

**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: **19 March 2013**

Original language: **English**

Classification: **Public**

THE PROSECUTION
v.
SALIM JAMIL AYYASH
MUSTAFA AMINE BADREDDINE
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA

**DECISION ON PROSECUTION NOTICE OF DISCLOSURE AND REQUEST TO
FILE AN UPDATED EXHIBIT LIST DATED 1 MARCH 2013**

Office of the Prosecution:
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. Introduction

1. In this decision, the Pre-Trial Judge rules on the Prosecution's request to file an Updated Exhibit List and Notice on Disclosure.¹

II. Procedural History

2. On 21 December 2012, the Prosecution filed a request to amend the witness and exhibit lists and for authorisation for further disclosure.²

3. On 15 January 2013, Counsel for Messrs Ayyash,³ Badreddine,⁴ and Sabra⁵ filed their respective responses to the Request. Counsel for Mr. Oneissi joined the Sabra Response "in all respects".⁶

4. On 27 February 2013, the Pre-Trial Judge issued his decision on the Request.⁷

5. On 1 March 2013, the Prosecution filed the Second Request.

6. On 5 March 2013, the Defence indicated that it had no intention of responding to the Second Request.⁸

¹ STL, *Prosecution v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Prosecution Request to file Updated Exhibit List and Notice on Disclosure, Confidential, 1 March 2013 (the "Second Request"). All further references to filings and decisions relate to this case number unless otherwise stated.

² Prosecution Request to Amend the Witness and Exhibit Lists and Authorization for Further Disclosure (Confidential with Confidential Annexes A to I), 21 December 2012 (the "Request").

³ Ayyash Response to Prosecution Request to Amend the Witness and Exhibit Lists and Authorization for Further Disclosure, confidential, 15 January 2013 (the "Ayyash Response").

⁴ *Réponse de la Défense de M. Badreddine à la requête du Procureur aux fins d'amendement de ses listes de pièces et de témoins et de divulgation de pièces supplémentaires*, confidential, 15 January 2013 (the "Badreddine Response") with a public redacted version dated 17 January 2013.

⁵ Sabra Response to Prosecution Request to Amend the Witness and Exhibits Lists and Authorisation for Further Disclosure, confidential, 15 January 2013 (the "Sabra Response").

⁶ The Defence for Hussein Hassan Oneissi Joinder to the 'Sabra Response to Prosecution Request to Amend the Witness and Exhibits Lists and Authorisation for Further Disclosure' dated 15 January 2013, confidential, 15 January 2013. Counsels for the four "co-accused" are hereinafter collectively referred to as the "Defence".

⁷ Decision on Prosecution Request of 21 December 2012 to Amend the Witness and Exhibit Lists and For Authorisation for Further Disclosure, 27 February 2013 (the "Decision of 27 February 2013"); A public redacted version of the Request was filed on the same day. The "Witness List" and the "Exhibit List" were filed as confidential Annexes B and C, respectively, to the Prosecution's Submission Pursuant to Rule 91, confidential, 15 November 2012, with a public redacted version of the submission dated the same day; Corrigendum to Prosecution Request to Amend the Witness and Exhibit Lists and Authorization for Further Disclosure, confidential, 28 January with a public redacted version dated the same day.

⁸ Pursuant to correspondence between the Pre-Trial Chamber's Senior Legal Officer and Counsel for Mr. Sabra, dated 5 March 2013

III. The Decision of 27 February 2013

7. In the Decision of 27 February 2013, the Pre-Trial Judge *inter alia* granted the Prosecution leave to amend its Witness List by adding 27 witnesses, and to change the mode of the expected testimony or summary of three witnesses. The Pre-Trial Judge further ordered the Prosecution, within two working days of the decision, to file either an amended Exhibit List containing the authorised amendments, or a submission containing a motivated proposal for an alternative date for the filing of the Exhibit List.

IV. Submissions

8. In the Second Request, the Prosecution notifies the Pre-Trial Judge that it has complied with most of the orders in the Decision of 27 February 2013.⁹ However, the filing of an amended Exhibit List — together with any consequential disclosure — remains to be determined.¹⁰ The Prosecution seeks leave to effect the filing of an amended Exhibit List through a series of instalments over several weeks, organised by subject area, with the final instalment to be filed by 15 April 2013. The Prosecution also seeks authorisation from the Pre-Trial Judge to disclose any new materials that are added to the Exhibit List by 15 April 2013.¹¹

9. According to the Prosecution, the process of collating and listing all of the underlying items¹² that the Prosecution may wish to tender into evidence at trial will continue to be a resource intensive and time consuming process.¹³ The Prosecution recalls that it has previously mentioned that the process of listing all underlying items separately on the exhibit list “may affect many exhibits on the exhibit list”.¹⁴

10. The Prosecution also indicates that complying with the Decision of 27 February 2013 requires the review of approximately 5,000 documentary exhibits in order to determine the extent to which underlying items should be placed on the Exhibit List.¹⁵

⁹ Second Request, para. 1 a et b, paras 3-5.

¹⁰ *Id.* para. 1 c, 2.

¹¹ *Id.*, para. 12.

¹² *Id.*, para. 6, *See also* Decision of 27 February 2013, paras 10, 53 and 54. Underlying items are those materials which are referenced or attached to or contained within currently listed exhibits.

¹³ Second Request, para. 6.

¹⁴ *Id.*, para. 7; Notice of Upcoming Prosecution Request to Amend the Witness and Exhibit Lists and Further Disclosure, and Issues Pertaining to the Exhibit List, 19 December 2012 (“Prosecution Notice”); Request.

¹⁵ Second Request, paras. 8 and 9; *See also* Prosecution Notice, para. 8; Request, para. 38.

11. According to the Prosecution, any potential prejudice to the Defence is mitigated by the fact that a significant portion of the underlying items that will be added to the Exhibit List have already been disclosed to the Defence.¹⁶

V. Discussion

12. The Pre-Trial Judge considers that the process proposed by the Prosecution, which consists of a series of instalments over the next weeks culminating in the finalisation of the amended Exhibit List and its associated disclosure by 15 April 2013, is appropriate for the following reasons.

13. First, the Pre-Trial Judge notes that, on several previous occasions, the Prosecution has sought guidance from the Pre-Trial Judge on this matter, while maintaining that the process of listing all underlying items separately on the Exhibit List would affect many exhibits on the exhibit list.¹⁷ The Pre-Trial Judge notes the Prosecution's willingness to seek clarification on this specific issue, and to have it resolved, so that the Defence is provided with the information which the Pre-Trial Judge deems necessary.

14. Second, many of the exhibits concerned have already been disclosed to the Defence, and the Pre-Trial Judge observes that no submissions were received from the Defence in respect of the Second Request.

15. Third, the Pre-Trial Judge notes the recent decision on vacating the date for the start of trial,¹⁸ in which he considered submissions by the Defence¹⁹, the Legal Representative of Victims²⁰ and the Prosecution²¹ on vacating the tentative date for the start of the trial in light of the preparatory work that remains to be completed. The Pre-Trial Judge considers that, having rendered the 21 February 2013 Decision to vacate the tentative date for the start of trial, the consequences – if any – of granting the Second Request will be taken into consideration when Pre-Trial Judge determines a new tentative date for the start of the trial. Therefore, provided the disclosure is made on a rolling basis but in any event completed by

¹⁶ *Id.*, para. 10; Prosecution Notice on Disclosure, 28 February 2013, paras 2 and 6.

¹⁷ Prosecution Notice, para. 9, Request, para. 38.

¹⁸ Decision Relating to the Defence Motion to Vacate the Date for the Start of Trial, 21 February 2013 (the "21 February 2013 Decision").

¹⁹ Joint Defence Note Regarding Requirements to Prepare for Trial and Observations on Tentative Date for the Start of Trial, 8 March 2013.

²⁰ Observations of the Legal Representative of Victims Regarding the Preparedness and the Date for the Start of the Trial, 6 March 2013.

²¹ Prosecution Submissions on a Tentative Date for the Start of Trial, 8 March 2013.

15 April 2013, the Pre-Trial Judge authorises the resubmission of the amended Exhibit List and the resulting disclosure. The Pre-Trial Judge therefore grants the Second Request.

FOR THESE REASONS,

THE PRE-TRIAL JUDGE,

PURSUANT TO Article 18(2) of the Statute and Rules 77(A), 89(B) and 91(G)(iii) of the Rules;

GRANTS the Request;

AUTHORISES the Prosecution to amend the Exhibit List through a series of instalments organised by subject area;

ORDERS that the process be completed and the final instalment filed by 15 April 2013 at the latest; and

AUTHORISES the disclosure by the Prosecution of any previously undisclosed items that are added to the Exhibit List by 15 April 2013 at the latest.

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

Leidschendam, 19 March 2013.



Daniel Fransen
Pre-Trial Judge

