

The Pre-Trial Judge**Le Juge de la mise en état****THE PRE-TRIAL JUDGE**

Case No.: **STL-11-02/CCS/PTJ**

The Pre-Trial Judge: **Judge Daniel Fransen**

The Registrar: **Mr. Herman von Hebel**

Date: **14 November 2011**

Original language: **English**

Type of document: **Public**

RECLASSIFICATION ORDER

Office of the Prosecutor:
Mr. Daniel A. Bellemare, MSM, Q.C.

Defence Office:
Mr. François Roux



I. Background

1. On 28 October 2011, the Court Management Services Section of the Registry (“CMSS”) addressed a memorandum¹ to the Pre-Trial Judge seeking his guidance regarding the potential distribution to the Defence Office of the “Decision on the Prosecutor’s Connected Case Submission of 20 June 2011”² (the “Connected Case Decision”). In the Registry Memorandum, CMSS explained that it had received a request for a copy of the Connected Case Decision from the Defence Office on 26 October 2011.
2. On 4 November 2011, the Pre-Trial Judge addressed a memorandum to the Prosecutor, inviting his observations on whether the Connected Case Decision could be provided to the Defence Office in its current form and, if not, what modalities would be requested.
3. On 9 November 2011, the Prosecutor submitted his response in a confidential and *ex parte* memorandum (the “Prosecutor’s Memorandum”).

II. Submission

4. In his memorandum, the Prosecutor submits that the Connected Case Decision ought not to be distributed to the Defence Office, and should be reclassified as confidential and *ex parte*. The Prosecutor’s Memorandum has been addressed to the Pre-trial Judge confidentially and *ex parte* for the same reasons he advances for the confidential and *ex parte* nature of the Connected Case Decision.
5. The Prosecutor advances the following reasons in support of his submission. First, the Connected Case Decision was issued confidentially in the interests of protecting the Prosecutor’s ongoing investigations, and in order to protect victims and witnesses concerned thereby.³ Second, distribution of the Connected Case Decision to the Defence Office at this stage of proceedings would be “premature”, since the connected cases concerned remain at the investigation stage, and no indictment has been submitted for confirmation in their regard.⁴ Third, the rights of the accused are regulated by the Rules of Procedure and Evidence

¹ Internal Memorandum: “Distribution to the Defence Office of the Pre-Trial Judge’s Decision on the Prosecutor’s Connected Case Submission of 30 June 2011”, 28 October 2011 (the “Registry Memorandum”).

² Decision on the Prosecutor’s Connected Case Submission of 20 June 2011, filed confidentially on 5 August 2011.

³ Prosecutor’s Memorandum, para. 2.

⁴ Prosecutor’s Memorandum, paras 3, 4.

(the “Rules”) and the Defence shall in any event have the opportunity to challenge the Connected Case Decision in a preliminary motion on jurisdiction pursuant to Rules 11(C) and 90 of the Rules.⁵

III. Discussion

6. As CMSS has pointed out in the Registry Memorandum, Article 9 of the Practice Direction on the Role of the Defence Office requires the Registry to distribute to the Head of the Defence Office all public and confidential orders and decisions in a particular case. The Pre-Trial Judge notes that Article 11 of the Practice Direction on the Role of the Defence Office provides furthermore that in a particular case, the Head of Defence Office may only receive *ex parte* filings when specifically authorised by the Pre-Trial Judge or Chamber.

7. The Prosecutor’s original Connected Case Submission was filed *ex parte* and confidentially on 30 June 2011.⁶

8. In the Connected Case Decision, the Pre-Trial Judge was satisfied that the public disclosure of the Prosecutor’s Connected Case Submission, as well as the Decision thereon, could adversely affect the safety and security of victims and witnesses, jeopardise ongoing investigations, and lead to the destruction of evidence.⁷ Accordingly, the Connected Case Decision was filed confidentially. In the Connected Case Decision, the Pre-Trial Judge nevertheless authorised the Prosecutor to disclose it to the limited number of persons whom he had specifically requested should have access thereto.

9. The Pre-Trial Judge is satisfied that the Prosecutor’s concerns, summarised above, remain valid at this time, and that neither the Prosecutor’s Connected Case Submission, nor the Connected Case Decision, should be distributed to either the Defence Office or to the Defence, when constituted, at this stage of the proceedings.

10. In light of the foregoing, and pursuant to Rules 77(A) and 96(A) of the Rules, the Pre-Trial Judge is therefore satisfied that the Connected Case Decision must at this stage of the proceedings be reclassified as confidential and *ex parte*, in order to ensure the safety and security of victims and witnesses, as well as to safeguard the Prosecutor’s ongoing investigations and the integrity of evidence.

⁵ Prosecutor’s Memorandum, para. 5.

⁶ Prosecutor’s Connected Case Submission, filed confidential and *ex parte*, 30 June 2011.

⁷ Connected Case Decision, para. 148.

11. It follows, accordingly, that the Defence Office shall not be provided with a copy of the Connected Case Decision at this time.

FOR THESE REASONS,

THE PRE-TRIAL JUDGE,

PURSUANT TO Rules 77(A) and 96(A) of the Rules;

RECLASSIFIES the Decision on the Prosecutor's Connected Case Submission of 20 June 2011, filed confidentially on 5 August 2011, as confidential and *ex parte* until further order; and

ORDERS the Registry to take the measures necessary to execute this order.

Done in English.

Leidschendam, 14 November 2011.



Daniel Fransen
Pre-Trial Judge

