



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**

### ORDER REQUESTING THE COOPERATION OF THE LEBANESE AUTHORITIES TO CEASE DISSEMINATION OF INFORMATION

**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

**The Government of Lebanon:**  
The Prosecutor General of Lebanon

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

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



## I. INTRODUCTION

1. The Pre-Trial Judge is seised of the “Registry Submission in relation to Pre-Trial Judge’s Decision of 25 May 2012” dated 12 April 2013 (the “Request”) and filed pursuant to Rule 48 (C) of the Rules of Procedure and Evidence (the “Rules”).<sup>1</sup>

## II. PROCEDURAL BACKGROUND

2. On 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>2</sup>

3. On 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 (“Decision of 25 May 2012”).<sup>3</sup>

4. On 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>4</sup>

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<sup>1</sup> STL, *Prosecutor v. Ayyash et al*, Case No. STL-11-01/PT/PTJ, Registry Submission in Relation to Pre-Trial Judge’s Decision of 25 May 2012, confidential, 12 April 2013. All further references to filings and decisions relate to this case number unless otherwise stated.

<sup>2</sup> STL, *Prosecutor v. Ayyash et al*, Case No. STL-11-01/PT/PTJ, Decision Relating to the Examination of the Indictment of 10 June 2011 Issued Against Mr. Salim Jamil Ayyash, Mr. Mustafa Amine Badreddine, Mr. Hussein Hassan Oneissi & Mr. Assad Hassan Sabra, confidential, 28 June 2011 (“Decision of 28 June 2011”), para. 101. A public redacted version was filed on 16 August 2011. 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/PT/PTJ, Order on the Prosecutor’s Urgent Motions for Non-Disclosure, 19 January 2011.

<sup>3</sup> Decision relating to the Prosecution Request Seeking Measures for the Non-Dissemination of Material of 2 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, proves to be well-founded and reasonable” and is “in keeping with prevailing international case law” (para. 52).

<sup>4</sup> 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.

5. Collectively, these decisions will be referred to as the “Non-Dissemination Orders”.

### III. SUBMISSIONS

6. The Registrar requests the Pre-Trial Judge to issue an immediate public order, reiterating the obligations of all third parties regarding information which is subject to protective measures pursuant to the Decision of 25 May 2012.<sup>5</sup>

7. The Registrar also requests the Pre-Trial Judge to order the Prosecutor General of Lebanon to take action “to notify the public, including the media in Lebanon and, in particular, the media outlets mentioned in this submission, that pursuant to the Decision of 25 May 2012, they are prohibited from disseminating any confidential material and information of the Tribunal, unless that material or information becomes public during open session proceedings”.<sup>6</sup>

8. The Registrar notes “that certain media outlets in Lebanon have purported to disseminate confidential material or information related to the proceedings before the Tribunal publicly on their websites or through other news reports accessible to the public. Some of these reports claim to disclose confidential information related to purported witnesses or potential witnesses before the Tribunal.”<sup>7</sup>

### IV. APPLICABLE LAW

9. 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.

10. As recalled in a decision by the Pre-Trial Judge issued on 10 August 2012, “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>8</sup>

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<sup>5</sup> Request, para. 1.

<sup>6</sup> *Id.*, para. 2.

<sup>7</sup> *Id.*, para. 5.

<sup>8</sup> Order for Immediate Removal of Disseminated Material and Cessation of Dissemination, confidential and *ex parte*, 10 August 2012, with a public redacted version filed on 5 June 2013, para. 10 and fn. 12, citing ICTY, *Prosecutor v Bošković et al.*, Case No. IT-04-82-A, Order Issuing a Public Redacted Version of the “Decision

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>9</sup> provides that the Lebanese Government “shall comply without undue delay with [...] an order issued by the Chambers”.<sup>10</sup>

## V. DISCUSSION

12. The Pre-Trial Judge considers that the purported dissemination of confidential information regarding certain individuals, as indicated by the Registrar in its submission, is in violation of the Non-Dissemination Orders. The Pre-Trial Judge considers that the dissemination of information that purports to identify protected witnesses or otherwise divulges purported information classified as confidential is in violation of the Non-Dissemination Orders. Such violation must cease immediately, and any such information currently available should be removed. Consequently, the Pre-Trial Judge considers that it is appropriate to request the Prosecutor-General of Lebanon to (1) take action to notify the public, including the media in Lebanon, that pursuant to the Decision of 25 May 2012, they are prohibited from disseminating any confidential material and information of the Tribunal and (2) take any measure to prevent, or if applicable, to stop the dissemination of information in breach of the Non-Dissemination Orders.

13. The Pre-Trial Judge notes that those responsible for the disclosure of information in breach of the Tribunal’s orders may be found in violation of Rule 60*bis* of the Rules governing contempt and obstruction of justice. This rule provides in its relevant parts as follows:

A. The Tribunal, in the exercise of its inherent power, may hold in contempt those who knowingly and wilfully interfere with its administration of justice, upon assertion of the Tribunal’s jurisdiction according to the Statute. This includes, but is not limited to, the power to hold in contempt any person who: [...]

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on Boškoski 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>9</sup> Annexed to S/RES/1757 (2007) of 30 May 2007.

<sup>10</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.

iii. discloses information relating to proceedings in knowing violation of an order of a Judge or Chamber; [...]

J. The maximum penalty that may be imposed on a person found to be in contempt of the Tribunal shall be a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 Euros, or both.<sup>11</sup>

**FOR THESE REASONS,**

**THE PRE-TRIAL JUDGE,**

**PURSUANT TO** the Non-Dissemination Orders, to Article 18(2) of the Statute and Rules 61 and 77(A) of the Rules;

**GRANTS** the Request;

**REQUESTS** the Prosecutor General of Lebanon to ensure public distribution in Lebanon, through media or other channels of this Order;

**REQUESTS** the Prosecutor General of Lebanon to serve this Order on the responsible officials of the major media outlets in Lebanon, and obtain written evidence from the media outlets confirming their receipt thereof;

**REQUESTS** the Prosecutor General of Lebanon to take any measure to prevent or if applicable, to stop the dissemination of information in breach of the Non-Dissemination Orders;

**INSTRUCTS** the Registrar to take all necessary measures to ensure the implementation of this Order;

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

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<sup>11</sup> The full text of the Rules of procedure and evidence of the Tribunal is available at <http://www.stl-tsl.org/en/documents/rules-of-procedure-and-evidence/rules-of-procedure-and-evidence>.

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

Leidschendam, 5 June 2013



Daniel Fransen  
Pre-Trial Judge

