



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: **Mr Daniel Fransén**

The Registrar: **Mr Herman von Hebel**

Date: **12 December 2012**

Original language: **French**

Classification: **Public**

THE PROSECUTOR

v.

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

**ORDER AUTHORISING SOME OF THE CONTENT OF THE PROSECUTION'S
 APPLICATION OF 14 NOVEMBER 2012 RELATING TO THE TEMPORARY
 SUSPENSION OF THE DISCLOSURE OF CERTAIN INFORMATION AND
 DOCUMENTS AND THE DECISION OF 30 NOVEMBER 2012
 BEING MADE CONFIDENTIAL**

Office of the Prosecutor:
 Mr Norman Farrell

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

Legal Representative of Victims:
 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. Subject of the Order

1. By way of this order, the Pre-Trial Judge rules on the motions of the Prosecution (the “Prosecution’s motion of 7 December 2012”)¹ and of the Defence (the “Defence motion of 7 December 2012”)² to make public, after redaction as appropriate, some of the content of the Prosecution’s confidential and *ex parte* application of 14 November 2012 in order to be granted leave not to file, pursuant to Rule 91 (G) of the Rules of Procedure and Evidence (the “Rules”), the names of witnesses and the exhibits relating to them, nor to disclose these documents to the participants in the proceedings, in accordance with Rules 116 (A) and 117 (A) of the Rules (the “confidential and *ex parte* Application”),³ and of the Decision regarding the Application (the “confidential and *ex parte* Decision”).⁴

II. Background to the proceedings

2. On 30 November 2012, the Pre-Trial Judge ruled, in the confidential and *ex parte* Decision, on the confidential and *ex parte* Application.

3. On 3 December 2012, the Pre-Trial Judge made the participants in the proceedings and the public aware of the fact that he issued, on 30 November 2012, the confidential and *ex parte* Decision.⁵

III. The requests of the Parties

4. The Prosecution wishes, at this stage, to provide further information to the participants in the proceedings regarding the respective contents of the confidential and *ex parte* Application and of the confidential and *ex parte* Decision.

¹ STL, *The Prosecutor v Ayyash et al.*, Case no. STL-11-01/PT/PTJ, Prosecution Notice pursuant to Decision of 30 November 2012, confidential and *ex parte*, 7 December 2012.

² STL, *The Prosecutor v Ayyash et al.*, Case no. STL-11-01/PT/PTJ, Joint Defence Motion for Access to Prosecution Application to Withhold Witnesses and Exhibits from the Rule 91 Filing and for an Order for Non-Disclosure of Certain Statements of Witnesses and Exhibits Related to Witness Protection, pursuant to Rules 116 and 117 and to the Decision Granting this Application, public, 7 December 2012.

³ STL, *The Prosecutor v Ayyash et al.*, Case no. STL-11-01/PT/PTJ, Prosecution Application to Withhold Witnesses and Exhibits from the Rule 91 Filing and for an Order for Non-Disclosure of Certain Statements of Witnesses and Exhibits Related to Witness Protection, pursuant to Rules 116 and 117, confidential and *ex parte*, 14 November 2012.

⁴ STL, *The Prosecutor v Ayyash et al.*, Case no. STL-11-01/PT/PTJ, Decision Regarding the Prosecution’s Application relating to the Temporary Suspension of the Disclosure of Certain Information and Documents, confidential and *ex parte*, 30 November 2012.

⁵ STL, *The Prosecutor v Ayyash et al.*, Case no. STL-11-01/PT/PTJ, Order To Make Public the Disposition of the Decision regarding the Prosecution’s Application relating to the Temporary Suspension of the Disclosure of Certain Information and Documents, 3 December 2012

5. The Defence seeks disclosure to it of the confidential and *ex parte* Decision, if necessary after redaction, as well as the confidential and *ex parte* Application, if necessary after redaction authorised by the Pre-Trial Judge. The Defence requests, moreover, suspension of the confidential and *ex parte* Decision on the grounds that it was not heard before that Decision was rendered and that this was in violation of the adversarial principle.

IV. Statement of reasons

6. The Pre-Trial Judge notes that the Prosecution seized him with a reasoned confidential and *ex parte* application, which he granted. According to the confidential and *ex parte* Decision, the Pre-Trial Judge deemed it sufficient to inform the participants of the existence of that application in conformity with the principle of publicity of the proceedings, whilst ensuring the confidentiality of certain facts which could not be disclosed at this stage in the proceedings.

7. Since the Prosecution wishes now to disclose to the Defence and to the Legal Representative of Victims some of the content of the confidential and *ex parte* Application in order to better inform them of its initial request, the Pre-Trial Judge has no objection thereto. However, the Pre-Trial Judge considers that the most appropriate manner in which to proceed would be for the Prosecution to file a confidential version of the confidential and *ex parte* Application, if necessary in redacted form. As a consequence, the Pre-Trial Judge authorises the Prosecution to do so.

8. Having regard to the confidential and *ex parte* Decision, the Pre-Trial Judge recalls that it was rendered in that form after he had accepted the request from the Prosecution to protect the information it did not wish to disclose at this stage in the proceedings for security reasons. Insofar as the Prosecution now deems that some of the content of the confidential and *ex parte* Application may be disclosed to the Defence and to the Legal Representative of Victims, the Pre-Trial Judge considers that the same can be the case for the content of the confidential and *ex parte* Decision. As with the confidential and *ex parte* Application, the most appropriate manner in which to proceed is to file a confidential version of the confidential and *ex parte* Decision, if necessary in redacted form. It is then incumbent upon the Prosecution to submit to the Pre-Trial Judge any suggestions for redaction of that Decision.

9. Regarding the Defence request to suspend the confidential and *ex parte* Decision, the Pre-Trial Judge notes that, in accordance with the Rules, he may be seized in a confidential and *ex parte* manner by a party that so requires it. Should he consider it to be justified, the Pre-Trial

Judge may render Decisions of the same kind, without being obliged to hear the other parties. The Pre-Trial Judge points out moreover that the confidential and *ex parte* Decision is a transitional measure which is not based on Rules 116 to 118 of the Rules, but on Rule 77 (A) of the Rules, precisely in order to allow the Prosecution to gather the information needed with regard to any protective measures to be sought. The Defence motion of 7 December 2012 on this point is, thus, unfounded.

V. Disposition

FOR THESE REASONS,

Pursuant to Rule 77 (A) of the Rules,

THE PRE-TRIAL JUDGE,

DECLARES the Prosecution's motion of 7 December 2012 founded and the Defence motion of 7 December 2012 partially founded;

AUTHORISES the Prosecution to file a confidential version of the confidential and *ex parte* Application, if necessary, in redacted form;

ORDERS the Prosecution to inform him of suggestions for redaction of the confidential and *ex parte* Decision by 14 December 2012 at 16.00 hours at the latest; and

DISMISSES the Defence motion of 7 December 2012 in all other respects.

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

Leidschendam, 12 December 2012

[stamp]

[signature]



Daniel Fransen
Pre-Trial Judge