

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**

Date: **4 September 2013**

Original language: **English**

Classification: **Public**

THE PROSECUTOR

v.

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

DECISION ON THE MOTION BY THE AYYASH DEFENCE TO COMPEL THE DISCLOSURE OF THE IDENTITIES OF 29 PROPOSED PROSECUTION 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:

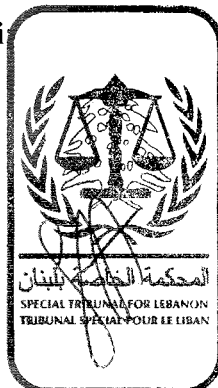
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Mr. David Young



I. INTRODUCTION

1. In this decision, the Pre-Trial Judge rules on the motion received from Counsel for Mr. Salim Jamil Ayyash (the “Ayyash Defence”) to compel the disclosure of the identities of 29 proposed Prosecution witnesses (the “Motion”).¹

II. PROCEDURAL BACKGROUND

2. On 18 January 2013, the Ayyash Defence filed the Motion in which it requested the Pre-Trial Judge to order the Prosecution immediately to disclose the identities of 29 of the witnesses that appeared on its witness list filed pursuant to Rule 91(G)(ii) (the “Rule 91 List”) of the Rules of Procedure and Evidence (the “Rules”).²

3. On 28 January 2013, the Prosecution filed a response to the Motion (the “Response”).³ In the Response, the Prosecution informed the Pre-Trial Judge of the disclosure to the Defence of the identities of two witnesses on 28 January 2013.⁴ With regard to the 27 witnesses remaining, the Prosecution asked the Pre-Trial Judge to postpone his ruling on the Motion until 15 February 2013 in order to allow the States under whose authority the remaining witnesses gave evidence “to apprise the Tribunal of any concerns related to witness protection and grounds justifying interim protective measures”.⁵

4. On 15 February 2013, the Prosecution filed a notice updating the Pre-Trial Judge on the disclosure of the identities of witnesses concerned by the Motion (the “First Notice”).⁶ In the First Notice, the Prosecution disclosed to the Defence the identities of 22 witnesses, thereby informing the Pre-Trial Judge that it had, by 14 February 2013, provided to the Defence the identities of 24 of the 29 expert witnesses.⁷

¹ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Motion to Compel Disclosure of the Identities of 29 Proposed Prosecution Witnesses, public, 18 January 2013. All further references to filings and decisions relate to this case number unless otherwise stated.

² Motion, paras. 1 and 32. The Pre-Trial Judge also notes that he had already ordered the Prosecution to file its pre-trial brief including its Rule 91 witness list and exhibit list on 15 November 2012, see Order Setting a date for filing the Prosecution’s Pre-Trial brief, 28 August 2012; Motion, para. 15.

³ Prosecution Response to the Defence Motion to Compel Disclosure of the Identities of 29 Proposed Prosecution Witnesses, confidential, 28 January 2013. A public redacted version of the response was filed the same day.

⁴ Response, paras 2 and 7.

⁵ *Id.*, para. 2.

⁶ Notice Updating the Pre-Trial Judge on the Disclosure of Identities of State Related Experts in Relation to the Ayyash Defence “Motion to Compel Disclosure of the Identities of 29 Proposed Prosecution Witnesses”, confidential, 15 February 2013.

⁷ First Notice, paras 1 and 7.

5. On 28 February 2013, the Prosecution filed an application for interim non-disclosure of the identity of the five remaining witnesses pursuant to Rule 115 of the Rules (the “Application”).⁸

6. On 11 and 20 March 2013 respectively, the Ayyash Defence and Counsel for Mr. Mustafa Amine Badreddine (the “Badreddine Defence”) each filed a response to the Application (the “Ayyash Response” and the “Badreddine Response” respectively).⁹

7. On 28 June 2013, the Prosecution filed its submissions regarding the Application.¹⁰

8. On 2 July 2013, the Prosecution withdrew its Application (the “Withdrawal”).¹¹ In its Withdrawal, the Prosecution explained that it no longer intended to call the five remaining witnesses at trial, and that their names would therefore subsequently be withdrawn from its Rule 91 List.¹²

9. On 10 July 2013, the Prosecution filed a notice of intention in relation to exhibits and witnesses in which it requested the Pre-Trial Judge *inter alia* to authorise the withdrawal of five witnesses from the Rule 91 List (the “Second Notice”).¹³

10. On 15 July 2013, the Prosecution filed a corrigendum¹⁴ along with a corrected version of the Second Notice which left unaffected the withdrawal of the five aforementioned witnesses (the “Corrected Second Notice”).¹⁵ In both the Second Notice and the Corrected Second Notice, the Prosecution clearly stated that the five remaining expert witnesses whose identity needed to be disclosed had been removed from the Prosecution Rule 91 List.¹⁶

⁸ Prosecution Application for Interim Non-Disclosure of the Identity of Witnesses Pursuant to Rule 115, confidential with confidential and *ex parte* annexes A to F, 28 February 2013, paras 1, and 7.

⁹ Response on Behalf of Mr. Ayyash to “Prosecution Application for Interim Non-Disclosure of the Identity of Witnesses Pursuant to Rule 115, confidential, 11 March 2013; *Réponse de la Défense de M. Mustafa Amine Badreddine à la requête du Procureur en mesures de protection sur le fondement de l’article 115 du Règlement de procédure et de preuve*, confidential, 20 March 2013.

¹⁰ Prosecution Submissions Regarding its Pending Rule 115 Application, confidential with confidential and *ex parte* annexes A-C, 28 June 2013.

¹¹ Prosecution Withdrawal of its Rule 115 Application of 28 February 2013, confidential, 2 July 2013.

¹² Withdrawal, paras 1-4.

¹³ Prosecution’s Notice of Intention in Relation to Exhibits and Witnesses and Notice of Reclassification, with confidential annexes A, B and C, 10 July 2013.

¹⁴ Corrigendum to “Prosecution’s Notice of Intention in Relation to Exhibits and Witnesses and Notice of Reclassification” and to the Confidential Annex B, 15 July 2013.

¹⁵ Corrected version of “Prosecution’s Notice of Intention in Relation to Exhibits and Witnesses and Notice of Reclassification,” filed 10 July 2013, with confidential Annexes A, B and C (Annex B corrected), 15 July 2013.

¹⁶ Second Notice, Annex B – List of Withdrawn Witnesses, 10 July 2013, p. 7-8, see nos 427, 428 and 433-435; Second Notice Corrected version of “Annex B – List of Withdrawn Witnesses,” filed 10 July 2013, 15 July 2013, p. 10-12, see nos 427, 428 and 433-435.

III. DISCUSSION

11. The Pre-Trial Judge considers that, since the identities of 24 out of the 29 witnesses concerned by the Motion have been disclosed, and since the Prosecution has withdrawn the five remaining witnesses, the Motion is moot.

IV. DISPOSITION

FOR THESE REASONS,

THE PRE-TRIAL JUDGE,

PURSUANT TO Rules 77(A) and 91 of the Rules;

DECLARES the Motion moot.

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

Leidschendam, 4 September 2013.



Daniel Fransen
Pre-Trial Judge

