the proposed redactions were filed before the Pre-Trial Judge in Annex C to the Prosecutor’s Response. With regard to document 182, it is a *duplicata* of document 18 which has already been transmitted to the Applicant.²⁸

22. The Pre-Trial Judge notes that in fact, in the Report of 24 June 2011, the Prosecutor stated that documents 237 and 433 had not been disclosed to the Applicant as they were not part of the documents originating from the Applicant and that they were being reviewed prior to any disclosure. The Prosecutor, moreover, stated that document 182 had not been disclosed to the Applicant as it was a *duplicata* of document 18 which had been transmitted to him on 20 May 2011.

23. The Pre-Trial Judge notes that the Prosecutor should have clarified the status of documents 237 and 433 at the earliest opportunity whereas it was only after he received the Applicant’s Observations that he mentioned in part the results of his review. Indeed, the proposed redactions of document 237, motivated by the desire to safeguard national and international security and the interests of third parties, were only filed before the Pre-Trial Judge on 7 September 2011. On that same date, namely more than two months after the Report of 24 June 2011, the Prosecutor was still not able to indicate precisely the status of document 433. As a consequence, the Pre-Trial Judge invited the Prosecutor to clarify the status of that document at the earliest opportunity.

24. Having examined the suggested redactions of document 237 and the reasons for them set out by the Prosecutor, the Pre-Trial Judge considers that they are justified. As a consequence, document 237 must be disclosed to the Applicant and to his counsel after it has been redacted.

²⁷ Case No. CH/PTJ/2011/11, 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, 24 June 2011.

²⁸ The Prosecutor’s Response, para. 8.

b. Allegations of documents that have not been disclosed in their entirety

i. Document 61

25. According to the Applicant, document 61 entitled “UNIIC Letter to Request Prosecutor General to Arrest Jamil El Sayed” which was released to him by the Prosecutor does not contain the documents and statements mentioned therein.²⁹

26. The Prosecutor submits that, among those documents to which document 61 refers, the Applicant’s statements dated 5 July and 31 August 2005 were disclosed to him on 20 May 2011 under numbers 177, 179, 180 and 181.³⁰

27. With regard to the other documents referred to in document 61, the Prosecutor states that they are entered under numbers 47, 50 and 479 and that they have still not been disclosed following the ongoing suspension and appeal procedures in this case.³¹

28. With regard to the last document referred to in document 61, and for which the Applicant requests that it be released without redaction,³² the Prosecutor claims that it is entered under number 36 and is not part of those which should be disclosed by virtue of the Decisions of 12 May 2011 and of 6 July 2011.³³

29. In this connection, the Pre-Trial Judge recalls that the Decision of 12 May 2011 ordered the Prosecutor to file proposed redactions of document 36 with a view to it being disclosed to the Applicant and to his counsel. Indeed, the Pre-Trial Judge decided that once a document had been redacted it should, in principle, be disclosed to the Applicant and to his counsel whereas the Prosecutor sought that after the document had been redacted it should only be inspected by counsel.³⁴ Following the Decision of 12 May 2011, the Prosecutor filed on 27 May 2011 proposed redactions relating to that document. By way of the Decision of 6 July 2011, after having examined those suggestions, the Pre-Trial Judge noted that the

²⁹ The Applicant’s Observations, para. 4.

³⁰ Prosecutor’s Response, para. 9 a.

³¹ *Ibid.*, para. 9 c, d and e.

³² The Applicant’s Reply, para. 4.

³³ *Ibid.*, para. 9 b.

³⁴ Decision of 12 May 2011, disposition, p. 18.

translation of document 36 did not seem to be complete.³⁵ Indeed, the document filed on 27 May 2011 contained pages written in Arabic. Consequently, as the Pre-Trial Judge had invited him to do, the Prosecutor had to clarify the status of that document, after the translation of the pages in Arabic, as appropriate, before he was able to rule on proposed redactions in their entirety.

30. As a consequence, the Pre-Trial Judge invited the Prosecutor once more to clarify the status of document 36 by specifying whether the pages it contains in Arabic have already been translated and to re-file the document with the proposed redactions in full. The redacted document will then have to be disclosed to the Applicant and his counsel.

ii. Documents 173 and 173 A

31. According to the Applicant, documents 173 and 173 A do not contain the notes that they were supposed to contain.³⁶

32. The Prosecutor mentions that in fact those documents do not contain “notes”, but only the original and the translation of part of an interview that the Applicant allegedly gave to the *Al-Hayat* newspaper.³⁷

33. The Pre-Trial Judge considers that, even if the title seems to suggest the existence of notes, since the Prosecutor states that he is not in possession of those documents, he could not disclose them to the Applicant. The Pre-Trial Judge reminds the Prosecutor nevertheless of his responsibility with regard to the organisation and presentation of the documents from the Applicant’s criminal file. To that end, it is incumbent upon the Prosecutor to organise and name the documents as precisely as possible so as not to mislead the Applicant or the Chambers as to their contents. As the Appeals Chamber pointed out, it is for the Prosecutor to properly categorise the documents in the first instance.³⁸

³⁵ Decision of 6 July 2011, para. 21 and disposition p. 8.

³⁶ The Applicant’s Observations, para. 4.

³⁷ The Prosecutor’s Response, para. 10.

³⁸ 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, para. 116.

iii. Documents 195 and 196

34. The Applicant submits that documents 195 and 196 as delivered are “without transcripts, contrary to all the similar documents” regarding other interviews between him and the International Independent Investigation Commission (the “Commission”).³⁹

35. The Prosecutor states that, to his knowledge, the interview of 23 December 2005, to which document 195 refers, was not recorded. He points out the transcript and the audio recording of document 196 were disclosed to the Applicant on 1 September 2011.⁴⁰

36. The Applicant maintains that it is inconceivable that the interview of 23 December 2005 to which document 195 refers was not recorded. He requests an investigation of the matter.⁴¹

37. The Pre-Trial Judge notes that the Prosecutor obviously cannot disclose what he does not possess, but that he should have released the transcripts and recording of document 196 to the Applicant earlier. However, it was only after the request presented by the Applicant that the Prosecutor undertook that disclosure. This delay is contrary to the proper administration of justice. Furthermore, the Pre-Trial Judge invites the Prosecutor to verify unequivocally whether or not a recording exists of the interview to which document 195 refers and, if so, to disclose it.

iv. Document 207

38. According to the Applicant, document 207 is an incomplete transcript of an interview and the recording of the interview itself was not disclosed to him.⁴²

39. The Prosecutor points out that the full transcript of this interview in Arabic was disclosed to the Applicant on 20 May 2011 and that the audio recording was released to him on 1 September 2011.⁴³

³⁹ The Applicant’s Observations, para. 4.

⁴⁰ The Prosecutor’s Response, para. 11.

⁴¹ The Applicant’s Reply, para. 5.

⁴² The Applicant’s Observations, para. 4.

⁴³ The Prosecutor’s Response, para. 12.

40. The Pre-Trial Judge takes note of the delay with which the audio recording of document 207 was disclosed to the Applicant. Indeed, that disclosure took place only in September 2011, whereas it should have occurred in May of the same year, when the document itself was disclosed.

v. Document 210

41. According to the Applicant, document 210 does not contain the four recordings that should be attached thereto.⁴⁴

42. The Prosecutor states that he disclosed those four recordings on 1 September 2011.⁴⁵

43. The Pre-Trial Judge reiterates the fact that the Prosecutor should have disclosed those recordings to the Applicant when document 210 was disclosed in the month of May 2011, and not in September of the same year.

vi. Document 225

44. According to the Applicant, document 225 apparently contains a “list” which was not provided to the Applicant.⁴⁶

45. The Prosecutor points out that, contrary to what its title suggests, document 225 is not a list, but a memorandum which was disclosed to the Applicant on 20 May 2011.⁴⁷

46. The Pre-Trial Judge reminds the Prosecutor that he is responsible for the organisation and presentation of the documents in the Applicant’s criminal file. Accordingly, it is incumbent upon him to name the documents as precisely as possible so as not to mislead the Applicant or the Chambers as to their contents.

⁴⁴ The Applicant’s Observations, para. 4.

⁴⁵ The Prosecutor’s Response, para. 13.

⁴⁶ The Applicant’s Observations, para. 4.

⁴⁷ The Prosecutor’s Response, para. 14.

vii. Document 234

47. According to the Applicant, document 234 contains only a cover page without the contents.⁴⁸

48. On 7 September 2011, the Prosecutor acknowledged that only the cover page was disclosed to the Applicant following an error he made with regard to its transmission. He undertook to disclose the document in its entirety.⁴⁹

49. On 22 September 2011, the Prosecutor went back on his submissions of 22 September 2011, pointing out that document 234 had indeed been disclosed to the Applicant on 20 May 2011 and that in his observations the Applicant was perhaps referring to document 343, in respect of which in fact only the cover page had been disclosed to him, as explained in the Prosecutor's Report of 24 June 2011.⁵⁰

50. In order to clarify this situation, the Pre-Trial Judge orders the Prosecutor to ensure that document 234 was indeed disclosed to the Applicant in its entirety and to confirm that by specifying the date on which this obligation was fulfilled or, failing this, to transmit that document without delay.

viii. Document 435

51. According to the Applicant, document 435 does not contain "Memorandum 34" to which it refers.⁵¹

52. The Prosecutor replies that he does have in his possession another document apart from that one which he disclosed under the title "Azoury Memorandum Number 34".⁵²

53. The Pre-Trial Judge notes on this matter that the Prosecutor obviously cannot disclose what he does not possess, but that the Applicant might have been misled by the title of the document. The Pre-Trial Judge reiterates his comment on the need to entitle documents as precisely as possible so as not to mislead the Applicant or Chambers as to their contents.

⁴⁸ The Applicant's Observations, para. 4.

⁴⁹ The Prosecutor's Response, para. 15.

⁵⁰ The Prosecutor's Submissions of 22 September 2011, paras 11 to 13.

⁵¹ The Applicant's Observations, para. 4.

⁵² The Prosecutor's Response, para. 16.

c. The full recordings of all the interviews the Investigation Commission held with the Applicant

54. Generally, the Applicant requests that the full recordings of all the interviews between himself and the Investigation Commission be provided to him, the transcripts that he received being inaccurate or incomplete.⁵³

55. The Prosecutor points out that, among the audio recordings of the interviews between the Investigation Commission and the Applicant, he has in his possession the recordings corresponding to the following documents: 18, 181, 186, 189, 190, 192, 194, 196, 200, 207 and 210. He adds that the audio recordings corresponding to documents 196, 207 and 210 were disclosed to the Applicant on 1 September 2011. Furthermore, he points out that he contacted the Applicant's counsel on 29 August 2011 in order that he might specify which parts of the transcripts he considers incomplete so that they might be reviewed and that, to date, he has not received any response from him.⁵⁴

56. The Pre-Trial Judge considers that if the Prosecutor has those audio recordings of the interviews in his possession, he must disclose them to the Applicant and to his counsel without having to wait for the Applicant's response.

d. Proposed redactions

57. The Pre-Trial Judge examined the Prosecutor's request for redactions of documents 21, 31, 34, 43, 206 and of some parts of document 437. Having noted that the Applicant opposes any proposed redactions,⁵⁵ the Pre-Trial Judge recalls that by way of the Decision of 12 May 2011, he ordered, on the one hand, the translation of certain documents – including documents 21, 31, 34, 43, 206 and 437 – and on the other, that they be disclosed to the Applicant within 15 days of their being translated or that the Pre-Trial Judge be seized with any reasoned proposal for them to be redacted with a view to their being disclosed.⁵⁶ As a consequence, the Prosecutor is well-founded in seizing the Pre-Trial Judge of reasoned proposals for the redaction of those documents.

⁵³ The Applicant's Observations, paras 5 and 6.

⁵⁴ The Prosecutor's Response, para.12 and paras 17 to 19.

⁵⁵ The Applicant's Reply, paras 6 and 7.

⁵⁶ Decision of 12 May 2011, disposition, pp. 18 and 19.

58. The Pre-Trial Judge considers that, in addition to the observations that he intends to make below on a case-by-case basis, it is for the Prosecutor to examine whether, in accordance with the Appeals Chamber Decision of 7 October 2011, the documents he filed on 22 September 2011 should also be subject to review, after consultation with the Victims and Witnesses Unit. If that were the case, the Pre-Trial Judge reminds the Prosecutor that the Pre-Trial Judge's Scheduling Order of 21 October 2011 for the enforcement of the Appeals Chamber Decision of 7 October 2011 applies likewise to documents 21, 31, 34, 43 and 206.⁵⁷

i. Document 21

59. With regard to document 21, the Pre-Trial Judge notes that it appears in the list of witness statements according to the spreadsheet prepared by the Prosecutor on 22 September 2011. The Pre-Trial Judge notes that the proposed redactions relate to the names of Lebanese officials, third parties, as well as parts of the document which, according to the Prosecutor, are not strictly speaking witness statements and would endanger a third party if they were to be disclosed. The Pre-Trial Judge considers that the information provided by the Prosecutor concerning that document is not sufficient so as to allow him to determine the content and, *a fortiori*, to assess the relevance of the proposed redactions. Consequently, the Pre-Trial Judge invites the Prosecutor to provide specific facts regarding that document and in particular:

- is it one or several "documents"?
- is it one or several statement(s) from one "witness" or more "witnesses"?
- where appropriate, in what context and by whom were those statements taken ?
- who is the author of the report that is mentioned?
- why are some pages duplicated in their entirety?

ii. Document 31

60. With regard to document 31, the Pre-Trial Judge notes that it also appears on the list of witness statements in the spreadsheet drawn up by the Prosecutor. The proposed redactions relate to the names of Lebanese officials and third parties. The Pre-Trial Judge considers that

⁵⁷ Case No.CH/PTJ/2011/18, Scheduling Order for Enforcement of the Appeals Chamber Decision of 7 October 2011, 21 October 2011.

the information provided by the Prosecutor concerning that document is not sufficient so as to allow him to determine the content and, *a fortiori*, to assess the relevance of the proposed redactions. Consequently, the Pre-Trial Judge invites the Prosecutor to provide specific details regarding that document and in particular:

- what type of document is it ?
- who is or are the authors of those documents ?
- is it one or several statement(s) from one “witness” or more “witnesses”?
- where appropriate, in what context and by whom were those “statements” taken?
- why are those documents grouped together under document 31?

iii. Document 34

61. With regard to document 34, the Pre-Trial Judge notes that it appears to contain several statements from the same person recorded on different dates. The proposed redactions relate to the names of Lebanese officials and third parties and the reasons provided are likewise to safeguard the ongoing investigation. The Pre-Trial Judge invites the Prosecutor to clarify whether it is a question of one or several statements from the same person and by whom they were recorded.

62. Furthermore the Pre-Trial Judge notes that with regard to the first statement, the proposed redactions would have the effect of preventing the witness from being identified. However, according to the Prosecutor, those redactions are justified by the need to protect third parties whereas it appears that a significant part of that information relates only to the witness. Consequently, the Pre-Trial Judge invites the Prosecutor to clarify the reasons why that information should be redacted.

iv. La pièce 43

63. With regard to document 43, the Pre-Trial Judge notes that it contains, as the title suggests, two statements from the same person recorded on different dates and that the proposed redactions relate to the names of Lebanese officials and third parties and the reasons provided are likewise to safeguard the ongoing investigation. Having noted that five pages of

the second statement are blank, the Pre-Trial Judge invites the Prosecutor to clarify what those blank pages are supposed to contain.

64. Furthermore, the Pre-Trial Judge notes that, as is the case with document 34, the proposed redactions would have the effect of preventing the witness from being identified. However, according to the Prosecutor, those redactions are justified by the need to protect third parties, whereas it appears that a significant part of that information relates only to the witness. Consequently, the Pre-Trial Judge invites the Prosecutor to clarify the reasons why that information should be redacted.

v. Document 206

65. With regard to document 206 which appears in the list of the Applicant's statements drawn up by the Prosecutor, the Pre-Trial Judge notes that that document does not appear exclusively to contain such statements, but also other documents including a statement of another person. Consequently, the Pre-Trial Judge invites the Prosecutor to provide specific details relating to that document and in particular:

- what type of document (s) is it ?
- is it one or several statement(s) from one "witness" or more than one "witness"?
- why is that document included under the title "Applicant's statements"?
- why are those documents grouped together under that document?

vi. Document 437

66. With regard to the parts of document 437 which have already been translated, the Pre-Trial Judge recalls that that document is part of the category of "other documents" on the Prosecutor's spreadsheet and that, according to him, the extracts concern the replies of the Lebanese judiciary to the Applicant's requests presented during his detention, in particular those relating to his release. The proposed redactions concern the names and titles of Lebanese officials and the names of third parties with the aim of protecting their security. In the context of decisions issued by organs of justice, the Pre-Trial Judge does not *a priori* consider well-founded the requests for redaction of the names and titles of the Lebanese

judges who received those requests or who signed judicial decisions.⁵⁸ Indeed, on the one hand, any litigant must be able *a priori* to know who his judges are and on the other, the proposed redactions do not seem to be sufficient to conceal the identity of the persons concerned. Consequently, the Prosecutor is invited to specify, in light of those considerations, the reasons that would justify those redactions. Failing this, the Prosecutor must file the relevant extracts of document 437, restricting the proposed redactions to the need for protecting, in particular, the interests of witnesses and third parties.

e. Transmission of documents

67. In order to avoid any future objections on the subject of the material and documents disclosed, it is appropriate that henceforth the Prosecutor prepares a detailed inventory indicating for each document, its exact title, its nature, as well as, where appropriate, the number of pages it comprises. That inventory shall be transmitted, together with the documents to be disclosed to the Applicant, to the Registry that will verify and attest to its accuracy.

68. Lastly, it is appropriate that the Prosecutor draw up a report relating to the fulfilment of his obligations for the Pre-Trial Judge.

FOR THESE REASONS,

Pursuant to Rule 77 (A) of the Rules,

THE PRE-TRIAL JUDGE,

RECALLS that the Prosecutor is required to comply with the decisions of the Pre-Trial Judge within the deadlines set out and in accordance with the established procedures, failing which sanctions apply pursuant to Rule 60 of the Rules;

INVITES the Prosecutor to show all due diligence required by virtue of his function with regard to the fulfilment of his obligations;

ORDERS the Prosecutor to specify, by 8 November 2011 at the latest, after consultation with the Language Services Section of the Tribunal, the date on which the replies of the Lebanese

⁵⁸ Inter-American Commission on Human Rights, case *Polay Campos v. Peru*, 1998, no. 577/1994; Inter-American Court of Human Rights, case *Garcia Asto and Ramirez Rojas v. Peru*, 25 November 2005.

authorities to the release requests presented by the Applicant in Arabic could be disclosed to him;

ORDERS the Prosecutor to clarify the status of document 433 by 8 November 2011 at the latest;

ORDERS the Prosecutor to disclose to the Applicant and to his counsel, by 8 November 2011 at the latest, a certified copy of document 237, after it has been redacted;

ORDERS the Prosecutor to clarify, by 8 November 2011 at the latest, the status of document 36 by specifying whether the pages in Arabic contained therein have already been translated and to re-file the document including the proposed redactions in full with a view to it being disclosed to the Applicant and to his counsel;

ORDERS the Prosecutor to verify whether or not there exists a recording of the interview of 23 December 2005 to which document 195 refers and, if so, to disclose it to the Applicant and to his counsel by 8 November 2011 at the latest;

ORDERS the Prosecutor to ensure that document 234 was indeed transmitted to the Applicant and to his counsel and to confirm this by specifying the transmission date, or failing that, to transmit that document by 8 November 2011 at the latest;

ORDERS the Prosecutor to disclose to the Applicant and to his counsel the audio recordings of documents 18, 181, 186, 189, 190, 192, 194 and 200 as well as any other recording that he has in his possession by 8 November 2011 at the latest;

ORDERS the Prosecutor to examine whether documents 21, 31, 34, 43 and 206 filed on 22 September 2011, fall within the scope of the the Pre-Trial Judge's Scheduling Order of 21 October 2011 for the Enforcement of the Appeals Chamber Decision of 7 October 2011, and if that is the case, to comply therewith;

ORDERS the Prosecutor to provide specific details, such as those mentioned in the statement of reasons, relating to documents 21, 31, 34, 43, 206 and 437 by 8 November 2011 at the latest;

RECALLS that, in accordance with the Decisions of 12 May 2011 and 6 July 2011, all certified copies of the documents are to be transmitted by the Prosecutor to the Applicant through the Registry;

ORDERS the Prosecutor to prepare a detailed inventory indicating, for each document that he discloses to the Applicant and to his counsel, its exact title, its nature, as well as, where appropriate, the number of pages comprised therein;

ORDERS the Registrar to verify and attest to the accuracy of that inventory; and

ORDERS the Prosecutor to draw up for the Pre-Trial Judge, a report relating to the fulfilment of his obligations by 10.00 on 11 November 2011 at the latest.

Done in French.

Leidschendam, 1 November 2011

[stamp]

[signature]

Daniel Fransen
Pre-Trial Judge

