



THE PRE-TRIAL JUDGE

Case No.: **STL-11-01/PT/PTJ**

The Pre-Trial Judge: **Judge Daniel Fransén**

The Registrar: **Mr. Daryl Mundis, Acting Registrar**

Date: **10 May 2013**

Original language: **English**

Classification: **Public**

THE PROSECUTOR

v.

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

**DECISION ON THE LEGAL REPRESENTATIVE OF VICTIMS' REQUEST FOR
LEAVE OF ELEVEN WEEKS TO COMPLY WITH THE PRE-TRIAL JUDGE'S
DECISION ON PROTECTIVE MEASURES**

Office of the Prosecutor:
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Mr. Eugene O'Sullivan

Legal Representative of Victims:
Mr. Peter Haynes

Counsel for Mr. Mustafa Amine Badreddine:
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Counsel for Mr. Hussein Hassan Oneissi:
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Counsel for Mr. Assad Hassan Sabra:
Mr. David Young



I. INTRODUCTION

1. In this decision, the Pre-Trial Judge rules on the Legal Representative of Victims' ("LRV") request for leave of eleven weeks within which to comply with the Pre-Trial Judge's decision of 19 December 2012 on Protective Measures (the "Request").¹

II. PROCEDURAL BACKGROUND

2. On 18 May 2012, the Pre-Trial Judge issued a decision regarding the access of the Victims' Participation Unit ("VPU") to case materials, and on the modalities of victims' participation in the proceedings before him.²

3. On 29 October 2012³ and 2 November 2012,⁴ the LRV submitted two motions for anonymity as a protective measure in respect of 23 Victims Participating in the Proceedings ("VPP" or "VPPs").

4. On 2 November 2012, the LRV submitted a motion for confidentiality as a protective measure of eight VPPs.⁵

5. On 19 December 2012, the Pre-Trial Judge issued a decision on the LRV's First, Second and Third Motions for Protective Measures for VPPs in which *inter alia* he declined to recognise the validity of total anonymity as a protective measure.⁶

6. On 8 February 2013, the LRV filed an appeal against the Decision of 19 December 2012.⁷

7. On 10 April 2013, the Appeals Chamber rendered its decision on the LRV's appeal against the Decision of 19 December 2012, in which the Appeals Chamber dismissed the

¹ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01-PT/PTJ, Request on behalf of the Legal Representative of Victims for a Leave of Eleven Weeks to Allow Compliance with the Pre-Trial Judge's Decision on Protective Measures, 11 April 2013. All further references to filings and decisions relate to this case number unless otherwise stated.

² Decision on the VPU's Access to Materials and the Modalities of Victims' Participation in Proceedings before the Pre-Trial Judge, 18 May 2012 ("Decision of 18 May 2012").

³ First Motion of the Legal Representative of Victims for Protective Measures (Anonymity) of Seventeen Victims Participating in the Proceedings, 29 October 2012.

⁴ Second Motion of the Legal Representative of Victims for Protective Measures (Anonymity) of Six Victims Participating in the Proceedings, 2 November 2012.

⁵ Third Motion of the Legal Representative of Victims or Protective Measures (Confidentiality) of Eight Victims Participating in the Proceedings, 2 November 2012.

⁶ Decision on the Legal Representative of Victims' First, Second and Third Motions for Protective Measures for Victims Participating in the Proceedings, 19 December 2012 ("Decision of 19 December 2012").

⁷ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/AC/AR126.3, Appeal of the Legal Representative of Victims against the Decision of the Pre-Trial Judge Refusing Protective Measures, 8 February 2013.

LRV's appeal and found that anonymity is "generally prejudicial to and inconsistent with the rights of the accused and the fairness of the trial" and "not a valid form of victim participation within the meaning of Article 17 of the Statute".⁸

8. On 11 April 2013, the LRV filed the Request.

III. SUBMISSIONS

9. Following the Appeals Chamber Decision, the LRV is required to inform the 23 VPPs — on whose behalf he had applied for anonymity as a protective measure — that their identities "should be disclosed sufficiently in advance to give the Defence adequate time to prepare."⁹ The LRV makes the following submissions in support of his request for 11 weeks in which to do so:

- a. The concerned VPPs reside either in different areas of Lebanon, or abroad, and contacting them will require the LRV (or his Co-Legal Representatives) to travel, which will be preceded by three weeks of "logistical organization".¹⁰
- b. The LRV cannot speculate on the time each VPP will require to decide between retaining their VPP status in the absence of anonymity as a protective measure, or asking for alternative protective measures, or withdrawing from the proceedings. The LRV estimates that a period of "minimum five weeks" is required for these 23 VPPs to consider their options and make an informed decision.¹¹
- c. Should some or all of the VPPs decide to retain their VPP status and seek alternative protective measures, the LRV, in conjunction with the Tribunal's Victims and Witnesses Unit ("VWU") may have to re-evaluate the VPPs' assessed risk in light of the measures now available. In any event, the LRV must provide the risk assessments and submissions on the appropriateness of

⁸ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/AC/AR126.3, Decision on Appeal by Legal Representative of Victims against Pre-Trial Judge's Decision on Protective Measures, 10 April 2013 ("Appeals Chamber Decision"), para. 39.

⁹ *Id.*, para. 39.

¹⁰ Request, para. 6.

¹¹ *Id.*, para. 7.

the alternative protective measures requested, where applicable. This process is envisaged to take a further three weeks.¹²

10. In sum, the LRV estimates that as far as these 23 VPPs are concerned, complying with the 19 December 2012 Decision “will take a minimum of eleven weeks (until 28 June 2013).” The LRV avers that this estimation “is in line with that made by the LRV in its Observations Regarding the Preparedness and the Date for the Start of the Trial”, and that any further extensions of time as may become necessary will be submitted as and when appropriate.¹³

11. The Parties declined to file responses to the Request.

IV. DISCUSSION

12. The Rules of Procedure and Evidence (the “Rules”) do not provide a ready determination of the time to be accorded for the reconsideration and re-evaluation of a VPP’s request for protective measures. Nevertheless, two Rules when read together are informative.

13. Rule 51(B)(v) provides that the VPU shall:

inform, *in a timely manner*, the victims of relevant decisions of the Tribunal that might have an impact on their rights or specific interests, subject to any confidentiality restrictions.¹⁴

14. Rule 86(C)(i) provides:

The Pre-Trial Judge shall decide a request for the status of victim participating in the proceedings, after seeking submissions from the Parties and the Victims’ Participation Unit on relevant legal issues. *An unsuccessful applicant for the status of victim participating in the proceedings may appeal the decision within seven days after receiving notification under Rule 51(B)(v). [...]* ¹⁵

15. With respect to informing VPPs “in a timely manner” of the Appeals Chamber Decision as a “relevant [decision] of the Tribunal that might have an impact on their rights or specific interests”,¹⁶ the Pre-Trial Judge is not persuaded that three weeks of logistical organisation is required before travel is even undertaken. First, the LRV is ably assisted by

¹² *Id.*, para. 8.

¹³ *Id.*, para. 9, citing Observations of the Legal Representative of Victims Regarding the Preparedness and the Date for the Start of the Trial, 6 March 2013, para. 7.

¹⁴ Emphasis added.

¹⁵ Emphasis added.

¹⁶ Rule 51(B)(v) STL RPE.

two Co-Legal Representatives, both of whom reside in Lebanon, and neither of whom has demonstrated any reason why they cannot effectively inform those VPPs concerned who also reside in Lebanon.

16. Second, pursuant to Rule 51(B)(vi), the VPU is required to “provide all necessary administrative and logistical assistance to victims participating in the proceedings or their legal representatives”. Thus, even where the LRV or his Co-Legal Representatives encounter logistical impediments to informing VPPs in a timely manner, the VPU — which retains an officer in Beirut — remains obliged to assist them. It does not appear that the LRV has sought the VPU’s assistance.

17. With respect to affording VPPs sufficient time in which to consider their options, Rule 86(C)(i) allows an applicant seven days after notification thereof in which to file an appeal against a decision denying the status of VPP. The Pre-Trial Judge considers that applying the same time period of seven days to VPPs who need to reconsider their applications for protective measures is appropriate.

18. In light of the foregoing, the Pre-Trial Judge has determined that:

- a. Given the presence in Lebanon of two Co-Legal Representatives and an officer of the VPU, the “logistical organization” preceding the notification of the VPPs of the Appeals Chamber Decision should in principle not exceed ten working days.
- b. Each VPP is entitled to a maximum of seven working days in which to reassess their VPP status in the absence of anonymity as a protective measure, or to ask for alternative protective measures, or to decide to withdraw from the proceedings. Such time period should naturally run from the date on which each VPP is notified of the Appeals Chamber Decision in a language he understands. However, in the absence of any demonstration from the LRV as to why this entire process should take a minimum of five weeks, the Pre-Trial Judge considers that three weeks is sufficient time in which to notify all of the VPPs and allow them to consider their options and make an informed decision.
- c. Should some or all of the VPPs decide to retain their VPP status and seek alternative protective measures, the LRV and the VWU are entitled to a

further three weeks, at most, to re-evaluate the VPPs' assessed risk in light of the measures available, and to provide revised risk assessments of the appropriateness of the alternative protective measures requested, where applicable.

19. This time amounts to six weeks and ten working days. The LRV filed the Request on 11 April 2013. Six weeks and ten working days from that filing leads to 7 June 2013 as the date by which the LRV must comply with the Decision of 19 December 2012.

V. DISPOSITION

FOR THESE REASONS,

THE PRE-TRIAL JUDGE,

PURSUANT TO the Decision of 18 May 2012 and Rules 77(A) and 89(B) of the Rules;

ORDERS the LRV to file, by 7 June 2013, either:

- a. Notices on behalf of the VPPs concerned that they intend to retain their VPP status in the absence of anonymity as a protective measure, and that no alternative protective measures are sought; and/or
- b. Renewed applications for appropriate protective measures on behalf of the VPPs concerned; and/or
- c. Notices on behalf of the VPPs concerned of their withdrawal(s) from the proceedings.

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

Leidschendam, 10 May 2013.




Daniel Fransen
Pre-Trial Judge

