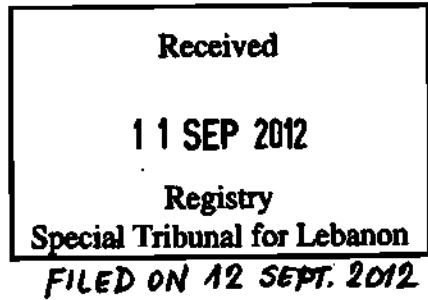




THE PRE-TRIAL JUDGE

Case No.: CH/PTJ/2012/02
The Pre-Trial Judge: Mr Daniel Fransen
The Registrar: Mr Herman von Hebel
Date: 21 May 2012
Original language: French
Classification: Public



**ORDER RELATING TO THE PROSECUTION
SUBMISSIONS FILED ON 27 MARCH 2012**

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Mr François Roux





I. The subject of the Order

1. By way of this Order, the Pre-Trial Judge rules on the Prosecution submissions of 27 March 2012 relating to the implementation of part of the Order of 20 February 2012 by the Victims and Witnesses Unit (respectively, the “Order of 20 February 2012” and the “VWU”).¹

II. Procedural background

2. On 27 March 2012, the Appeals Chamber suspended the Order of 20 February 2012 following the Prosecution appeal.² The same day, the Prosecution filed submissions relating to the implementation of the Order of 20 February 2012 (the “Submissions of 27 March 2012”) including, in the annex, a memorandum from the VWU (“Annex B of the Submissions of 27 March 2012”), which is the subject of this decision.³

3. On 18 April 2012, the Appeals Chamber admitted in part the appeal lodged by the Prosecution and directed that it disclose certain documents by 18 May 2012 at the latest.⁴

4. Following a meeting held on 11 May 2012 between the Pre-Trial Judge’s staff, representatives of the VWU, the Registry and the Prosecution in order to clarify certain parts of the Submissions of 27 March 2012 and of Annex B, the Registrar filed a confidential and *ex parte* submission on 17 May 2012 (the “Registry Submission”).⁵

¹ STL, Case No. OTP/PTJ/2012/02, Prosecution Submissions in Relation to the Pre-Trial Judge’s Order of 20 February 2012, 27 March 2012.

² STL, Case No. CH/AC/2012/02, Order on Prosecution’s Request for Suspensive Effect of the Pre-Trial Judge’s Order of 20 February 2012, 27 March 2012.

³ For a detailed description of all the stages of the procedure, the Pre-Trial Judge refers to the procedure mentioned in the following order: STL, Case No. CH/PTJ/2012/01, Order Relating to the Submissions of the Prosecutor Filed on 8, 15 and 28 November 2011, 12 and 30 December 2011 and 15 February 2012 and to the Observations from Mr El Sayed of 11 January 2012, 20 February 2012, the “Order of 20 February 2012”.

⁴ STL, Case No. CH/AC/2012/03, Decision on the Prosecutor’s Partial Appeal of the Pre-Trial Judge’s Order of 20 February 2012, 18 April 2012.

⁵ STL, Case No. REG/PTJ/ 2012/01, Registry Submission Pursuant to Rule 48 (C) and Further to the Pre-Trial Judge’s Order of 20 February 2012, confidential and *ex parte*, 17 May 2012.



III. The Submissions of 27 March

5. The Prosecution states that, further to the Order of 20 February 2012, it seized the VWU in order to implement the said Order. The VWU, for its part, seized the Prosecution with a number of questions with a view to clarifying the tasks it should carry out in application of the Order of 20 February 2012. It was necessary for the Prosecution to address the Pre-Trial Judge in respect of the responses to some of those questions.

6. The Prosecution considers that it is unable to finalise the proposed redactions relating to the documents to be disclosed to the Applicant while the consultation procedure with the VWU is still ongoing and while the issues raised by the latter, requiring the intervention of the Pre-Trial Judge, have not been clarified.⁶ With regard to those questions, the Prosecution points out that it provided the VWU with an updated version of the witness risk assessment and guidelines on redactions that it prepared in order for the unit to reply to it.⁷ Furthermore, with regard to filing the documents, the Prosecution seeks that the time limit be extended by 20 days from the time the results of the consultations with the VWU have been obtained.⁸

IV. Statement of reasons

7. The Pre-Trial Judge notes that Annex C of the Submissions of 27 March 2012 raises several issues, some of which are addressed to the Prosecution and others to the Pre-Trial Judge and that, amongst the latter, three must be determined by him.

8. Firstly, the VWU requests clarification of the question as to whether the evaluation of the “risks incurred” – or “risk assessment” according to the terms used in Annex C to the Submissions of 27 March 2012 – involves the evaluation of the “threats” – or “threat assessment”, according to that same Annex – as conducted by the Prosecution.

9. The Pre-Trial Judge recalls the relevant paragraphs of the Order of 20 February 2012:

With respect to the Prosecutor’s request for non-disclosure of the statements from nine witnesses incurring risks described as “high” or “very high”, the Pre-Trial Judge notes that the Prosecutor maintains that the VWU agrees with his request. However, it appears that the

⁶ Prosecution Submissions of 27 March 2012, para. 1.

⁷ *Id.*, para. 2.

⁸ *Id.*, para. 3.



VWU has not given its views directly on this proposal, but has restricted its comments to the redaction measures proposed in light of the risks, without providing its views as to the existence of such risks.

The Pre-Trial Judge points out that, by way of the Decision of 7 October 2011, the Appeals Chamber made it clear that the Prosecutor should demonstrate that the VWU expressed its agreement as to his assessment of the risks incurred by the witnesses. Such a demonstration has not been evidenced here, however. The Pre-Trial Judge notes that the wording of the VWU indicates its remit was not to examine whether the risk assessment carried out by the Prosecutor was correct, whereas, on 31 October 2011, the VWU stated that its role was to assess the risk assessment methodology and its results, if appropriate.

Consequently, the Pre-Trial Judge considers that the Prosecutor must be able to demonstrate that the VWU is satisfied with the result of the risk assessment for each witness referred to in Annex D of this Submission of 30 December 2011. In addition, the VWU is invited to give its views specifically as to the measure for non-disclosure of the documents proposed by the Prosecutor in relation to the witnesses for whom the risk incurred is deemed to be “high” or “very high”.⁹

10. The aim of the measure prescribed in the Order of 20 February 2012 is to guarantee, in accordance with the Appeals Chamber decision, that “the VWU agrees with the Prosecutor’s [risk] assessment”.¹⁰ Therefore it is for the VWU, and not the Pre-Trial Judge, to determine whether, in the context of conducting individual “risk assessments” that are incumbent upon it and in order to fully discharge that task, it should examine the threat assessment produced by the Prosecutor and, if appropriate, the methodology it should use, bearing in mind the fact that the risk assessment conducted by the latter is necessarily based on its own assessment of the threats.

11. Secondly, the VWU seeks clarification relating to the completion of its task of evaluating the results of the risk assessment for each witness referred to in the Order of 20 February 2012. Indeed, according to paragraph 78 of the Order of 20 February 2012, the Prosecutor must obtain “the approval by the VWU of the method for assessing the risk to the witnesses and other persons conducted by the Prosecutor.”¹¹ The VWU suggests four possible options, ranging from a simple review of the methodology used by the Prosecutor to that of conducting an independent review of the risk assessment for a certain number of

⁹ Order of 20 February 2012, paras 67 to 69, footnotes omitted.

¹⁰ STL, Case No. CH/AC/2012/02, 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, para. 34 (the “Decision of 7 October 2011”).

¹¹ Order of 20 February 2012, para. 78.



witnesses chosen at random.¹² The Pre-Trial Judge recalls once more that it is incumbent upon the VWU to approve the risk assessment process – and, if it deems it necessary, that of the threats – for the witnesses concerned drawn up by the Prosecution. To that end, should the VWU consider that the risk assessment of some witnesses chosen at random is sufficient to fulfil the task assigned to it by the Appeals Chamber, the Pre-Trial Judge has no objection that it proceed in that way.

12. Thirdly, the Pre-Trial Judge notes that the VWU clarified in the Registry Submission that it considers appropriate, in light of the circumstances, the Prosecution’s proposal for non-disclosure of statements or other documents relating to witnesses whose risk is assessed as “high” or “very high”.¹³

13. With regard to the Prosecution request for an extension of the time limit within which to re-file the documents after consultations with the VWU, the Pre-Trial Judge finds that is it premature at this stage of the proceedings since the results of the consultations with the VWU, which have still not been concluded, should be taken into account.

¹² Prosecution Submissions of 27 March 2012, Annex B, para. 4.

¹³ Registry Submission, para.9.



FOR THESE REASONS,

THE PRE-TRIAL JUDGE,

ORDERS the VWU to decide, without delay, on the results of the risk assessments for the witnesses in Annex D to the Prosecution's Submission of 30 December 2011¹⁴ following the methodology of its own choosing in order to discharge in full the task it has been assigned; and

REJECTS the Prosecution request for an extension of the time limit within which to re-file all the documents mentioned in the Order of 20 February 2012.

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

Leidschendam, 21 May 2012

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[signature]

Daniel Fransen
Pre-Trial Judge



¹⁴ STL, Case No. CH/PTJ/2011/18, Prosecution's Submission in Compliance with the Pre-Trial Judge's Scheduling Order of 21 October 2011, confidential and *ex parte*, 30 December 2011.