

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/PT/PTJ**
The Pre-Trial Judge: **Judge Daniel Fransen**
The Registrar: **Mr. Herman von Hebel**
Date: **8 February 2012**
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THE PROSECUTOR

v.

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

**ORDER MAKING PUBLIC CERTAIN PROSECUTOR'S SUBMISSIONS IN THE
AYYASH ET AL. CASE**

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

Counsel for Mr. Salim Jamil Ayyash:
Mr. Eugene O'Sullivan
Mr. Émile Aoun

Counsel for Mr. Mustafa Amine Badreddine:
Mr. Antoine Korkmaz
Mr. John Jones

Counsel for Mr. Hussein Hassan Oneissi:
Mr. Vincent Courcelle-Labrousse
Mr. Yasser Hassan

Counsel for Mr. Assad Hassan Sabra:
Mr. David Young
Mr. Guénaél Mettraux



1. **NOTING** the “Order to Make Public the Prosecutor’s Submissions Concerning the *Ayyash et al.* Case” of 21 September 2011 (“Order of 21 September 2011”) in which the Pre-Trial Judge stated that, in accordance with Rule 96 (B) of the Rules of Procedure and Evidence (“Rules”), it was in the interest of justice to make public the Prosecutor’s confidential and *ex parte* submissions relating to the review of the indictments filed since 17 January 2011, provided that it would not be prejudicial to the conduct of the investigation and/or the protection of any person;¹
2. **NOTING** that, on 7 October 2011, the Prosecutor filed a request for clarification of certain aspects of the Order of 21 September 2011;²
3. **NOTING** the “Order Relating to the Prosecutor’s Request for Clarification of the Order of 21 September 2011 to Make Public the Prosecutor’s Submissions Concerning the *Ayyash et al.* Case” of 13 October 2011 in which the Pre-Trial Judge clarified which submissions fell within the scope of the Order of 21 September 2011 and stated that documentary evidence filed in support of the indictments did not fall within the scope of this order and should not be made public at this stage of the proceedings;³
4. **NOTING** that, on 20 October 2011, the Prosecutor, pursuant to the Order of 21 September 2011, filed its observations along with Annex A (containing a list of filings relating to the Order of 21 September 2011) and Annex B (containing suggested redactions of three documents listed in Annex A for the purpose of safeguarding the interests of the investigation and the security of persons concerned by those documents) (“Prosecutor’s Observations of 20 October 2011”);⁴
5. **NOTING** the “Order Relating to Making Public the Prosecutor’s Submissions Concerning the *Ayyash et al.* Case” of 6 December 2011 (“Order of 6 December 2011”), in which the Pre-Trial Judge ruled on whether, and under what conditions, the documents listed in Annex A of the Prosecutor’s Observations of 20 October 2011 should be made public, and

¹ STL, *The Prosecutor v Ayyash et al.*, Case No. STL-11-01/I/PTJ, Order to Make Public the Prosecutor’s Submissions Concerning the *Ayyash et al.* Case, 21 September 2011, para. 8.

² STL, *The Prosecutor v Ayyash et al.*, Case No. STL-11-01/I/PTJ, Prosecutor’s Request for Clarification on the Scope of the Order by the Pre-Trial Judge dated 21 September 2011, 7 October 2011.

³ STL, *The Prosecutor v Ayyash et al.*, Case No. STL-11-01/I/PTJ, Order Relating to the Prosecutor’s Request for Clarification of the Order of 21 September 2011 to Make Public the Prosecutor’s Submissions Concerning the *Ayyash et al.* Case, 13 October 2011, paras 14-16.

⁴ STL, *The Prosecutor v Ayyash et al.*, Case No. STL-11-01/I/PTJ, Prosecutor’s Observations Filed Pursuant to the Order of the Pre-Trial Judge Dated 21 September 2011, 20 October 2011. A corrigendum was filed in respect of Annex A on 24 October 2011: Corrigendum to the Prosecutor’s Observations Filed Pursuant to the Order of the Pre-Trial Judge Dated 21 September 2011, 24 October 2011.

stated that certain listed documents remained subject to necessary redactions in order to protect the conduct of the investigation or certain persons concerned by those documents, but that these documents shall be made public at the latest when any of the four accused concerned by the *Ayyash et al.* Case (the “Accused”) appear in court or, in the case of proceedings *in absentia*, when counsel for the defence are assigned;⁵

6. **NOTING** that, on 4 January 2012, the Prosecutor submitted a request pursuant to the Order of 6 December 2011 (“Prosecutor’s Request of 4 January 2012”), along with public Annex A and confidential and *ex parte* Annex B, in which he requested the Pre-Trial Judge: i) to authorise the proposed redactions indicated in Annex B, ii) to direct the Registry’s Language Services Section to prepare identical redactions in the translations of the documents contained in Annex B within two weeks of the Pre-Trial Judge’s order, and iii) to maintain the confidentiality of paragraphs 18 and 19 and Annex B of the Prosecutor’s Request of 4 January 2012;⁶

7. **NOTING** that, on 10 January 2012, the Pre-Trial Judge ordered that the Prosecution must first consult with the Victims and Witnesses Unit (“VWU”) in accordance with the Order of 6 December 2011 before filing his request;⁷

8. **NOTING** that, on 25 January 2012, the Prosecutor submitted an addendum to the Prosecutor’s Request of 4 January 2012 (“Prosecutor’s Addendum of 25 January 2012”), following consultation with VWU, in which he attached public Annex A (an amended list of the twelve filings covered by the Order of 6 December 2011), confidential and *ex parte* Annex B (VWU’s internal memorandum of 20 January 2012 as to its proposed redactions) and confidential and *ex parte* Annex C (containing four filings with proposed additional redactions suggested by VWU);⁸

9. **NOTING** that in the Prosecutor’s Request of 4 January 2012, the Prosecutor requests additional redactions, including some based on two additional categories of redactions not

⁵ STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/I/PTJ, Order Relating to Making Public the Prosecutor’s Submissions Concerning the *Ayyash et al.* Case, 6 December 2011, disposition, p. 12, 13.

⁶ STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/I/PTJ, Prosecutor’s Request for the Pre-Trial Judge to Authorise Proposed Redactions and Order the Registry to Prepare these in the Translated Documents Pursuant to the Order of the Pre-Trial Judge Dated 6 December 2011, 4 January 2012, p. 9.

⁷ STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/I/PTJ, “Ordonnance portant sur la requête du Procureur aux fins d’expurgation des documents déposés en exécution de l’Ordonnance du 6 décembre 2011”, 10 January 2012, p. 3.

⁸ STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/I/PTJ, Addendum to the Prosecution’s filing dated 4 January 2012 following consultation with the Victims and Witness (*sic*) Unit, 25 January 2012.

previously covered in its Observations of 20 October 2011 and related to the extent of the Prosecutor's knowledge about the Accused as well as information that could be useful to parties attempting to frustrate the ongoing proceedings;⁹

10. **NOTING** that, in this same request, in relation to the indictment of 6 May 2011, the Prosecutor requests additional redactions based on three further categories, related to the number of telephones in each network, the personal details of the deceased and the names of victims;¹⁰

11. **NOTING** that, on 31 January 2012, the Pre-Trial Judge called a meeting in Chambers with representatives of VWU and of the Office of the Prosecutor to discuss the proposed additional redactions found in Annex B of the Prosecutor's Addendum of 25 January 2012 at which VWU explained the reasons underlying the proposed redactions contained in its internal memorandum of 20 January 2012 ;

12. **CONSIDERING** that the credibility of the Tribunal is in part measured by the transparency of its activities; accordingly, pre-trials filings, proceedings and orders shall be made public unless otherwise provided by specific rules or decided by the Pre-Trial Judge upon a party's request and must be limited to what is strictly necessary to ensure the protection of individuals or the effective conduct of the investigations, as required by article 96 (B) of the Rules;

13. **CONSIDERING** that the redactions proposed by the Prosecutor in Annex B of the Prosecutor's Addendum of 25 January 2012 are necessary to protect the effective conduct of the investigation or the persons concerned by those documents, with the exception of the proposed redaction of the Prosecutor's signature, given, in particular, that it has previously been rendered public and that no valid reason has been advanced to justify that it should be redacted;

14. **CONSIDERING** that, in relation to the additional redactions proposed by VWU in Annex C of the Prosecutor's Addendum of 25 January 2012, the Pre-Trial Judge is not convinced that these proposals are necessary to protect the relevant persons and to address all

⁹ STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/I/PTJ, Prosecutor's Request for the Pre-Trial Judge to Authorise Proposed Redactions and Order the Registry to Prepare these in the Translated Documents Pursuant to the Order of the Pre-Trial Judge Dated 6 December 2011, 4 January 2012, para. 16.

¹⁰ *Ibid.*, para. 20.

concerns relating to the work of VWU expressed by its representatives during the meeting of 12 January 2012;

15. **CONSIDERING** that Annex B to the Prosecutor's Request of 4 January 2012 as well as Annexes B and C to the Prosecutor's Addendum of 25 January 2012 must remain confidential and *ex parte* in order to protect the persons concerned and the effective conduct of the investigations as required by article 96 (B) of the Rules;

16. **CONSIDERING** that paragraphs 18 and 19 of the Prosecutor's Request of 4 January 2012 must be redacted in the public version of that Request for the same reasons indicated in paragraph 15 of this order;

17. **CONSIDERING** that the Language Services Section must ensure that, where appropriate, the translation of those documents takes into account any possible amendments which might be made to them at a later date, even if they are in the form of redactions;¹¹

¹¹ STL, *The Prosecutor v Ayyash et al*, Case No. STL-11-01/I/PTJ, Order Relating to Making Public the Prosecutor's Submissions Concerning the *Ayyash et al*. Case, 6 December 2011, disposition, para. 26.

FOR THESE REASONS,

THE PRE-TRIAL JUDGE,

PURSUANT TO Rules 96.(A) and (B) of the Rules,

RECALLS that the publicity of the documents listed in Annex A of the Prosecutor's Addendum of 25 January 2012 is governed by the Order of 6 December 2011;

AUTHORISES that the documents in Annex C of the Prosecutor's Addendum of 25 January 2012 be redacted in accordance with the Prosecutor's suggestions, with the exceptions of the Prosecutor's signature and the proposed additional redactions of VWU contained in Annex B to the Prosecutor's Addendum of 25 January 2012;

ORDERS that the Registry's Language Services Section prepare identical redactions in the translations of the aforementioned documents in Annex C in consultation with the Prosecution;

ORDERS that Annex B to the Prosecutor's Request of 4 January 2012 as well as Annexes B and C to the Prosecutor's Addendum of 25 January 2012 remain confidential and *ex parte*; and

ORDERS that paragraphs 18 and 19 of the Prosecutor's Request of 4 January 2012 be redacted in the public version of that Request.

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

Leidschendam, 8 February 2012



Daniel Fransen
Pre-Trial Judge

