

**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: **20 June 2013**

Original language: **English**

Classification: **Public**

THE PROSECUTOR

v.

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

**DECISION ON PROSECUTION REQUEST FOR AN EXTENSION OF TIME TO
COMPLY WITH DECISION OF 24 MAY 2013**

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 decision, the Pre-Trial Judge rules on the Prosecution request for an extension of time (the “Request”)¹ to comply with part of his 24 May 2013 decision (the “Disclosure Decision”)² regarding the disclosure of expert communications to the Defence.³

II. PROCEDURAL BACKGROUND

2. On 24 May 2013, the Pre-Trial Judge rendered the Disclosure Decision, granting in part a motion by Counsel for Mr. Assad Hassan Sabra (the “Sabra Defence”) containing five separate requests for disclosure. The Pre-Trial Judge ordered the disclosure of the material described in the Sabra Defence’s first request, as well as some of the material described in the Sabra Defence’s second and fifth requests.⁴

3. On 11 June 2013, the Prosecution filed the Request, seeking an extension of time to comply with the disclosure of the relevant material described in the Sabra Defence’s second request,⁵ while confirming that it would disclose the remaining material by the 21 June 2013 deadline established in the Disclosure Decision.⁶

4. The Sabra Defence has indicated that it does not intend to reply to the Request.

III. SUBMISSIONS

5. The Prosecution submits that the disclosure order relating to the Sabra Defence’s second request regarding expert communications “requires a longer timeline for completion” due to the large number of external expert witnesses implicated, the resulting volume of materials to be collected, reviewed and disclosed,⁷ and the need to contact parties external to the Office of the Prosecutor.⁸ It therefore requests an extension of time to 26 July 2013 in

¹ STL, *Prosecutor v. Ayyash et al*, Case No. STL-11-01/PT/PTJ, Prosecution Request for Extension of Time to Comply with Disclosure Order – Decision on Sabra’s Seventh Motion for Disclosure – Experts, Confidential, 11 June 2013, with a public redacted version of the same day. All further references to filings and decisions relate to this case number unless otherwise stated.

² Decision on Sabra’s Seventh Motion for Disclosure – Experts, with Annex to the “Decision on Sabra’s Seventh Motion for Disclosure – Experts” (“Annex to Disclosure Decision”), 24 May 2013.

³ *Id.*, Disposition, para. (b).

⁴ *Id.*, Disposition.

⁵ Request, paras 1, 15.

⁶ *Id.*, para. 2.

⁷ *Id.*, paras 2, 9.

⁸ *Id.*, para. 4.

order “to comply with subparagraph b) of the Disclosure [Decision] in relation to internally available material”.⁹

6. The Prosecution adds that because many of the expert communications date back several years in some cases, their retrieval requires contacting former staff members in addition to contacting the relevant expert witnesses “to ensure that the communications retrieved are complete”.¹⁰ Furthermore, correspondence with external expert witnesses is often conducted via States and thereby requires sending Requests for Assurances (“RFAs”) and awaiting a response.¹¹

7. The Prosecution also emphasises the current temporary absence of one staff member who is the primary contact person for more than half of the external forensic expert witnesses, stating that it relies on this person “to confirm the accuracy and completeness of its disclosure” for those witnesses.¹²

8. The Prosecution submits that the aforementioned factors constitute “good cause” justifying the extension of time request.¹³ Additionally, it advises that it is in the process of reviewing its expert witness list, which could prevent the disclosure of unnecessary material pursuant to the Disclosure Decision.¹⁴

IV. DISCUSSION

9. The Pre-Trial Judge recalls that the “good cause” requirement arises from his order on a Working Plan, which stipulates that Parties may seize him with requests for variation of time limits upon demonstrating “good cause”.¹⁵ In light of his broad discretionary power pursuant to Rule 77(A),¹⁶ the Pre-Trial Judge considers that a prescriptive formulation of

⁹ *Id.*, para. 3.

¹⁰ *Id.*, para. 9(b).

¹¹ *Id.*, para. 9(d).

¹² *Id.*, para. 9(c).

¹³ *Id.*, para. 10.

¹⁴ *Id.*, para. 11.

¹⁵ Order on a Working Plan and on the Joint Defence Motion Regarding Trial Preparation, 25 October 2012, para. 22.

¹⁶ Rule 77(A) STL RPE provides that “[a]t the request of a Party, the Pre-Trial Judge may issue such orders [...] as may be necessary for [...] the preparation or conduct of the proceedings”.

what constitutes “good cause” is not desirable, and it will be determined on a case-by-case basis. It must however be “exceptional” for relief to be granted.¹⁷

10. Upon reviewing the factors enumerated in the Request, the Pre-Trial Judge emphasises that the absence of a staff member does not demonstrate “good cause”, especially since, according to the dates provided by the Prosecution in relation to the staff member’s absence,¹⁸ the person in question was present at the Tribunal for nearly a month after the Disclosure Decision was rendered. In preparing for a fair and expeditious trial, the Prosecutor bears the responsibility of ensuring that delays are kept to a minimum regardless of any and all temporary absences of staff members.

11. In considering the other “good cause” factors listed, the Pre-Trial Judge notes that that Request concerns only part of the Disclosure Decision (subparagraph (b) of the Disposition) while the Prosecution will comply with the remaining orders (subparagraphs (a) and (c) of the Disposition) by the established deadline of 21 June 2013. The material meeting the description of paragraph (b) of the Disposition can be summarised as follows:

- a. The original set of instructions provided to each expert/analyst/investigator and any subsequent instructions prior to the completion of the final report;
- b. Any feedback, comments or observations that the expert received from the Prosecution;
- c. A list of each and all documents, material or information relied upon by the expert for the purpose of preparing his report.¹⁹

While subparagraphs (a) and (c) of the Disposition relate to a specific expert witness or report, subparagraph (b) relates to all pre-existing documents in the custody and control of the Prosecution concerning all external expert witnesses.²⁰

12. Noting the larger scope of subparagraph (b) of the Disposition, the Pre-Trial Judge considers it justifiable that the Prosecution require additional time to comply with this part of the Disclosure Decision. Furthermore, the Pre-Trial Judge takes into account the delays

¹⁷ Decision on Prosecution’s Request to Extend Working Plan Deadlines, Confidential, 17 December 2012, with a public redacted version dated 19 December 2012, para. 9; Decision on Prosecution Request for Extension of Time to Disclose Expert Reports, Confidential, 25 January 2013, para. 10.

¹⁸ Request, para. 9(c).

¹⁹ Annex to Disclosure Decision, paras 3(i), 3(iii), 3(vii).

²⁰ *Id.*, para. 3; Disclosure Decision, Disposition, para. (b).

associated with locating former staff members and with contacting external experts via their respective States. Finally, the Pre-Trial Judge notes that the Prosecution has already initiated the process²¹ and filed the Request within a reasonable amount of time after realising that it could not meet the established deadline.

13. The Pre-Trial Judge therefore finds that the extension of time is justified, and grants the Request.

V. DISPOSITION

FOR THESE REASONS,

THE PRE-TRIAL JUDGE,

PURSUANT TO Article 18(2) of the Statute and Rules 9 and 77(A) of the Rules of Procedure and Evidence,

GRANTS the Request; and

AUTHORISES that the time limit for the Prosecution to comply with subparagraph b) of the Disclosure Decision Disposition be extended to 26 July 2013.

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

Leidschendam, 20 June 2013.




Daniel Fransen
Pre-Trial Judge



²¹ Request, para. 9.