



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: **21 September 2012**
Original language: **English**
Classification: **Public**

THE PROSECUTOR

v.

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

**DECISION ON THE VICTIMS' LEGAL REPRESENTATIVE'S REQUEST FOR
RECLASSIFICATION AS PUBLIC OF IDENTITIES OF SEVEN VICTIMS
PARTICIPATING IN PROCEEDINGS**

Office of the Prosecutor:
Mr. Norman Farrell

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

Victims' Legal Representative:
Mr. Peter Haynes

Counsel for Mr Mustafa Amine Badreddine:
Mr. Antoine Korkmaz

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

Counsel for Mr Assad Hassan Sabra:
Mr. David Young



I. Introduction

1. In this Decision, the Pre-Trial Judge rules on the request of the Victims' Legal Representative (the "VLR") to reclassify as public the identities of seven victims participating in the proceedings (the "VPPs" or "VPP").¹

II. Background

2. On 5 April 2012, the Pre-Trial Judge issued a decision in which he decided *inter alia* that — at that stage of proceedings — the Parties were not entitled to receive the applications for VPP status, or the information contained therein.² He emphasised that:

[...] withholding the Applications from the Parties at this stage of proceedings (namely the determination of VPP status) does not amount to barring the Parties *ad infinitum* from accessing information related to VPPs. Rule 87 of the Rules recognises that a degree of such access is in fact anticipated in the interests of transparency, in a manner consistent with the rights of the accused, the VPPs, and the Rules. [...] [The Decision] is without prejudice to any future determination on whether or not the Parties should have access to the Applications or the information contained therein, and if so, to what extent and subject to which modalities.³

3. On 8 May 2012, the Pre-Trial Judge issued a public decision with a confidential and *ex parte* annex on VPPs' status pursuant to Article 17 of the Statute and Rule 86 of the Rules of Procedure and Evidence (the "Rules").⁴ The Pre-Trial Judge authorised 58 of the 73 applicants to participate in the proceedings in the *Ayyash et al.* case.⁵ Citing the Decision of 5 April 2012, the Pre-Trial Judge reminded the Parties that withholding the identities of the applicants and their applications was justified in order to protect their interests at that stage of proceedings.⁶

4. On 3 September 2012, the Pre-Trial Judge issued a further public decision with a confidential and *ex parte* annex on the status of VPPs pursuant to Article 17 of the Statute and Rule 86, in which he authorised an additional 9 of 14 applicants to participate in the

¹ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Request for the Re-classification as Public of the Identity of Seven Participating Victims, 17 September 2012 (the "Request").

² STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Decision on Defence Motion of 17 February 2012 for an Order to the Victims' Participation Unit to Re-file its Submission *Inter Partes* and Inviting Submissions on Legal Issues Related to Applications for the Status of Victim Participating in the Proceedings, 5 April 2012 (the "Decision of 5 April 2012"), para. 52

³ *Id.*, para. 53.

⁴ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Decision on Victims' Participation in the Proceedings, 8 May 2012, Public with confidential and *ex parte* annex (the "Decision of 8 May 2012")

⁵ *Id.*, paras 103 and 104.

⁶ *Id.*, para. 130.

proceedings in the *Ayyash et al.* case.⁷ The Pre-Trial Judge considered that — for the same reasons advanced in the Decision of 8 May 2012 — withholding the applications and the identities of the applicants was justified at that stage of proceedings in order to allow persons who have been granted VPP status to seek protective measures pursuant to Rule 133.⁸

5. The Pre-Trial Judge established in both the Decision of 8 May 2012⁹ and the Decision of 3 September 2012¹⁰ that a request for the appropriate protective measures pursuant to Rule 133 should include a risk assessment carried out by the Victims and Witnesses Unit.

III. Reasons for the Decision

6. In the Decision of 5 April 2012, the Pre-Trial Judge recognised that once the VPPs are effectively represented by VLRs who are informed and “highly qualified” counsel,¹¹ the VLRs will be in a position to advise the VPPs on the consequences of applying for or declining anonymity or such other protective measures as may be available to them. Once advised by the VLR, the Pre-Trial Judge can assume that the VPPs have been effectively informed about the protective measures available to them.¹²

7. The Pre-Trial Judge takes note that the VLR, having reviewed the initial applications of the VPPs, as well as the statements made on the occasion of their notification of having been accorded VPP status, submits that the identities of seven of the VPPs can be reclassified as public at this stage,¹³ namely: V001; V002; V003; V004; V009; V023; and V024. The VLR affirms that a risk assessment of these seven VPPs was “deemed unnecessary”¹⁴ and is “content that their identities can be made public.”¹⁵

8. In light of the foregoing, the Pre-Trial Judge grants the Request to reclassify the identities of these seven VPPs as public, in a manner sufficient to enable the Parties to identify these VPPs.

⁷ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Second Decision on Victims' Participation in the Proceedings, 3 September 2012, Public with confidential and *ex parte* annex (the “Decision of 3 September 2012”), para. 12.

⁸ *Id.*, para. 17.

⁹ Decision of 8 May 2012, para. 131.

¹⁰ Decision of 3 September 2012, para. 17.

¹¹ Rule 51(C)(i) STL RPE.

¹² Decision of 5 April 2012, para. 47.

¹³ Request, para. 5.

¹⁴ *Id.*, para. 6.

¹⁵ *Id.*, para. 7.

9. In addition to these seven VPPs, there are currently another 60 VPPs. Where the VLR identifies, on an ongoing basis, additional VPPs whose identities he considers may be reclassified as public with no need for a risk assessment under the same conditions as stated above¹⁶, he is authorised to reclassify them accordingly without further need for authorisation from the Pre-Trial Judge.

FOR THESE REASONS,

THE PRE-TRIAL JUDGE,

PURSUANT TO Rule 77(A) of the Rules;

GRANTS the Request to reclassify as public the identities of the following seven VPPs: V001; V002; V003; V004; V009; V023; and V024 in a manner sufficient to enable the Parties to identify these VPPs; and

AUTHORISES the VLR to reclassify as public, on an ongoing basis, the identities of other VPPs who meet the conditions stated in this decision without further need for authorisation from the Pre-Trial Judge.

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

Leidschendam, 21 September 2012



Daniel Fransen
Pre-Trial Judge



¹⁶ Cf supra para. 7.