



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

### THE PRE-TRIAL JUDGE

Case No.: **STL-11-01/PT/PTJ**

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

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

Date: **4 October 2012**

Original language: **English**

Classification: **Public with confidential Annex**

### THE PROSECUTOR

v.

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

### ORDER FOR CLARIFICATION OF CERTAIN PROPOSED AMENDMENTS IN THE PROSECUTION'S REQUEST FOR LEAVE TO AMEND THE INDICTMENT OF 17 AUGUST 2012

**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. By way of this order, the Pre-Trial Judge seeks clarification from the Prosecution on certain amendments proposed by the Prosecution in its request for leave to amend the 10 June 2011 indictment pursuant to Rule 71(A)(ii) of the Rules of Procedure and Evidence (the “Rules”) of 17 August 2012 (the “Request”).<sup>1</sup>

## **II. Procedural background**

2. On 17 January 2011, pursuant to Rule 68 of the Rules, the Prosecution submitted to the Pre-Trial Judge an indictment for confirmation against Mr. Salim Jamil Ayyash relating to the case concerning the attack against Mr. Rafiq Hariri (the “Attack”).<sup>2</sup>

3. On 11 March 2011 and on 6 May 2011, the Prosecution filed, respectively, a first<sup>3</sup> and a second<sup>4</sup> amended version of the indictment. The first amended version charged Mr. Hussein Hassan Oneissi and Mr. Assad Hassan Sabra in addition to Mr. Ayyash. The second amended version charged Mr. Mustafa Amine Badreddine in addition to Messrs. Ayyash, Oneissi and Sabra.

4. On 10 June 2011, the Prosecution submitted a third amended version of the indictment for confirmation.<sup>5</sup>

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<sup>1</sup> STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/PTJ, Prosecution Request for Leave to Amend the Indictment Pursuant to Rule 71(A)(ii), Confidential with Confidential Annexes A, B, C and D, 17 August 2012, with a Public Redacted version filed on 18 September 2012 pursuant to the Pre-Trial Judge’s Order of 14 September 2012.

<sup>2</sup> STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PTJ, Submission of an Indictment for Confirmation (Rule 68) and (1) Motion for an Arrest Warrant and Order for Transfer (Rule 79); (2) Urgent Motion for the Non-Disclosure of the Indictment (Rule 74); and (3) Urgent Motion for an Order for Interim Non-Disclosure of the Identities of Witnesses Pending the Implementation of Appropriate Witness Protection Measures (Rules 77 and 115), Confidential and *ex parte*, 17 January 2011, with a Public Redacted version of the Combined Motion (without the annexes) filed on 5 April 2012 pursuant to the Pre-Trial Judge’s Order of 8 February 2012.

<sup>3</sup> STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PTJ, Submission of an Amended Indictment for Confirmation (Rules 68 and 71) and Motion for Arrest Warrants and Orders for Transfer (Rule 79), Confidential and *ex parte*, 11 March 2011. The Submission and the Motion (without the annexes) were made public pursuant to the Pre-Trial Judge’s Order of 6 December 2011.

<sup>4</sup> STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PTJ, Combined Motion of the Prosecutor; (1) Submission of an Indictment for Confirmation (Rule 68), (2) Motion for Continuation of Pre-Trial Judge’s Order Dated 19 January 2011 Pursuant to Rule 96 (B), and (3) Motions in the Event of Confirmation of the Indictment Pursuant to Rules 74, 77, and 79, Confidential and *ex parte*, 6 May 2011, with a Public Redacted version of the Combined Motion and a Public Redacted version of Annex A filed on 16 February 2012 pursuant to the Pre-Trial Judge’s Order of 8 February 2012. Annex C was made public pursuant to the Pre-Trial Judge’s Order of 6 December 2011.

<sup>5</sup> STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PTJ, Submission of an Amended Indictment for Confirmation under Rule 71 and in Response to the Order of the Pre-Trial Judge Dated 9 June 2011, Confidential and *ex parte*, 10 June 2011. The Submission (without Annex A) was made public pursuant to the

5. On 28 June 2011, the Pre-Trial Judge rendered a decision relating to the Prosecution's request to confirm the third amended indictment against Messrs. Ayyash, Oneissi, Sabra and Badreddine (respectively, the "Indictment", the "Accused" and the "Decision of 28 June 2011").<sup>6</sup>

6. On 17 August 2012, the Prosecution filed the Request and its confidential annexes,<sup>7</sup> seeking the Pre-Trial Judge's authorisation to amend the Indictment in a manner consistent with the proposed amended indictment filed as Annex A (the "Proposed Amended Indictment").

### III. Discussion

7. In the Request, the Prosecution seeks leave to amend the Indictment pursuant to Rule 71(A)(ii). It submits that the amendments "clarify the pleading of the existing charges" and that they do not contain any new charges or counts. According to the Prosecution, these amendments will not result in "improper prejudice to the Accused, and there exists *prima facie* evidence to support the amendments".<sup>8</sup>

8. Rule 71(A)(ii) provides that "[t]he Prosecutor may amend an indictment [...] between its confirmation and the assignment of the case to the Trial Chamber, with the leave of the Pre-Trial Judge [...]." The Pre-Trial Judge considers that the Request is properly filed before the Pre-Trial Judge as the case has not yet been assigned to the Trial Chamber.

9. As to the Pre-Trial Judge's discretion in granting leave to amend, two cumulative criteria must be met pursuant to Rule 71(B): (1) the existence of *prima facie* evidence to support the proposed amendment; and (2) the amendment would not result in improper prejudice to the accused.

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Pre-Trial Judge's Order of 6 December 2011. Annex A was made confidential pursuant to the Pre-Trial Judge's Decision of 10 February 2012.

<sup>6</sup> STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PTJ, Decision relating to the Examination of the Indictment of 10 June 2011 Issued against Mr. Salim Jamil Ayyash, Mr. Mustafa Amine Badreddine, Mr. Hussein Hassan Oneissi & Mr. Assad Hassan Sabra, 28 June 2011. In that decision, the Pre-Trial Judge confirmed all counts but he found that "the attempt 'to kill 231 other persons' mentioned in paragraph h of this count [committing a terrorist act, as co-perpetrator] should not be included in the constituent elements of the terrorist act but in those of attempted intentional homicide", para. 53 of the Decision of 28 June 2012.

<sup>7</sup> The four annexes filed with the Request are the following: Annex A: the proposed amended indictment ("Annex A to Request"); Annex B: a table of the amendments relating to the proposed amended indictment in Annex A, including reasons for the proposed amendments ("Annex B to Request"); Annex C: a comparison of the Indictment with the proposed amended indictment in Annex A ("Annex C to Request"); Annex D: the additional evidence filed in support of the proposed amendments ("Annex D to Request").

<sup>8</sup> Request, para. 2.

10. Concerning the substance of the amendments, the Pre-Trial Judge notes that amendments to an indictment can include new charges and may also address other elements, which are not material changes as such. The case law of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) and International Criminal Tribunal for Rwanda (“ICTR”) is instructive, as both *ad hoc* tribunals have a provision regarding leave to amend an indictment which is similar to that of the Special Tribunal for Lebanon. For instance, amendments of the wording of an indictment to reflect more precisely the original supporting material, an adjustment to the list of victims, stylistic changes to clarify the indictment, and amendments that clarify an event, have all been submitted and accepted as long as they do not cause an improper prejudice to the accused.<sup>9</sup>

11. In applying the foregoing to the instant case, and having reviewed the amendments proposed by the Prosecution, the Pre-Trial Judge seeks clarification from the Prosecution with respect to certain additions or deletions before issuing an order on the merits of the Request. Since the Proposed Amended Indictment is confidential, the requests for clarification are detailed in the confidential annex to this Order. These clarifications are without prejudice to any decision which the Pre-Trial Judge may render in the future with respect to the Request.

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<sup>9</sup> ICTR, *Prosecutor v. Casimir Bizumungu, Justin Mugenzi, Jerome Bicamumpaka, Prosper Mugiraneza*, Case No. ICTR-99-50-I, Decision on the Prosecutor’s Request for Leave to File an Amended Indictment, 6 October 2003, para. 28; ICTY, *Prosecutor v Goran Hadžić*, Case No. IT-04-75-I, Decision on Prosecution Motion for Leave to Amend the Indictment, 19 July 2011, paras 48, 50, 51.

**FOR THESE REASONS,**

**THE PRE-TRIAL JUDGE,**

**PURSUANT TO** Rules 71 and 77(A) of the Rules,

**ORDERS** the Prosecution to file its submissions in response to the information sought in the confidential annex by 15 October 2012 at 16:00.

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

Leidschendam, 4 October 2012



Daniel Fransen  
Pre-Trial Judge

