



The Pre-Trial Judge

Le Juge de la mise en état

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

THE PRE-TRIAL JUDGE

Case No.: **STL-11-01/I/PTJ**
The Pre-Trial Judge: **Mr Daniel Fransén**
The Registrar: **Mr Herman von Hebel**
Date: **24 January 2012**
Original: **French**
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THE PROSECUTOR

v.

**SALIM JAMIL AYYASH,
MUSTAFA AMINE BADREDDINE,
HUSSEIN HASSAN ONEISSI &
ASSAD HASSAN SABRA**

**PROVISIONAL ORDER ON THE PROSECUTION'S APPLICATION OF 21
DECEMBER 2011 FILED PURSUANT TO RULES 115, 116 AND 133 OF THE RULES
OF PROCEDURE AND EVIDENCE**

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

Defence Office:
Mr François Roux



STL Official Translation

I. Aim of the Order

1. By way of this Order, the Pre-Trial Judge issues a provisional ruling on the Prosecution's Application of 21 December 2011 for interim non-disclosure of the identity of witnesses pursuant to Rules 115 and 116 of the Rules of Procedure and Evidence (the "Rules"), and for protective measures to be granted in accordance with Rule 133 of the Rules (the "Application").¹

II. The Application

2. In anticipation of the enforcement of the obligation, in compliance with Rule 110 of the Rules, to disclose to the accused and/or their counsel (the "Defence")² the evidentiary materials filed in support of the indictment in the *Ayyash et al.* case, the Prosecution requests from the Pre-Trial Judge protective measures for the witnesses and other persons mentioned in those materials. Those measures, based on Rules 115 (A), 116 (A) and 133 (C) of the Rules, are based on an assessment of the risks to those persons. In turn, that assessment is based on a methodology (the "Methodology")³ devised by the Prosecution and approved by the Victims and Witnesses Unit (the "VWU"), as can be seen from an exchange of correspondence between the Registrar and the Prosecution.⁴

3. In addition, the Prosecution seeks that any decision rendered pursuant to the Application should not refer to any information that might prejudice the ongoing investigations, increase the risk to witnesses or be contrary to the public interest or the right of third parties.⁵ It requests that such a decision remain confidential and *ex parte*.

¹ *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/I/PTJ, Prosecution's Application for Interim Non-Disclosure of the Identity of Witnesses Pursuant to Rules 115 and 116 and Witness Protective Measures Pursuant to Rule 133, 21 December 2011.

² The Rules, Rule 2 (A).

³ The Application, Annex B.

⁴ *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/I/PTJ, Supplementary Filing to the Prosecution's Application for Interim Non-Disclosure of the Identity of Witnesses Pursuant to Rules 115 and 116 and Witness Protective Measures Pursuant to Rule 133, 10 January 2012, Annexes 1 and 2.

⁵ The Application, para. 43.

III. Consideration of the Application

4. The Pre-Trial Judge considers that it is not appropriate to rule on the merits of the Application at this stage of the proceedings. Indeed, no defence counsel has been designated or assigned as duty counsel to represent the accused and they themselves have not appeared in person before the Tribunal. However, the measures proposed by the Prosecution might violate the exercise of their right during the preparatory phase of the case insofar as they are intended, for example, to delay the disclosure of the identity of certain witnesses⁶ or to substitute their statements with summaries.⁷ Before determining the Application with regard to the merits, it is therefore essential to obtain the observations of the Defence within the framework of an adversarial debate. Consequently, this debate should be arranged ensuring that the Defence is in possession of all the necessary information so that it may make its observations, while taking into account the concerns mentioned by the Prosecution in the Application.

5. Furthermore, the Pre-Trial Judge notes that the VWU was only consulted with regard to the Methodology, as can be seen from the Registrar's memorandum addressed to the Prosecution on 21 December 2011.⁸ However, it is appropriate that, in keeping with the spirit of the Order of the Appeals Chamber of 7 October 2011,⁹ the VWU also examine to what extent the Prosecution has correctly applied the Methodology when it conducted the concrete risk assessment to the above mentioned persons, and that it express its opinion on the matter. With this in mind and in order to ensure the proper conduct of the proceedings, the Pre-Trial Judge deems it necessary that the VWU communicate such an opinion to the Prosecution which, where appropriate, will consequently amend the Application and the evidentiary materials to be disclosed.

⁶ *Ibid.*, para. 4.

⁷ *Ibid.*, para. 6.

⁸ *The Prosecutor v Ayyash et al.*, Case No. STL-11-01/I/PTJ, Supplementary Filing to the Prosecution's Application for Interim Non-Disclosure of the Identity of Witnesses Pursuant to Rules 115 and 116 and Witness Protective measures Pursuant to Rule 133, 10 January 2012, Annex 1, para. 2.

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, para. 34.

6. So as the Defence may formulate, with full knowledge of the facts, its observations relating to the issues of protection and how the evidentiary materials may be disclosed, as set out in the Application, it is appropriate that – in light of the decision on the merits of that Application – the following documents be disclosed to it as soon as possible: (i) this Order; (ii) a redacted version of the Application, taking into account, where appropriate, the results of the review by the VWU; and (iii) the evidentiary materials mentioned in the Application to which the Prosecution will have applied the protective measures that it seeks, taking into account, where appropriate, the results of the review by the VWU.

7. Furthermore, in the interests of a fair administration of justice, the Pre-Trial Judge deems it necessary to arrange forthwith the schedule for the procedure of disclosing the documents required so as to determine the Application. In this respect, it should be noted that the proceedings pending before the Trial Chamber, based on Rule 106 of the Rules, have no bearing on that schedule, insofar as it may be applied regardless of whether the proceedings are adversarial or *in absentia*.

8. Lastly, the Pre-Trial Judge notes that this Order makes no reference to any information that might endanger the protection of witnesses or the interests of the investigation. As a consequence, there is no reason why it should not be made public. On the other hand, the Application shall remain confidential and *ex parte* insofar as it contains such information.

IV. The Disposition

FOR THESE REASONS,

THE PRE-TRIAL JUDGE,

PURSUANT TO Rules 50, 89 (A) and (B), 110, 115, 116 and 133 of the Rules, in a provisional ruling;

ORDERS the VWU to examine whether the risk assessment relating to the persons concerned in the evidentiary materials mentioned in the Application and its Annexes was conducted in

compliance with the Methodology and to communicate the results of its review to the Prosecution and the Pre-Trial Judge by 6 February 2012 at the latest;

DECIDES to arrange the procedure relating to the issues of protection and how the evidentiary materials may be disclosed, as set out in the Application, as follows:

(i) within five working days following the appearance of the accused and/or defence counsel has been designated or assigned as duty counsel, the Registry shall disclose to it a copy of this Order;

(ii) within ten working days following the appearance of the accused and/or defence counsel has been designated or assigned as duty counsel, the Prosecution shall disclose to it a redacted version of the Application, taking into account, where appropriate, the results of the review by the VWU, as well as the evidentiary materials mentioned in the Application to which the Prosecution will have applied the protective measures that it seeks, taking into account, where appropriate, the results of the review by the VWU; and

(iii) within a time frame to be set at a later date, the Defence will be invited to submit its observations on the Application and the evidentiary materials attached thereto; and

STATES that this Order is public and that the Application is confidential and *ex parte*.

Done in English, Arabic and in French, the French version being authoritative.

Leidschendam, 24 January 2012

[stamp]

[signature]

Daniel Fransen
Pre-Trial Judge

