



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: **Judge Daniel Fransen**

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

Date: **5 June 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 THE 10 AUGUST 2012 "ORDER FOR IMMEDIATE REMOVAL OF DISSEMINATED MATERIAL AND CESSATION OF DISSEMINATION"**

**Office of the Prosecutor:**  
Mr. Norman Farrell

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

**Victims' Legal Representative:**  
Mr Peter Haynes

**Counsel for Mr. Mustafa Amine Badreddine:**  
Mr. Antoine Korkmaz

**The authorities of the Lebanese Republic**

**Counsel for Mr. Hussein Hassan Oneissi:**  
Mr. Vincent Courcelle-Labrousse

**Counsel for Mr. Assad Hassan Sabra:**  
Mr. David Young



1. The Pre-Trial Judge is seized of the Prosecution's "Urgent Request for an Order for Cessation of Dissemination, Immediate Removal of Disseminated Material, and Cessation of Use of Materials" ( the "Urgent Request") dated 10 August 2012.

2. In his Decision of 28 June 2011, the Pre-Trial Judge ordered material supporting the indictment to remain confidential for the purposes *inter alia* of protecting the witnesses by not revealing their identity and "safeguarding the ongoing investigations by not disclosing the techniques that have been employed and the information that has been gathered".<sup>1</sup>

3. In his Decision of 25 May 2012, the Pre-Trial Judge ordered "all third parties to the proceedings not to disseminate material in the proceedings of which they may have knowledge or any information contained therein, which may be subject to a protective measure", unless that material or information becomes public during the course of proceedings.<sup>2</sup>

4. In his Decision of 14 June 2012, the Pre-Trial Judge stated that "the measures set out in the Decision of 25 May 2012 apply to all material disclosed by the Parties and the Victims' Legal Representative".<sup>3</sup>

5. According to the information provided by the Prosecution, [REDACTED]<sup>4</sup> [REDACTED], in which it purported to identify and interview alleged Tribunal witnesses. According to the material filed by the Prosecution, [REDACTED].

6. [REDACTED]<sup>5</sup> [REDACTED].<sup>6</sup>

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<sup>1</sup> STL, *Prosecutor v. Ayyash et al*, Case No. STL-11-01/II, Decision Relating to the Examination of the Indictment of 10 June 2011 Issued Against Mr. Salim Ayyash, Mr. Mustafa Amine Badreddine, Mr. Hussein Hassan Oneissi & Mr. Assad Hassan Sabra, 28 June 2011 (Decision of 28 June 2011), para. 101. In terms of maintaining the confidentiality of the supporting material, the Prosecution had requested that "the application of the Order of 19 January 2011 be continued" (Decision of 28 June 2011, para. 7; see also, paras 98, 100). See STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/I, Order on the Prosecutor's Urgent Motions for Non-Disclosure, 19 January 2011.

<sup>2</sup> Decision of 25 May 2012, Disposition, p. 23; see also paras 50-52 and fn. 46. The Prosecution requested that "the Pre-Trial Judge order that the public, and the media in particular, be prohibited from disseminating any material and information contained therein of which it has knowledge, and which is subject to protection, unless that material or information were to become public during open session proceedings" (para. 50). The requested measure was authorised (para. 52). The measure, "designed to enhance the status of information recognised as deserving of special protection, and proves to be well-founded and reasonable" and is "in keeping with prevailing international case law" (para. 52).

<sup>3</sup> STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/PTJ, Decision Authorising the Withdrawal of the Prosecution Application of 21 December 2011 and the Modification of the Application of 15 March 2012 Requesting Protective Measures for Witnesses, 14 June 2012, Disposition.

<sup>4</sup> [REDACTED].

<sup>5</sup> Annex I, [REDACTED].

7. [REDACTED].<sup>7</sup> Furthermore, the Registrar alerted the recipients of the potential application of Rule 60bis of the Rules and the Pre-Trial Judge's Decision of 25 May 2012.<sup>8</sup>

8. Notwithstanding the Registrar's notice, [REDACTED].<sup>9</sup>

9. [REDACTED].<sup>10</sup> [REDACTED].<sup>11</sup>

10. Pursuant to Article 18(2) of the Statute and Rules 61 and 77(A) of the Rules, the Pre-Trial Judge has the authority to issue such orders as may be required for the conduct of an investigation and for the preparation of a fair and expeditious trial. International case law has consistently determined that this authority includes issuing binding orders to third parties and corporate entities, including orders to cease the dissemination of information which is classified as confidential or identifies witnesses, or refers to or reveals their confidential statements or testimonies.<sup>12</sup>

11. Article 15(2) of the Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon<sup>13</sup> provides that the Lebanese Government "shall comply without undue delay with [...] an order issued by the Chambers".<sup>14</sup>

12. The Pre-Trial Judge considers that the dissemination of information improperly obtained that identifies protected witnesses or otherwise divulges information classified as confidential is in violation of the Decisions referred to in paragraphs 2, 3 and 4 of this order. Such breach must cease immediately, and any such information currently available should be made inaccessible. The Pre-Trial Judge therefore issues this decision at this time, and

<sup>6</sup> Annex I, [REDACTED].

<sup>7</sup> Annex D, [REDACTED].

<sup>8</sup> Annex D, [REDACTED].

<sup>9</sup> [REDACTED] Annex M. See also, Annex I, [REDACTED]; Annex J, [REDACTED].

<sup>10</sup> [REDACTED] Annex M. See also: Annex K, [REDACTED].

<sup>11</sup> [REDACTED]. See also, Annex N, [REDACTED].

<sup>12</sup> ICTY, *Prosecutor v. Bošković et al*, Case No. IT-04-82-A, Order Issuing a Public Redacted Version of the "Decision on Bošković Motion for Urgent Orders Regarding Disclosure of Confidential Material" of 22 December 2009, 14 May 2010; ICTY, *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Order for the Immediate Cessation of Violations of Protective Measures for Witnesses, 2 December 2004; ICTY, *Prosecutor v. Milošević*, Case No. IT-02-54-T, Order for the Immediate Cessation of Violations of Protective Measures for Witnesses, 18 June 2002; ICTY, *Prosecutor v. Blaškić*, Case No. IT-95-14-T, Order for the Immediate Cessation of Violations of Protective Measures for Witnesses, 1 December 2000.

<sup>13</sup> Annexed to S/RES/1757 (2007) of 30 May 2007.

<sup>14</sup> See also, Memorandum of Understanding between the Government of the Republic of Lebanon and the Office of the Prosecutor of the Special Tribunal for Lebanon regarding the Modalities of Cooperation between Them, 5 June 2009.

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reserves, without prejudice, his decision on the remaining aspects of the Urgent Request until further order.

13. The Pre-Trial Judge notes that those responsible for the disclosure of information in breach of the Tribunal's order may be found in violation of Rule 60*bis* of the Rules governing contempt and obstruction of justice.

14. This order is classified as confidential and *ex parte*, in order to ensure the integrity of the proceedings and respect for such protective measures as may be applicable. [REDACTED].

**FOR THESE REASONS,**

**THE PRE-TRIAL JUDGE,**

**PURSUANT TO** his Decisions of 28 June 2011, 25 May 2012, 14 June 2012, and pursuant to Article 18(2) of the Statute and Rules 61 and 77(A) of the Rules;

**GRANTS** the Urgent Request in part; and

**ORDERS** [REDACTED] immediately not to disseminate in any form, [REDACTED], any confidential information or material alleged to be related to purported witnesses before the Tribunal, including pictures and identifying information;

**ORDERS** [REDACTED] immediately to remove any confidential information or material allegedly related to witnesses before the Tribunal, from their websites and from any other resource accessible to the public;

**ORDERS** [REDACTED] immediately not to use any information obtained from confidential material related to the Tribunal, including approaching potential witnesses;

**STATES** that those responsible for the disclosure of information in breach of the Tribunal's order may be found in violation of Rule 60*bis* of the Rules governing contempt and obstruction of justice;

**RESERVES** without prejudice his decision on the remaining aspects of the Urgent Request until further order;

**ORDERS** the Registrar to take all measures necessary to ensure the implementation of this order; and

**ORDERS** that this order be classified as confidential and *ex parte*, save with respect to those persons who require access to this order so that it can be implemented.

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

Leidschendam, 5 June 2013



Daniel Fransen  
Pre-Trial Judge

