



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: 10 June 2013

Original language: English

Classification: Public

THE PROSECUTOR
v.
SALIM JAMIL AYYASH
MUSTAFA AMINE BADREDDINE
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA

**ORDER ON JOINT NOTICE REGARDING THE LEGAL WORKFLOW SYSTEM
AND WITNESS ENTITIES**

Office of the Prosecutor:
Mr. Norman Farrell

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I. INTRODUCTION

1. The Pre-Trial Judge is seised of the Joint Notice Regarding the Parties' Efforts to Resolve Issues Regarding Legal Workflow Witness Entities (the "Joint Notice")¹, and he hereby renders an order on the issues remaining between the Parties.

II. PROCEDURAL BACKGROUND

2. On 21 February 2013, Counsel for Messrs Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi and Assad Hassan Sabra (the "Defence") filed a joint motion with respect to Legal Workflow Witness Entities (the "Motion").²

3. On 13 March 2013, the Prosecution filed its response to the Motion (the "Response").³

4. On 22 March 2013, the Registry sought leave to file submissions and included them therein.⁴

5. On 16 April 2013, the Pre-Trial Judge rendered a decision allowing the Registry to file its submissions and ordering the Parties to attempt to resolve their disagreements amicably and, should it prove necessary, to file a joint notice before him (the "Decision").⁵

6. On 3 May 2013, the Parties filed the Joint Notice, which contains two issues that the Parties were unable to resolve and thereby request that the Pre-Trial Judge render a decision on these points.⁶

7. On 31 May 2013, the Prosecution filed consolidated and updated versions of its Rule 91 lists of exhibits ("Exhibit List") and witnesses ("Witness List").⁷

¹ STL, *Prosecution v. Ayyash et al*, Case No. STL-11-01/PT/PTJ, Joint Notice Regarding the Parties' Efforts to Resolve Issues Regarding Legal Workflow Witness Entities, 3 May 2013, with Annexes A and B (respectively, "Annex A to Joint Notice" and "Annex B to Joint Notice"). All further references to filings and decisions relate to this case number unless otherwise stated.

² Joint Defence Motion for an Order by the Pre-Trial Judge Regarding Legal Workflow Witness Entities, 21 February 2013.

³ Prosecution Response to Joint Defence Motion for an Order for Legal Workflow Witness Entities, 13 March 2013.

⁴ 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.

⁵ Decision on Joint Defence Motion for an Order Regarding Legal Workflow Witness Entities, 16 April 2013.

⁶ Joint Notice, paras 8-9.

⁷ Prosecution Submission of Consolidated and Updated Rule 91 Exhibit and Witness Lists, Confidential with Confidential Annexes A to I, 31 May 2013.

III. SUBMISSIONS

8. In the Motion, the Defence provides a brief overview of Witness Entities in the Legal Workflow System (“LWS”). Witness Entities are a facility within the LWS that serve to disclose witness information between Parties. They contain a number of metadata⁸ fields, which consist of preset fields used to provide witness information, including name, pseudonym, and specifications related to witness testimony.⁹

9. Following the Decision, the Parties discussed outstanding issues related to the LWS and Witness Entities.¹⁰ The Defence listed three issues it considered appropriate for the Prosecution to resolve, namely, (a) the completion of the metadata fields for Witness Entities in the LWS, (b) the creation of relationships between witnesses and disclosed material in LWS, and (c) the timely notification to the Defence as to updates to Witness Entities.

10. The Joint Notice states that while the first issue was resolved *inter partes*, the Pre-Trial Judge should render a decision with respect to the remaining two issues.¹¹

11. With respect to the second issue (b) above, the Prosecution notes that it has already created relationships between Witness Entities and witness statements disclosed under Rule 110(A)(ii) of the Rules of Procedure and Evidence (the “Rules”). Regarding material disclosed under other rules, the Prosecution maintains that it is under no legal obligation to link them to Witness Entities. The Defence submits that such relationships should be created between Witness Entities and material disclosed pursuant to Rules 91(G)(iii), 110(B) and 113.¹²

12. As for the third issue (c) above, the Prosecution proposes that notifications to the Defence be sent when a bulk update has been completed,¹³ whereas the Defence requests a notification every time the Prosecution updates or alters any of the metadata for Witness Entities.¹⁴

⁸ Appendix A to Protocol for the Upload of Electronically Stored Information as Evidence, Section 6.

⁹ Motion, para. 3. *See also* Disclosure Protocol, 27 February 2012, Article 23, fn. 3.

¹⁰ Joint Notice, paras 3-5.

¹¹ *Id.*, paras 7-9.

¹² *Id.*, para. 8.

¹³ *Id.*, para. 9.

¹⁴ Annex A to Joint Notice, para. 2c).

IV. DISCUSSION

13. In rendering an order regarding the relationship between the Prosecution's witnesses and its exhibits to be used at trial, the Pre-Trial Judge finds it helpful to recall the rules of evidence on this matter. Pursuant to Rule 149(C), the Trial Chamber will only admit relevant evidence, which it deems to have probative value. As a result, the Party tendering the evidence has to demonstrate the relevance and probative value of each exhibit, as well as its relationship to the witness through whom it seeks to tender the exhibit.¹⁵ The information provided under Rule 91 should allow the Pre-Trial Judge, and later the Trial Chamber, "to have both an overview and specific details about all the evidence to be presented during the trial".¹⁶ It is therefore often beneficial for the Prosecution to identify, prior to the commencement of trial proceedings, both the exhibit(s) each witness shall tender into evidence and the witness(es) who will tender each exhibit into evidence.¹⁷ Accordingly, pursuant to Rules 89(B) which allows the Pre-Trial Judge to order any measures necessary to ensure a fair and expeditious trial, he may order the Prosecution to create relationships between its Witness List and Exhibit List.¹⁸

14. The Pre-Trial Judge appreciates that the Prosecution has already created relationships in the LWS between Witness Entities and witness statements disclosed pursuant to Rule 110(A)(ii).¹⁹ However, he also considers that the creation of relationships between Witness Entities and the Exhibit List would be beneficial for the efficient management of the proceedings, especially when considering the voluminous number of witnesses and exhibits in the Prosecution's case.²⁰ The Pre-Trial Judge recalls that exhibits may only be tendered

¹⁵ ICTY, *Prosecutor v. Hadžić*, Case No. IT-04-75-PT, Annex to Order on Guidelines for Procedure for Conduct of Trial, 4 October 2012 ("Annex to Hadžić Order"), paras 2-3; ICTY, *Prosecutor v. Stanišić & Župljanin*, Case No. IT-08-91-PT, Annex A to Order on Guidelines on the Admission and Presentation of Evidence, 10 September 2009, paras 2-3.

¹⁶ ICTY, *Prosecutor v. Prlić et al*, Case No. IT-04-74-PT, Order Directing the Prosecution to Comply with the Provisions of Ordinary Proceedings, 24 January 2006, p. 2 ("Prlić 24 January 2006 Order"); ICTY, *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-PT, Order on Guidelines for Drawing up the List of Witnesses and Exhibits and Order to Translate the Witness Statements, 16 December 2005 ("Milošević Order"), p. 3.

¹⁷ ICTY, *Prosecutor v. Milutinović et al*, Case No. IT-05-87-PT, Pre-Trial Order and Appended Work Plan, 5 April 2006, Disposition, para. 3; ICTY, *Prosecutor v. Karadžić*, Case No. IT-95-5/18-PT, Order Following on Status Conference and Appended Work Plan, 6 April 2009, para. 7(3).

¹⁸ *Ibid*; ICTY, *Prosecutor v. Prlić et al*, Case No. IT-04-74-PT, Order on Guidelines for Drawing up the List of Witnesses and Exhibits, 30 November 2005, p. 2; Milošević Order, p. 3 and Annex.

¹⁹ Joint Notice, para. 8.

²⁰ For the relationship between the magnitude of the trial in terms of number of witnesses and exhibits and the efficient management of proceedings, see *Prlić* 24 January 2006 Order, p. 3.

through a witness if there is a clear and apparent relevance to the substance of the witness' testimony.²¹

15. Accordingly, the Pre-Trial Judge considers that the Prosecution must therefore indicate, with respect to each exhibit on its Exhibit List, the witness(es) who will tender the exhibit into evidence. Where the Prosecution is unable to link a specific exhibit to any of its witnesses, it may indicate that it will seek other means by which to admit said exhibit into evidence. Additionally, with respect to each witness on its Witness List, the Prosecution shall indicate the exhibit(s) which will be referred to in the course of the evidence to be given by the witness. The Pre-Trial Judge recalls that the LWS is the electronic tool used to support the judicial proceedings of the Tribunal²² and relied upon for filing and disclosure purposes.²³ He therefore specifies that the Prosecution must use the LWS to create the aforementioned relationships between Witness Entities and the Exhibit List material.²⁴

16. As for material falling under Rules 110(B) and 113, the Pre-Trial Judge does not consider that it is the Prosecution's responsibility to create relationships for material that it does not intend to use as evidence in trial. This would burden the Prosecution with this task while the Defence has acknowledged being "fully capable of creating these relationships itself",²⁵ and where the Defence is also best placed to analyse the material in light of its own case.

17. Finally, in relation to notifications to the Defence that Witness Entities have been updated, the Pre-Trial Judge recalls that while the metadata fields in the LWS are not complete, the pertinent information on the Prosecution witnesses and their mode of testimony can be found in the Prosecution's filings pursuant to Rule 91. While updating this information in the LWS is beneficial for this case to proceed expeditiously to trial, the Pre-Trial Judge considers that sending notifications to the Defence when a bulk update has been completed is the more efficient and less cumbersome alternative. Notifications to the Defence should be sent for bulk updates based on the specific metadata field that has been updated. The Prosecution is therefore ordered to notify the Defence when the metadata fields

²¹ Annex to *Hadžić* Order, para. 3.

²² Protocol for the Upload of Electronically Stored Information as Evidence, Article 1.

²³ Practice Direction on Filing of Documents before the Special Tribunal for Lebanon, 23 April 2012, Article 2(2); Protocol for the Upload of Electronically Stored Information as Evidence, Article 3; *See also* Disclosure Protocol, 27 February 2012, Article 9.

²⁴ *See also* Disclosure Protocol, 27 February 2012, Article 23.

²⁵ Motion, para. 13.

of all Witness Entities have been updated for a single subject matter, such as pseudonym, type of witness, intended mode of testimony, etc.

18. Pursuant to this order, the Pre-Trial Judge finds that two further notifications shall be sent to the Defence in relation to the creation of relationships in the LWS, linking the Witness Entities to the Exhibit List. The Prosecution shall notify the Defence once it has finished listing: (a) for each witness on its Witness List, the exhibit(s) the witness will tender into evidence, and (b) for each exhibit on its Exhibit List, the witness(es) through whom the exhibit will be tendered into evidence.

V. DISPOSITION

FOR THESE REASONS,

THE PRE-TRIAL JUDGE,

PURSUANT TO Rules 77(A) and 89(B) of the Rules,

ORDERS the Prosecution to indicate the relationships between the materials on the Exhibit List and the Prosecution witnesses through whom the materials will be tendered, pursuant to this order;

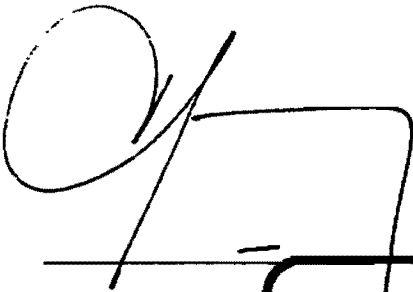
ORDERS the Prosecution to provide periodic notifications informing the Defence that bulk updates of Witness Entities have been completed, pursuant to this order, with the final notification being sent no later than 19 July 2013;

ORDERS the Prosecution to provide, no later than 30 August 2013, the following two notifications to the Defence: (a) that the Prosecution has finished listing, for each witness on its Witness List, the exhibit(s) the witness will tender into evidence, and (b) that the Prosecution has finished listing, for each exhibit on its Exhibit List, the witness(es) who will tender the exhibit into evidence.

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

Leidschendam, 10 June 2013.




Daniel Fransen
Pre-Trial Judge

