



**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: **15 November 2012**  
Original language: **English**  
Classification: **Public**

**THE PROSECUTOR**

v.

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

**DECISION ON URGENT MOTION FOR INJUNCTIVE RELIEF**

**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



1. The Pre-Trial Judge is seised with the “Urgent Motion on behalf of Mr. Ayyash for Injunctive Relief”, filed on 14 November 2012.<sup>1</sup> In the Motion, Counsel for Mr. Ayyash allege that certain recent disclosures to the Pre-Trial Judge were made pursuant to Rule 110(A)(ii) of the Rules of Procedure and Evidence (the “Rules”), and that disclosure of such materials is made “*inter partes* only.”<sup>2</sup> Counsel for Mr. Ayyash request the Pre-Trial Judge to issue an urgent injunction revoking his access to materials disclosed, ordering the Prosecution to re-disclose “Rule 91 material” in accordance with the Order of 25 October 2012 and Memorandum of 12 November 2012, and ordering the Prosecution in future to refrain from disclosing to the Pre-Trial Judge material to which he is not entitled under the Rules.<sup>3</sup>

2. Counsel for Messrs. Badreddine and Oneissi (together with counsel for Mr. Ayyash, the “Defence”) have joined the Motion.<sup>4</sup>

3. The Pre-Trial Judge recalls that in the Order of 25 October 2012, he ordered *inter alia* that the Prosecution shall file its pre-trial brief by 15 November 2012, which shall include its list of witnesses and exhibits, as well as the statements of all listed witnesses, all listed exhibits and all expert reports it intends to rely on at trial.

4. The Pre-Trial Judge recalls furthermore that on 6 November 2012, the Defence (including Counsel for Mr. Sabra) filed a request for certification to appeal that Order, submitting that “prejudice will be caused [to] the Accused if this matter is not dealt with by the Appeals Chamber before the [Order] is implemented”.<sup>5</sup> Following receipt of the Prosecution’s response,<sup>6</sup> a decision on the request is currently pending.

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<sup>1</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Urgent Motion on behalf of Mr. Ayyash for Injunctive Relief, 14 November 2012 (the “Motion”).

<sup>2</sup> Motion, paras 6, 8.

<sup>3</sup> Motion, para. 1. The “Order” is STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Order on a Working Plan and on the Joint Defence Motion Regarding Trial Preparation, 25 October 2012. The “Memorandum” is the Pre-Trial Judge’s Confidential Internal Memorandum of 12 November 2012.

<sup>4</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Defence for Mr. Mustafa Amine Badreddine’s Joinder in the Defence for Mr. Salim Jamil Ayyash’s Urgent Motion for Injunctive Relief, 14 November 2012. STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, *Jonction de la Défense de Mr. Hussein Hassan Oneissi à «Urgent Motion on Behalf of Mr. Ayyash for Injunctive Relief»*, 15 November 2012.

<sup>5</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Joint Defence Motion seeking certification of the “Order on a Working Plan and on the Joint Defence Motion regarding trial preparation”, 6 November 2012 (the “Request for Certification”), para. 7. The Defence refers to specific disclosure batches; however, since the Prosecution’s disclosure of similar materials is ongoing, it is referred to generically in this Decision.

<sup>6</sup> Prosecution Response to Joint Defence Motion Seeking Certification of the “Order on a Working Plan and on the Joint Defence Motion Regarding Trial Preparation”, 13 November 2012.

5. In the Memorandum, the Pre-Trial Judge undertook not to access materials which will be filed in conjunction with the Prosecution's pre-trial brief — and which are the concern of the Request for Certification — without prejudice to and pending either the Pre-Trial Judge's denial of the Request for Certification or the Pre-Trial Judge's certification of the Request and the Appeals Chamber's subsequent determination of the matter (whichever is applicable).

6. In its Response to the Motion,<sup>7</sup> the Prosecution submits that the disclosures were made “pursuant to the Order of 25 October 2012 and the Pre-Trial Judge's [...] memorandum of 12 November 2012 to the parties”, which “clarified that the Rule 91 materials (including witness statements) were to ‘be provided *inter alia* to the Pre-Trial Judge’ and ‘made available to the Pre-Trial Judge’ through the Legal Workflow system.”<sup>8</sup> The Prosecution also points out that the designation of materials as subject to disclosure for the purposes of Rule 110(A)(ii) is without prejudice to their also being subject to the Order and the Memorandum.<sup>9</sup> The Prosecution submits that the Motion is without merit and should be dismissed.<sup>10</sup>

7. The Pre-Trial Judge takes note that he has been provided with access to the materials in question pursuant to his Order and the Memorandum. As such, they are not Rule 110(A)(ii) materials and there is no justification for the Defence's requests; the Motion is without merit.

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<sup>7</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Prosecution Response to the Urgent Motion on behalf of Mr. Ayyash for injunctive relief, 14 November 2012 (the “Response”).

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

<sup>9</sup> Response, para. 3.

<sup>10</sup> *Id.*

**FOR THESE REASONS,**

**THE PRE-TRIAL JUDGE,**

**PURSUANT TO** Rules 89 and 91,

**DISMISSES** the Motion.

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

Leidschendam, 15 November 2012.



Daniel Fransen  
Pre-Trial Judge

