

**THE PRESIDENT**

Case No.: STL-11-01/PT/PRES
Before: Judge David Baragwanath, President
Registrar: Mr Herman von Hebel
Date: 12 April 2013
Original language: English
Classification: Public

THE PROSECUTOR

v.

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

**PUBLIC REDACTED VERSION OF ORDER ON REQUEST TO REDACT
TRANSCRIPT OF HEARING**

Prosecutor:
Mr Norman Farrell

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

Head of Defence Office:
Mr François Roux

Counsel for Mr Mustafa Amine Badreddine:
Mr Antoine Korkmaz
Mr John Jones

Counsel for Mr Hussein Hassan Oneissi:
Mr Vincent Courcelle-Labrousse
Mr Yasser Hassan

Counsel for Mr Assad Hassan Sabra:
Mr David Young
Mr Guénaél Mettraux





INTRODUCTION

1. On 1 March 2013, the Registrar filed confidentially the “Registry Submission Pursuant to Rule 48(C) Seeking Clarification and Relief Regarding the President’s Decision of 21 December 2012”,¹ related to the Defence retainer of Dr Nashabe.
2. On 21 March 2013 I conducted an oral hearing to give counsel the opportunity to respond to my provisional views. During the hearing I delivered an interim oral ruling that the transcript of that hearing would remain confidential until I had received counsel’s further submissions on the issue of confidentiality.
3. On 27 March 2013, the Registry filed its submissions, stating that I should order redactions of the relevant transcripts for the “proper administration of justice”,² [REDACTED.³] The Registrar cites Rule 137 of the Tribunal’s Rules of Procedure and Evidence as an example of the powers of Judges to redact information from the public record for reasons related to (i) public order or morality; (ii) security; (iii) a State’s national security interests; (iv) non-disclosure of the identity of a victim or witness; or (v) the interests of justice.⁴ [REDACTED.⁵]
4. On 28 March, the Defence Office and Defence counsel filed responses to the Registrar’s submissions on redactions.⁶ As a matter of principle, they oppose redactions which would convert this

¹ STL, *Prosecutor v Ayyash et al.*, STL-11-1/PT/PRES, Registry Submission Pursuant to Rule 48(C) Seeking Clarification and Relief Regarding the President’s Decision of 21 December 2012, Confidential, 1 March 2013 (“Registry Submission on Clarification and Relief”) (a public redacted version was filed on 8 March 2013). All further references to filings and decisions relate to this case number unless otherwise stated.

² Registry Submission to Redact the Transcript of the 21 March 2013 Hearing in the President’s Office with Confidential Annex 1, Confidential, 27 March 2013 (“Registry Submission on Redactions”), para 7

³ Registry Submission on Redactions, paras 9-10.

⁴ Registry Submission on Redactions, para. 8.

⁵ Registry Submission on Redactions, para. 13.

⁶ Réponse du Bureau de la Défense à la demande du Greffe aux fins d’expurgation du compte-rendu d’audience du 21 mars 2013, Confidential, 28 March 2013 (“Head of Defence Office Response”); Submissions of the Defence for Mustafa Badreddine on Registry’s Proposed Redactions to Transcript of Hearing of 21 March 2013 in the President’s Office, 28 March 2013 (“Badreddine Response”); Response of the Defence for Mr Hussein Hassan Oneissi to the “Registry Submission to Redact the Transcript of the 21 March 2013 Hearing in the President’s Office”, 28 March 2013 (“Oneissi Response”); Ayyash Joinder in Defence and Defence Office Submissions Regarding Proposed Redactions to Transcript of Hearing of 21 March 2013, 28 March 2013.



Tribunal into a place ruled by a “state of exception” (“*exceptionnalisme de ce Tribunal*”) where everything becomes confidential and secret.⁷ On the merits, they reiterate that [REDACTED],⁸ that the public has an interest in the information sought to be redacted because it relates to the judicial process and its implementation,⁹ that Rule 137 is inapplicable to the present case since the Registry has not demonstrated any of the five grounds listed in that Rule,¹⁰ and that, in any event, the test to be applied in these cases is one of necessity and the proposed redactions are a disproportionate interference with the principle that justice be rendered publicly.¹¹

DISCUSSION

5. I first note that the question before me is not that the Registrar is seeking to prevent disclosure of certain information *to the Defence*. The Registrar is instead seeking to maintain confidentiality only *vis-à-vis* the public in relation to certain procedures it follows in discharging its duty to ensure the security of the Tribunal, its staff and other individuals affected by its work—such procedures are known to the Defence Office and to Defence counsel.

6. There is no question that the public in general, and the people of Lebanon in particular, are presumptively entitled to follow the litigation within the Special Tribunal for Lebanon. The principle of open justice, that this Tribunal and its Appeals Chamber have emphasized time and again, does not need reiteration.¹² By rendering the administration of justice transparent, publicity contributes to the achievement of a fair trial.

⁷ Head of Defence Office Response, para. 4 (referring to the transcript of the hearing); *see also* Badreddine Response, para. 4

⁸ Head of Defence Office Response, para. 5; *see also* Badreddine Response, para. 5 (ii).

⁹ Oneissi Response, para. 5

¹⁰ Oneissi Response, para. 3.

¹¹ Badreddine Response, paras 5-6.

¹² *See* STL, *In the matter of El Sayed*, CH/AC/2013/01, Public Redacted Version of Decision on Appeal by the Prosecutor Against Pre-Trial Judge’s Decision of 11 January 2013, Dated 28 March 2013, para. 9 (referring to STL, *Prosecutor v. Ayyash et al*, Case No. STL-11-01/PT/AC, *Corrected Version* Decision on the Pre-Trial Judge’s Request Pursuant to Rule 68(G), 29 March 2012, para. 12); Public Redacted Version of Second Interim Decision Filed Confidentially on 10 September 2012, 8 October 2012 (“Second Interim Decision”), para. 50.



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7. The requirement for publicity is, however, not absolute. While every exception to such a fundamental principle must be treated cautiously, the very interests of justice, which the Tribunal must uphold, might in some circumstances be defeated unless confidentiality is maintained.¹³ Such (limited) restrictions to publicity are foreseen by the Tribunal's Rules of Procedure and Evidence and they are consonant with rules existing in various legal systems¹⁴ as well as international criminal procedure.¹⁵ They do not relate to the publicity required of a final judgment of acquittal or conviction.¹⁶ The Defence Office itself has requested that confidentiality *vis-à-vis* the public be imposed during the present litigation, when making certain information public was perceived to be potentially prejudicial to a person not participating in the proceedings before me.¹⁷

8. [REDACTED].

¹³ See STL, *In the matter of El Sayed*, CH/AC/2011/01, Decision on Partial Appeal by Mr. El Sayed of Pre-Trial Judge's Decision of 12 May 2011, 19 July 2011, para. 48 ("[T]he right to information may need to be reconciled with other interests, such as the principle of good administration of justice [...] Whenever there may arise a conflict among these interests, it falls to courts to strike a balance between them, in light of the general principles of international law on human rights."); see also, *mutatis mutandis*, STL, CH/AC/2010/02, Decision on Appeal of Pre-Trial Judge's Order Regarding Jurisdiction and Standing, 10 November 2010 (upholding the Pre-Trial Judge's previous order detailing the right of access of an individual to his previous criminal case file, but subjecting it to exceptions).

¹⁴ See, e.g., Art. 249 Lebanon, *Code of Criminal Procedure* ("Proceedings before the Criminal Court shall be held in public unless the President decides to hold them *in camera* to preserve law and order or public morals."), Art. 484 Lebanon, *Code of Civil Procedure* ("Hearings are conducted publicly, otherwise they are considered to be null. The court may, *proprio motu*, or upon the request of a party, conduct the hearing confidentially to preserve public order or decency or the sanctity of family. But the judgment is pronounced in public."); see also *Code of Criminal Procedure* (France), Arts 306 ("Les débats sont publics, à moins que la publicité ne soit dangereuse pour l'ordre ou les mœurs. Dans ce cas, la cour le déclare par un arrêt rendu en audience publique."), 400 ("Les audiences sont publiques. Néanmoins, le tribunal peut, en constatant dans son jugement que la publicité est dangereuse pour l'ordre, la sérénité des débats, la dignité de la personne ou les intérêts d'un tiers, ordonner, par jugement rendu en audience publique, que les débats auront lieu à huis clos").

¹⁵ See, e.g., Rules 54 bis, 69, 75, 79 ICTY RPE, listing various grounds for non-disclosure of information contained in the record of proceedings to the public; see also Art. 6 (1) of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (Adopted 4 November 1950, 213 U.N.T.S. 221) ("Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice").

¹⁶ See Art. 23 STL St. ("The judgement [...] shall be delivered in public.").

¹⁷ Second Interim Decision, para. 49 (referring to [Head of Defence Office's] Request for Review of Registrar's Decision of 27 July 2012 in Relation to the Assignment of a Local Resource Person, 31 August 2012, para. 73, which is now public only in redacted format [see Public Redacted Version of "Request for Review of Registrar's Decision of 27 July 2012 in Relation to the Assignment of a Local Resource Person" Filed 31 August 2012]).



9. But I agree with counsel for Mr. Badreddine that the mere fact that security checks are requested and carried out cannot be a matter requiring confidentiality.¹⁸ This much has already been made public even in the Registry's own filings,¹⁹ and is a common practice before international institutions.

¹⁸ Badreddine Response, para. 5 (ii).

¹⁹ See Registry Submission on Clarification and Relief (public redacted version), para. 28



DISPOSITION

FOR THESE REASONS

I

ORDER that the transcripts of the hearing of 21 March 2013 be made public, with the minimal redactions indicated in the Annex to this Decision.

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

Filed 12 April 2013,

Leidschendam, the Netherlands

Judge David Baragwanath
President

