



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: **16 April 2013**
Original language: **English**
Classification: **Public**

THE PROSECUTOR

v.

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

**DECISION ON JOINT DEFENCE MOTION FOR AN ORDER REGARDING
LEGAL WORKFLOW WITNESS ENTITIES**

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. Introduction

1. In this decision, the Pre-Trial Judge rules on the Joint Defence Motion for an Order regarding Legal Workflow Witness Entities (the “Motion”).¹

II. Procedural History

2. On 21 February 2013, Counsel for Messrs Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi and Assad Hassan Sabra (the “Defence”) filed the Motion jointly.

3. On 5 March 2013, the Pre-Trial Judge issued a Scheduling Directive inviting the Registry to file submissions on the issues raised in the Motion by 13 March 2013.² The Registry indicated its intention not to file any submissions.³

4. On 13 March 2013, the Prosecution filed its response to the Motion (the “Prosecution Response”).⁴

5. On 22 March 2013, the Registry sought leave — pursuant to Rule 48(C) of the Rules of Procedures and Evidence (the “Rules”) — to file submissions in response to the Motion and to the Prosecution Response, and included its submissions therein (the “Registry Response”).⁵

III. Submissions

A. The Motion

6. The Defence avers that the Prosecution has not provided the information required in the relevant metadata fields regarding the witness entities in the Legal Workflow System

¹ STL, *Prosecution v. Ayyash et al*, Case No. STL-11-01/PT/PTJ, Joint Defence Motion for an Order by the Pre-Trial Judge regarding Legal Workflow Witness Entities, 21 February 2013. All further references to filings and decisions relate to this case number unless otherwise stated.

² Scheduling Directive from the Pre-Trial Judge, 5 March 2013.

³ Pursuant to emails between the Pre-Trial Chamber and Court Management Services Section dated 5 March 2013. The Registry notified the Pre-Trial Judge that it was not necessary to make any submissions considering that there was no “technical obstacle from Legal Workflow’s perspective impeding the implementation” of the Defence Motion.

⁴ Prosecution Response to Joint Defence Motion for an Order for Legal Workflow Witness Entities, 13 March 2013.

⁵ Registry Submission pursuant to Rule 48(C) and in Response to the Joint Defence Motion and the Prosecution Submission regarding Legal Workflow Witness Entities, 22 March 2013.

("LWS"), and disclosed pursuant to the Prosecution's pre-trial brief, despite having filed that brief in November 2012.⁶ The Defence also notes that the disclosure of materials related to these witnesses did not respect the Disclosure Protocol. The Disclosure Protocol was finalised on 27 February 2012, following discussions between the Prosecution and the Defence Office, and consultations with other concerned organs in the Tribunal (the "Disclosure Protocol"). It established *inter alia* that the Prosecution is "to disclose information in a methodical way".⁷

7. In particular, the Defence observes that the completion of the metadata fields for witnesses disclosed as part of the Prosecution's pre-trial brief "has been haphazard at best", and that only the Prosecution can update the metadata fields.⁸ The Defence seeks an order requiring the Prosecution to update all relevant metadata fields within ten days of this order.⁹

8. The Defence claims furthermore that it is "hampered by the lack of" electronic relations created by the Prosecution between witness entities and witness statements or other relevant materials.¹⁰ Once again, the Defence seeks an order obliging the Prosecution to establish these relationships in the LWS.¹¹

9. Lastly, in respect of both of the foregoing issues, the Defence requests timely notification by the Prosecution when witness entities are updated.¹²

B. The Prosecution Response

10. The Prosecution recalls that, following the Pre-Trial Judge's stated position that the Parties try and resolve any issues informally before seising him of a dispute,¹³ the Defence Office and the Prosecution held a meeting on 11 December 2012 during which *inter alia* the issue of the creation of the "Witness Entities" and the notification of "Witness Entity"

⁶ Request, para. 9

⁷ Disclosure Protocol, version 1.5, 27 February 2012, para. 5.

⁸ Request, para. 8.

⁹ *Id.*, para. 9.

¹⁰ *Id.*, para. 10.

¹¹ *Id.*, para. 13.

¹² *Id.*, para. 14.

¹³ Response, para. 4, citing Order Relating to the Motion from the Defence for Mr. Sabra for Compliance with the Pre-Trial Judge's Order of 24 January 2012 and Scheduling of a Time Frame for Presenting Observations on the Prosecution's Application of 21 December 2011, 23 March 2012.

updates was discussed.¹⁴ The Prosecution notes that until now, however, the Defence has not reverted to the Prosecution about the outcome of the meeting.¹⁵

11. The Prosecution also notes that the issues raised in the Motion are directly related to the functionality of the LWS. As such, these issues concern the Registry. Furthermore, the Prosecution considers that if, according to the Defence, the LWS does not allow for automatic notification of an updated witness entity but rather requires that this be done manually when a witness entity is updated or when documents are linked, it is not for the Prosecution to do so.¹⁶

12. Lastly, with respect to the link between witness statements and witness entities, the Prosecution observes that the “relationship” icon that enables LWS users to link witness entities and witness statements is no longer visible, but that it still exists. Hence, the Prosecution refutes the Defence’s assertion that disclosure has been undertaken since November 2012 “with no discernible logic”.¹⁷

13. For these reasons, the Prosecution concludes that the Defence’s complaints are essentially an “alleged information-technology shortcoming” that falls to be resolved by the Registry.¹⁸

C. The Registry Response

14. The Registry requests leave from the Pre-Trial Judge to file its submissions after the deadline set by the Scheduling Directive.¹⁹ It indicates that the Prosecution Response was filed on the same day as the deadline for the Registry to file its submissions. This prevented the Registry from anticipating the issues that would be raised by the Prosecution and responding in time.²⁰ Furthermore, in light of a number of technical issues raised in the

¹⁴ Response, para 4.

¹⁵ *Ibid*

¹⁶ *Id.*, paras 5 and 7.

¹⁷ *Id.*, paras 13 and 14

¹⁸ *Id.*, para 16

¹⁹ Registry’s Response, paras 5 and 8. Rule 48(C) of the Rules provides that “[t]he Registrar, in the execution of his functions, may make oral and written representations to the President or Chambers on any issue that affects the discharge of his functions, with notice to the Prosecutor, the Defence and the Head of Defence Office where appropriate.”

²⁰ *Id.*, para. 6

Prosecution Response, the Registry considers that its response will be of assistance to the Pre-Trial Judge.²¹

15. With respect to the witness entity metadata fields, the Registry explains that there is no technical impediment in the LWS to their being updated by the Party that has created them.²²

16. As for the “relationship” icon, the Registry explains that it was deactivated in order to improve the performance of the LWS after the Registry had received complaints in this regard from the Parties in late November 2012, and recalls that the stakeholders were all informed of the deactivation through Release Notes dated 4 December 2012.²³

17. Lastly, regarding the notification of updates of witness entities, the Registry recalls that when the LWS was designed, automatic notifications were not anticipated as updating metadata fields was considered to be an exceptional measure; manual notices provided by the updating party thus remain the only possibility.²⁴

IV. Discussion

18. The Pre-Trial Judge notes that the issues raised by the Parties regarding witness entities in the LWS are technical issues related to the functionality and performance of the LWS. The Pre-Trial Judge further observes that the Registry felt compelled to file submissions in this matter only once the Prosecution Response had been filed, as it raised issues of concern to the former. The Pre-Trial Judge considers that the Registry’s Response clarifies these technical issues, particularly in respect of the Prosecution’s assertions regarding the LWS. The Registry Response should therefore be allowed on this occasion, even though it was filed past the deadline set by the Pre-Trial Judge.

19. The Pre-Trial Judge recalls that although it is not judicially binding, the Disclosure Protocol is intended to ensure the fair and effective implementation of the disclosure obligations of the Prosecution, the Defence and the Legal Representative of Victims. The Pre-Trial Judge notes furthermore that the Disclosure Protocol states *inter alia* that the Parties

²¹ *Id.*, para. 7

²² *Id.*, para. 10

²³ *Id.*, para. 13, Release Notes – LW edition 1.16 (dated 26 November 2012 and emailed to stakeholders on 4 December 2012): “Relationship indicator has been disabled since it caused the performance issues. Upon stabilizing the system core functions this will be reviewed”

²⁴ *Id.*, para. 15

“shall attempt to resolve any difficulties or disagreement regarding disclosure amicably before bringing it to the attention of the Pre-Trial Judge or a Chamber, unless the urgency or the impact of such difficulties requires immediate judicial intervention”.²⁵ In this regard, the Pre-Trial Judge notes that the Parties have not demonstrated any urgency requiring judicial intervention at this stage, and he recalls that his intervention should only be sought as a last resort.

20. The relief sought by the Defence is, in principle, reasonable. Furthermore, the Pre-Trial Judge and Chambers of the Tribunal, as well as the Legal Representative of Victims, will benefit from the provision by the Parties of materials via the LWS in a manner that contains all relevant information and is useful, that is logically structured, and that allows for meaningful searches and analyses.

21. Nevertheless, the Pre-Trial Judge considers that the Defence should first have attempted to resolve these technical issues informally with the Prosecution before seising him with a motion.

22. The Pre-Trial Judge concludes that, in accordance with paragraph 8 of the Disclosure Protocol, the Prosecution and the Defence, in consultation with the Registry and in light of the Registry Response, must “attempt to resolve any difficulties or disagreement regarding disclosure amicably before bringing it” to his attention should that prove necessary.

²⁵ Disclosure Protocol, Part 1, para. 8

V. Disposition

FOR THESE REASONS,

THE PRE-TRIAL JUDGE,

PURSUANT TO Rule 77(A) of the Rules, and Paragraph 8 of the Disclosure Protocol,

GRANTS the Registry's request for leave to file its Response;

DISMISSES the Motion;

ORDERS the Parties to file a joint notice before the Pre-Trial Judge — by 16:00 on Friday, 3 May 2013 at the latest — as follows: (1) informing him of the attempts made amicably to resolve the technical issues associated with the functionality of the LWS and witness entities, taking into consideration the Registry's Response, and following consultations with the Registry where necessary; (2) detailing the results of the attempts made; together with (3) an update on the status of the remaining technical issues.

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

Leidschendam, 16 April 2013.



Daniel Fransen
Pre-Trial Judge

