



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 Franssen**

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

Date: **11 June 2013**

Original language: **French**

Classification: **Public**

THE PROSECUTOR

v.

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

DECISION RELATING TO THE PROSECUTION REQUEST TO EXTEND THE TIME FRAME TO FILE ALL OF THE RULE 113 MATERIAL

Office of the Prosecutor:
Mr Norman Farrell

Counsel for Mr Salim Jamil Ayyash:
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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. By way of the present decision, the Pre-Trial Judge rules on the Prosecution request of 15 February 2013 to extend the time frame to disclose to the Defence all the materials referred to in Rule 113 of the Rules of Procedure and Evidence (the “Rules” and the “Request”).¹

II. Procedural Background

2. On 25 October 2012, pursuant to Rule 91 (A) of the Rules, the Pre-Trial Judge established a Working Plan setting out the obligations of the Parties and the participants in the proceedings with a view to the start of trial on 25 March 2013 (the “Working Plan”).² That Working Plan provided in particular that the Prosecution complete disclosure of the Rule 113 material by 30 November 2012 at the latest and that it file a notice confirming execution of that plan.³

3. On 17 December 2012, the Pre-Trial Judge granted — at the request of the Prosecution⁴ — the extension of certain deadlines set in the Working Plan, including for disclosure of the materials referred to in Rule 113 of the Rules, to 28 February 2013 at the latest (the “Decision of 17 December 2012”).⁵ While doing so, the Pre-Trial Judge pointed out that he had taken into account “the overriding benefit to the Defence of the potential disclosure of exculpatory material pursuant to Rule 113 which is intrinsic to the Defence’s fundamental right to a fair trial”.⁶

4. On 30 January 2013, during a status conference, the Pre-Trial Judge requested the Prosecution to inform him when the disclosure, in particular that referred to in Rule 113 of the Rules, would be complete, taking account of the deadlines set.⁷

¹ STL, *The Prosecutor v Ayyash et al.*, Case No STL-11-01/PT/PTJ, Prosecution’s Notice Regarding Disclosure, confidential, 15 February 2013, with a public redacted version dated the same day. Any further reference to filed documents and decisions refers to this case number unless otherwise stated.

² Order on a Working Plan and on the Joint Defence Motion Regarding Trial Preparation, 25 October 2012.

³ Working Plan, para. 21 (5).

⁴ Prosecution Notice Regarding the Working Plan and Request to Extend Certain Deadlines, confidential, 14 November 2012 (“Prosecution Request of 14 November 2012”), with a public redacted version dated 15 November 2012.

⁵ Decision on Prosecution’s Request to Extend Working Plan Deadlines, confidential, 17 December 2012, with a public redacted version dated 19 December 2012.

⁶ *Id.*, para. 9.

⁷ PT, pp. 2-6 [French version] (30 January 2013).

5. On 15 February 2013, following that request, the Prosecution filed a notice relating to the status of the disclosure. That notice also included the Request to extend the time frame to 17 June 2013.
6. On 1 March 2013, the Sabra Defence filed a response to the Request (the "Response").⁸
7. On 6 March 2013, the Prosecution filed a request for leave to reply to the Response.⁹ The Sabra Defence responded to that request on 13 March 2013.¹⁰
8. On 21 March 2013, the Pre-Trial Judge authorised the Prosecution to reply to the Response by 28 March 2013.¹¹
9. On 28 March 2013, the Prosecution filed a reply (the "Reply").¹²

III. Submissions of the Parties

A. The Prosecution

10. The Prosecution bases itself on Article 18 (2) of the Statute and Rule 77 (A) of the Rules in order to seek an extension of the deadline of 28 February 2013 to 17 June 2013 to complete the disclosure of the Rule 113 material. It states that it shall disclose that material on a rolling basis and that it does not anticipate there being a large amount.
11. The request to extend the deadline relates to the materials which might affect the credibility of the Prosecution witnesses and is based on the need to carry out searches relating to the topics covered by them in their statements. According to the Prosecution, that assessment is more difficult and requires more time due to the volume of the relevant materials. Review of the materials also relates to any additional material which should be disclosed to the Defence after conferring with certain States.

⁸ Consolidated Sabra Response to Prosecution Notice of Disclosure, Application to Authorise Necessary Redactions and Request for an Extension of Time and to Prosecution's Notice Regarding Disclosure, confidential, 1 March 2013.

⁹ Prosecution Request for Leave to Reply to Consolidated Sabra Defence Response of 1 March 2013, 6 March 2013.

¹⁰ Sabra Response to Prosecution Request for Leave to Reply to Consolidated Sabra Defence Response of 1 March 2013, confidential, 13 March 2013.

¹¹ Decision on Prosecution's Notice of Disclosure, Application to Authorise Redactions and Request for Extension of Time, 21 March 2013.

¹² Prosecution Reply to Consolidated Sabra Defence Response of 1 March 2013, 28 March 2013.

B. The Defence

12. The Sabra Defence opposes the Request. It considers that the Prosecutor should have requested reconsideration of the Decision of 17 December 2012 pursuant to Rule 140 of the Rules and as a consequence considers that the Request should be dismissed. It also objects to the Request being formulated within the context of a confidential notice.

13. The Sabra Defence points out that, by way of the Decision of 17 December 2012, the Pre-Trial Judge granted an extension of the deadline noting that the Prosecution had given assurances that it would meet the new deadlines requested due to the steps it had taken to remedy the problems identified. It considers that the Pre-Trial Judge has been placed in a *fait accompli*.

14. Nevertheless, since it has need of the exculpatory materials, the Sabra Defence seeks that these materials be disclosed to it promptly, on a rolling basis, in a coherent manner, organised according to subject matter and in compliance with the Disclosure Protocol of 27 February 2012 signed by the Prosecution (the "Disclosure Protocol"). It would like, in particular, when Rule 113 material is filed in the Legal Workflow system, that the Prosecution indicate to what the exculpatory material refers (material suggesting the innocence of the accused, mitigating his criminal responsibility or affecting the credibility of the incriminating evidence) and that it establish a link between any evidence relating to the credibility of a witness and that witness.

15. Moreover, the Sabra Defence seeks that the Pre-Trial Judge order the Prosecution to provide clarification as to the steps it has taken to disclose the exculpatory materials.

C. The Reply

16. The Prosecution considers that the supplementary requests submitted by the Sabra Defence in its Response are not well-founded.

17. More specifically, it considers that: (1) the Defence request for additional time to prepare is premature since it has not yet been established that the Prosecution will discover further materials;¹³ (2) there is no legal basis for the requests to extend the Prosecution's disclosure obligations; (3) the Disclosure Protocol is not legally binding; (4) it has provided indications

¹³ Having noted that this factor does not seem to have been raised by the Defence in its Response, the Pre-Trial Judge considers that he is not required to reply to it.

regarding the theme of the disclosures for each batch of material disclosed pursuant to Rule 113 of the Rules, for all but five of them; (5) it is not obliged to conduct analyses on behalf of the Defence; (6) the request relating to creating a relationship between the evidence and the witness concerned is dealt with separately in response to a specific request from the Defence; (7) it has endeavoured to disclose the materials with meaningful document names, and even if it recognises that this has not been the case in every instance, it considers that does not prevent the Defence from reviewing the materials.

IV. Statement of reasons

18. The Pre-Trial Judge recalls that the Working Plan established a system relating to the disclosure of materials pursuant, in particular, to Rule 113 of the Rules. That plan balanced “the right of the Defence to have adequate time and facilities to prepare their own pre-trial briefs ahead of the start of trial on 25 March 2013, and the requirement that proceedings are not unnecessarily delayed”.¹⁴ It provided that the Prosecution complete the disclosure of all the Rule 113 material by 30 November 2012 at the latest. After that date, with regard to any filing of additional materials, the Prosecution was required to set out in detail the circumstances in which the evidence was obtained and identified, the valid reasons why that material had not yet been disclosed and the steps taken, if any, to avert the recurrence of such delays in the future.¹⁵ The purpose of that mechanism is to enable the Pre-Trial Judge to verify that the obligations of the parties in the proceedings are not subject to undue delay and, where appropriate, to intervene in this respect in order to ensure the efficient preparation of the case.

19. However, the disclosure of materials pursuant to Rule 113 of the Rules, namely the exculpatory materials, is a continuous obligation. That obligation remains in place throughout the proceedings, including after the start of the trial on the merits. However, the Prosecution should identify those materials in good faith, disclose them to the Defence as soon as possible¹⁶ and do so within a reasonable period of time after they come into its possession. This also applies, by way of example, to the materials originating from the International Independent Investigation Commission, which have been in the possession of the Prosecutor since he took

¹⁴ Working Plan, para. 16.

¹⁵ *Id.*, pp. 17 and 18.

¹⁶ Rule 113 (A) of the Rules.

office. That obligation stems from both a proper administration of justice, the fairness of the proceedings and the need to respect the fundamental rights of the accused.¹⁷

20. The Pre-Trial Judge notes that, on 14 November 2012, the Prosecution sought that the deadline be extended from 30 November 2012 to 28 February 2013, thus extending by three months the deadline initially set by the Working Plan. Thereafter, on 15 February 2013, two weeks before the date set for the filing of all the Rule 113 material, the Prosecution sought to further extend the deadline to 17 June 2013, which is an extension of three and a half months. As such, to date, the Prosecution has requested an extension of six and a half months compared to the deadline that was set initially.

21. The Pre-Trial Judge also notes that, in its first request to extend the deadline of 14 November 2012, the Prosecution pointed out that certain materials in its possession which, *a priori*, did not contain any exculpatory evidence, might require further review which could go beyond the deadline of 28 February 2013. In such case, the Prosecution undertook to file a notice in accordance with the Working Plan for any material filed after that date.¹⁸

22. Noting the assurances of the Prosecution to respect the new time limits requested due to the steps taken to remedy the problems identified,¹⁹ the Decision of 17 December 2012 authorised the Prosecution, as an exceptional measure, to extend the deadline for the filing of certain materials falling under Rule 113 of the Rules until 28 February 2013.

23. In support of its further request for extension, the Prosecution refers to the length of the review of the remaining materials that might be disclosed in light of the large number of witnesses, the nature of the searches to be conducted, the volume of the materials concerned and the need to consult certain States. As such, the Prosecution request does not concern particular materials that it might have discovered during its searches but is related to a request for an overall extension of the deadline for those materials which have yet to be identified. Furthermore, the Prosecution has not filed a notice setting out in detail the circumstances in which the additional Rule 113 evidentiary materials were obtained and identified as being

¹⁷ ICTY, *Prosecutor v. Dragomir Milošević* Case No. IT -98-29/1-A, Decision on Motion Seeking Disclosure of Rule 68 Material, 7 September 2012, para 5; ICTY, *Prosecutor v Brđanin*, Case No. IT-99-36-T, Decision on “Motion for Relief from Rule 68 violations by the Prosecutor and for Sanctions to be Imposed Pursuant to Rule 68 bis and Motion for Adjournment while Matters Affecting Justice and a Fair Trial Can be Resolved”, 30 October 2002, paras 24, 26; See on this subject, Rule 55 (C) of the Rules.

¹⁸ Prosecution Request of 14 November 2012, para. 7.

¹⁹ Decision of 17 December 2012, paras 8-10.

exculpatory, the valid reasons why those materials were not disclosed within the set time frame and the steps taken, as provided by the Working Plan.

24. In light of these points, it is not for the Pre-Trial Judge to authorise the Prosecution to fulfil its obligations which, in the case at hand, are continuous. The Request is therefore moot. The Pre-Trial Judge recalls, however, that the Prosecution is required to comply with the Working Plan and is under obligation to disclose as soon as possible to the Defence the information referred to in Rule 113 of the Rules.

25. Furthermore, the Pre-Trial Judge notes that, according to the Prosecution, the amount of material that might be disclosed to the Defence after 28 February 2013 should be “limited”. Consequently, he invites the Prosecution to seize him of a notice, as appropriate, at the time such materials are discovered, in accordance with the Working Plan, and to disclose those materials to the Defence without delay. He points out in this respect that the date on which the Rule 113 material is filed can have an impact on the rights of the Defence to have adequate time to prepare its case.²⁰ Where necessary, the Pre-Trial Judge shall take account of such when setting the tentative date for the trial.

26. Lastly, having considered the points raised by the Defence with a view to improving the framework for disclosure, the Pre-Trial Judge directs the Prosecution to ensure that any additional material which might be disclosed in accordance with Rule 113 of the Rules be disclosed in a manner that is comprehensible to the Defence, namely that it contains, as a minimum, relevant and useful information that is logically structured and allows for meaningful searches and analyses.²¹ Lastly, the Pre-Trial Judge recalls that even if the Disclosure Protocol is not binding, its purpose is to ensure fair and effective implementation of the disclosure obligations of the Parties.²²

27. The Pre-Trial Judge considers, however, that the request of the Sabra Defence to order the Prosecution to provide an account of the steps that it has taken to disclose the exculpatory

²⁰ *Id.*, para. 11.

²¹ Decision on Joint Defence Motion for an Order regarding Legal Workflow Entities, 16 April 2013, para. 20.

²² *Id.*, para. 19.

materials to the Defence is unfounded in light of the information provided for that purpose by the Prosecution in the Request.

V. Disposition

FOR THESE REASONS,

Pursuant to Rule 77 (A) of the Rules,

THE PRE-TRIAL JUDGE,

DECLARES the Request moot;

RECALLS that any additional material which might be disclosed pursuant to Rule 113 of the Rules must be disclosed as soon as possible and in a manner that is comprehensible to the Defence, namely that it contains, as a minimum, relevant and useful information that is logically structured and allows for meaningful searches and analyses;

TAKES note of the assurances of the Prosecution to complete the review of the Rule 113 material by 17 June 2013 at the latest;

DISMISSES the Defence request to order the Prosecution to provide a more comprehensive account of the steps it has taken to disclose the exculpatory materials to the Defence.

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

Leidschendam, 11 June 2013

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[signature]

Daniel Fransen
Pre-Trial Judge

