



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: **18 June 2013**

Original language: **English**

Classification: **Public**

**THE PROSECUTOR**

v.

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

**ORDER IN RELATION TO RULE 161 NOTICES ON EXPERT WITNESSES**

**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

**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 this order, the Pre-Trial Judge transfers to the Trial Chamber the Prosecution's final notice filed pursuant to Rule 161(A) of the Rules of Procedure and Evidence (the "Rules") on 15 May 2013, as well as the previously filed updated notices and corrigenda, and refers the matter to said Chamber.

## **II. PROCEDURAL BACKGROUND**

2. On 10 December 2012, the Prosecution filed a notice in relation to expert witnesses pursuant to Rule 161(A), with five confidential annexes (the "Prosecution Notice").<sup>1</sup> Three of the annexes contained information relating to expert witnesses on whom the Prosecution intended to rely on at trial, but for whom disclosure of relevant documents was still pending.<sup>2</sup>

3. On 24 January 2013, Counsel for Mr. Assad Hassan Sabra,<sup>3</sup> Counsel for Mr. Salim Jamil Ayyash,<sup>4</sup> Counsel for Mr. Mustafa Amine Badreddine,<sup>5</sup> and Counsel for Mr. Hussein Hassan Oneissi<sup>6</sup> (collectively, the "Defence") filed their respective notices in response to the Prosecution Notice, raising various concerns in relation thereto (collectively, the "Defence Notices").

4. On 28 February 2013, the Pre-Trial Judge issued a decision, referring the Defence Notices as well as the Prosecution Notice to the Trial Chamber, and ordering the Prosecution to file a final and complete notice pursuant to Rule 161(A) by 2 April 2013 (the "28 February 2013 Decision").<sup>7</sup>

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<sup>1</sup> STL, *Prosecutor v. Ayyash et al*; Case No. STL-11-01/PT/PTJ, Prosecution Notice in Relation to Expert Witnesses, with Confidential Annexes A through E, 10 December 2012. All further references to filings and decisions relate to this case number unless otherwise stated.

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

<sup>3</sup> Sabra Defence Notice Pursuant to Rule 161(B), with Confidential Annex, 24 January 2013.

<sup>4</sup> Notice by the Ayyash Defence Pursuant to Rule 161(B), Confidential with Confidential Annex, 24 January 2013, with a Public Redacted Version of the same day.

<sup>5</sup> Badreddine Defence Notice Pursuant to Rule 161(B), with Confidential Annex, 24 January 2013.

<sup>6</sup> The Defence for Hussein Hassan Oneissi Notice under Rule 161(B) in Response to the Prosecution Notice in Relation to Expert Witnesses Dated 10 December 2012, Confidential, 24 January 2013, with a Public Redacted Version dated 25 January 2013.

<sup>7</sup> Decision in Relation to Rule 161 Notices on Expert Witnesses, Public with Confidential Annex A, 28 February 2013.

5. On 19 March 2013, the Trial Chamber rendered an order in relation to Rule 161 notices, ordering the Prosecution to provide additional information by 29 April 2013 and ordering the Defence to file any response under Rule 161(B) by 21 May 2013.<sup>8</sup>

6. On 2 April 2013, the Prosecution filed, before the Pre-Trial Judge, an updated notice pursuant to Rule 161(A) (the “Updated Notice”),<sup>9</sup> as well as a corrigendum to the Updated Notice on 3 April 2013,<sup>10</sup> stating that it was still missing the *curricula vitae* (CVs) of some of its experts.<sup>11</sup> On 16 April 2013<sup>12</sup> and 1 May 2013<sup>13</sup>, the Prosecution filed two further updates and corrigenda to the Updated Notice (collectively, “Corrigenda to the Updated Notice”).

7. On 29 April 2013, the Prosecution filed before the Trial Chamber its submissions in relation to the additional information requested by the latter, including summaries of its expert reports (the “Prosecution Submissions”).<sup>14</sup> On 1 May 2013<sup>15</sup> and 16 May 2013,<sup>16</sup> the Prosecution filed updates to these submissions.

8. On 15 May 2013, the Prosecution filed before the Pre-Trial Judge its final update and corrigendum to the Updated Notice (the “Final Update”),<sup>17</sup> providing further corrections and affirming that it has completed the disclosure of all CVs and related materials of expert witnesses.<sup>18</sup>

9. On 21 May 2013, the Defence filed before the Trial Chamber its respective notices pursuant to Rule 161(B).<sup>19</sup> Counsel for Mr. Badreddine (the “Badreddine Defence”) also filed

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<sup>8</sup> STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/TC, Order on Rule 161 Notices Re Expert Witnesses, 19 March 2013.

<sup>9</sup> Prosecution Updated Notice Pursuant to Rule 161(A), with Confidential Annex I, 2 April 2013.

<sup>10</sup> Corrigendum to “Prosecution Updated Notice Pursuant to Rule 161(A)”, Confidential with Confidential Annex I, 3 April 2013, with a Public Redacted Version of the same day.

<sup>11</sup> Updated Notice, para. 4.

<sup>12</sup> Update and Further Corrigendum to “Prosecution Updated Notice Pursuant to Rule 161(A)”, with Confidential Annex I, 16 April 2013.

<sup>13</sup> Update and Further Corrigendum to “Prosecution Updated Notice Pursuant to Rule 161(A)”, with Confidential Annex I, 1 May 2013.

<sup>14</sup> STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/TC, Public Redacted Prosecution’s Submission Following Trial Chamber’s 19 March 2013 “Order on Rule 161 Notices Re Expert Witnesses”, 29 April 2013.

<sup>15</sup> STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/TC, Update on Prosecution’s Submission Following Trial Chamber’s 19 March 2013 “Order on Rule 161 Notices Re Expert Witnesses”, 1 May 2013.

<sup>16</sup> STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/TC, Further Update and Corrigendum to Prosecution’s Submission Following Trial Chamber’s 19 March 2013 “Order on Rule 161 Notices Re Expert Witnesses”, 16 May 2013 (“16 May 2013 Update”).

<sup>17</sup> Final Update and Further Corrigendum to “Prosecution Updated Notice Pursuant to Rule 161(A)”, with Confidential Annex I, 15 May 2013.

<sup>18</sup> *Id.*, para. 1.

<sup>19</sup> STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/TC, The Defence for Hussein Hassan Oneissi Rule 161(B) Notice and Submissions Pursuant to the Trial Chamber’s 19 March 2013 “Order on Rule 161 Notices Re Expert Witnesses”, Confidential, 21 May 2013; STL, *Prosecutor v. Ayyash et al.*, Case

its Rule 161(B) notice before the Pre-Trial Judge.<sup>20</sup> On 7 June 2013, the Badreddine Defence filed a corrigendum and corrected version of Annex A to its notice, again before both the Trial Chamber<sup>21</sup> and the Pre-Trial Judge.<sup>22</sup>

### **III. APPLICABLE LAW**

10. Rule 161(A) provides that statements by expert witnesses to be called at trial by a Party are to be disclosed to the opposing Party and to the victims participating in the proceedings.

11. Pursuant to Rule 161(B), the opposing Party shall indicate whether: (i) it accepts the expert witness statement; (ii) it wishes to cross-examine the expert witness; or (iii) it challenges the qualifications of the witness as an expert or the relevance of all or parts of the report.

12. Rule 161(C) specifies that where the opposing Party accepts an expert statement, the Trial Chamber may admit it into evidence without calling the witness to testify in person. Meanwhile, Rule 149(C) and (D) grants the Chamber the general power to admit or exclude evidence.

### **IV. DISCUSSION**

13. In Annex A to the 28 February 2013 Decision, the Pre-Trial Judge presented his view in relation to the concerns the Defence had with the Prosecution Notice. Overall, the Pre-Trial Judge agreed that the Prosecution Notice was incomplete.<sup>23</sup> With the Final Update, the Prosecution has responded to the views recorded by the Pre-Trial Judge, although some new issues have arisen in relation to its Rule 91 witness and exhibit lists.

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No. STL-11-01/PT/TC, Badreddine Defence Second Notice Pursuant to Rule 161(B), 21 May 2013; STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/TC, Notice by the Ayyash Defence Pursuant to Rule 161(B) Pursuant to the Trial Chamber Order of 19 March 2013, 21 May 2013; STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/TC, Sabra Defence Notice Pursuant to Rule 161(B), 21 May 2013.

<sup>20</sup> Badreddine Defence Second Notice Pursuant to Rule 161(B), with Confidential Annex, 21 May 2013, para. 13.

<sup>21</sup> STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/TC, Corrigendum to Annex to Badreddine Defence Second Notice Pursuant to Rule 161(B), 7 June 2013; STL, STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/TC, Corrected Version of Annex to Badreddine Defence Second Notice Pursuant to Rule 161(B), Confidential, 7 June 2013.

<sup>22</sup> Corrigendum to Annex to Badreddine Defence Second Notice Pursuant to Rule 161(B), with Confidential Annex, 7 June 2013; Corrected Version of Annex to Badreddine Defence Second Notice Pursuant to Rule 161(B), Confidential, 7 June 2013.

<sup>23</sup> 28 February 2013 Decision, para. 26.

14. In that respect, the Pre-Trial Judge notes that in its submissions before the Trial Chamber, the Prosecution clarifies that some of its expert witnesses are not included on its Rule 91 witness list and “that it will in due course seek leave of the Pre-Trial Judge to amend its witness and exhibit lists accordingly.”<sup>24</sup> In reference to this statement, the Prosecution listed six expert witnesses.<sup>25</sup> The Pre-Trial Judge draws the attention of the Trial Chamber to a discrepancy in the witnesses listed: the Prosecution included expert witness #133 (PRH175) in the six experts, while this person does appear in the Prosecution’s Rule 91 filing, meanwhile the Prosecution failed to include expert witness #36, who does not appear on its witness list.<sup>26</sup>

15. The Pre-Trial Judge further notes that although he had ordered the Prosecution to file its final and complete Rule 161(A) notice by the 2 April 2013,<sup>27</sup> it only complied with this order by the 15 May 2013 and instead filed an incomplete notice by the established deadline, followed by several corrigenda. Nonetheless, taking note of the Prosecution’s efforts in obtaining the outstanding CVs and of its affirmation that all expert CVs have now been disclosed,<sup>28</sup> the Pre-Trial Judge accepts the Prosecution’s Final Update despite it having been filed after the established deadline.

16. Therefore, pursuant to Rule 89(E) and recalling that filings concerning the admissibility of evidence fall within the ambit of the Trial Chamber,<sup>29</sup> the Pre-Trial Judge hereby transfers the Rule 161 matter to the Trial Chamber and informs the latter of the Updated Notice, the Corrigenda to the Updated Notice, and the Final Update.

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<sup>24</sup> Prosecution Submissions, para. 5.

<sup>25</sup> *Id.*, fn. 14.

<sup>26</sup> The Prosecution has clarified that it does not intend to rely on expert witness #36 at trial, 16 May 2013 Update, fn. 7.

<sup>27</sup> 28 February 2013 Decision, Disposition.

<sup>28</sup> Final Update, para. 4.

<sup>29</sup> 28 February 2013 Decision, paras 15, 29.

**V. DISPOSITION**

**FOR THESE REASONS,**

**THE PRE-TRIAL JUDGE,**

**PURSUANT TO** Rules 77(A) and 89(E) of the Rules, and to the 28 February 2013 Decision,

**INFORMS** the Trial Chamber of the Updated Notice, the Corrigenda to the Updated Notice, and the Final Update; and

**REFERS** these notices to the Trial Chamber.

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

Leidschendam, 18 June 2013



Daniel Fransen  
Pre-Trial Judge

