



THE PRE-TRIAL JUDGE

Case no.: CH/PTJ/2012/07
The Pre-Trial Judge: Judge Daniel Fransén
The Registrar: Mr Herman von Hebel
Date: 2 November 2012
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**DECISION ON THE PROSECUTION'S REQUEST TO SUSPEND IN PART THE
DECISION SETTING A DEADLINE FOR THE PROSECUTOR TO DISCLOSE TO
MR EL SAYED THE DOCUMENTS MENTIONED IN THE PRE-TRIAL JUDGE'S
ORDER OF 12 MAY 2011**

Counsel:
Mr Akram Azoury

Office of the Prosecutor:
Mr Norman Farrell



1. By way of this decision, the Pre-Trial Judge rules on the Prosecution's request to suspend in part the "Decision Setting a Deadline for the Prosecutor to Disclose to Mr El Sayed the Documents Mentioned in the Pre-Trial Judge's Order of 12 May 2011"¹ (the "Decision of 8 October 2012").²

I. Filings from the Prosecution and from Mr El Sayed

2. On 24 October 2012, the Prosecution seized the Pre-Trial Judge with a request to suspend the disclosure of a witness statement pursuant to the Decision of 8 October 2012 (respectively, the "Request" and the "Statement"). The Prosecution states that the Request has been made due to recent events and that it has requested the Victims and Witnesses Unit (the "VWU") to gauge their impact on the risk assessment it had previously conducted and submitted for review to the VWU in relation to the witness mentioned in the Statement.

3. On 24 October 2012, Mr El Sayed opposed the Request which, in his opinion, was submitted on the eve of the deadline set by the Pre-Trial Judge for the disclosure, among other documents, of the Statement. He considers the Request to be "additional delaying tactics" and recalls that the Prosecution has, over the course of these proceedings, submitted repeated requests for suspension on the eve of each deadline.³

II. Statement of reasons

4. The Pre-Trial Judge considers that the particular context in which the request to suspend the Decision of 8 October 2012 falls gives justification to it. He also notes the limited scope of this request for suspension in that it refers to a single statement only.

5. Nevertheless, recalling that the matter of the disclosure of all of the documents to Mr El Sayed has been pending for months, the Pre-Trial Judge considers that the Prosecution and the VWU should employ all possible means to ensure that the process of reassessing the risk incurred by the person referred to in the statement be finished shortly.

¹ STL, *In re. El Sayed*, Case no. CH/PTJ/2012/04, Decision Setting a Deadline for the Prosecutor to Disclose to Mr El Sayed the Documents Mentioned in the Pre-Trial Judge's Order of 12 May 2011, 8 October 2012.

² STL, *In re. El Sayed*, Case no. OTP/PTJ/2012/07, Prosecution's Urgent Request to Suspend in Part the Disclosure Decision of 8 October 2012, 24 October 2012.

³ STL, *In re. El Sayed*, Case no. CH/PTJ/2012/7, *Objection à "Prosecution's Urgent Request to Suspend in Part the Disclosure Decision of 8 October 2012" du 24 octobre 2012*, 24 October 2012

6. Should the new risk assessment, approved by the VWU, allow it, the Prosecution must disclose the Statement as soon as possible, in accordance with the Decision of 8 October 2012.

7. Conversely, if the VWU finds that the witness is exposed to “high” and “very high” risks, in accordance with the Decision of 8 October 2012, that witness statement is not to be disclosed. In that case, it will fall to the Prosecution to undertake a new assessment of the risks and threats incurred by the witness every six months and to submit its conclusions to the VWU for review.

FOR THESE REASONS,

Pursuant to Rule 77 of the Rules,

THE PRE-TRIAL JUDGE,

AUTHORISES the temporary suspension of the disclosure of the Statement pending a new risk assessment relating to the person referred to in the Statement;

ORDERS that the process for reassessing the risk relating to the person referred to in the Statement be completed by 7 November 2012;

ORDERS the Prosecution, in the event that the new risk assessment, approved by the VWU, allows it, to disclose the Statement as soon as possible, in accordance with the Decision of 8 October 2012;

AUTHORISES the Prosecution to not disclose the Statement if the VWU finds that the witness is exposed to “high” or “very high” risks;

ORDERS the Prosecution, for as long as the Statement has not been disclosed, to undertake every six months a new assessment of the risks and threats incurred by the witness and to submit its conclusions to the VWU for review; and

ORDERS the Prosecution to report as soon as possible to the Pre-Trial Judge on the fulfilment of its obligations pursuant to the Decision of 8 October 2012 at the end of this process.

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

Leidschendam, 2 November 2012

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[signature]

Daniel Fransen
Pre-Trial Judge

