



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 Fransén**

The Registrar: **Mr. Daryl Mundis**

Date: **19 September 2013**

Original language: **English**

Classification: **Public**

**THE PROSECUTOR**

v.

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

**PUBLIC REDACTED VERSION OF THE “DECISION ON THE PROSECUTION  
SUBMISSIONS PURSUANT TO THE 18 JUNE 2013 DECISION ON ISSUES  
RELATED TO THE INSPECTION ROOM AND CALL DATA RECORDS” DATED  
10 SEPTEMBER 2013**

**Office of the Prosecutor:**  
Mr. Norman Farrell

**Counsel for Mr. Salim Jamil Ayyash:**  
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**Legal Representative of Victims:**  
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**Counsel for Mr. Mustafa Amine Badreddine:**  
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**Counsel for Mr. Hussein Hassan Oneissi:**  
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**Counsel for Mr. Assad Hassan Sabra:**  
Mr. David Young



## **I. INTRODUCTION**

1. In this decision, the Pre-Trial Judge rules on the Prosecution's Submissions of 25 June 2013 (the "Submissions")<sup>1</sup> made pursuant to the Decision on Issues Related to the Inspection Room and Call Data Records ("CDRs") dated 18 June 2013 (the "18 June 2013 Decision").<sup>2</sup>

## **II. PROCEDURAL BACKGROUND**

2. On 18 March 2013, Counsel for Messrs Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi and Assad Hassan Sabra (the "Defence") filed a joint submission regarding matters related to the Inspection Room and CDRs on which they seek judicial determination,<sup>3</sup> to which the Prosecution responded on 22 March 2013.<sup>4</sup>

3. On 28 March 2013, the Defence filed additional submissions,<sup>5</sup> to which the Prosecution responded on 9 April 2013.<sup>6</sup>

4. On 25 June 2013, the Prosecution filed the Submissions regarding the 18 June 2013 Decision while the Defence declined to file any submissions.

5. On 9 August 2013, the Pre-Trial Judge issued a decision (the "9 August 2013 Decision"), in which he granted the Oneissi Defence's request to certify the 18 June 2013 Decision for appeal in respect of two discrete issues.<sup>7</sup> This proceeding is, at the time of this decision, pending before the Appeals Chamber.<sup>8</sup>

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<sup>1</sup> STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Prosecution Submissions pursuant to the Pre-Trial Judge's 18 June 2013 Decision on Issues Related to the Inspection Room and Call Data Records with Annexes A to F, confidential, 25 June 2013. All further references to filings and decisions relate to this case number unless otherwise stated.

<sup>2</sup> Decision on Issues Related to the Inspection Room and Call Data Records, confidential, 18 June 2013.

<sup>3</sup> Defence Submissions Regarding the Prosecution's Inspection Room and Call Data Records on the "Z Drive", confidential with confidential annexes A-J, 18 March 2013.

<sup>4</sup> Prosecution Response to the Defence Submissions regarding the Prosecution's Inspection Room and Call Data Records, confidential, 22 March 2013.

<sup>5</sup> Additional Defence Submissions Regarding the Prosecution's Inspection Room and Call Data Records on the "Z Drive", confidential with confidential annexes A-B, 28 March 2013.

<sup>6</sup> Prosecution Response to the Additional Defence Submissions regarding the Prosecution's Inspection Room and Call Data Records, confidential, 9 April 2013.

<sup>7</sup> Decision on the Defence for Hussein Hassan Oneissi's Request for Reconsideration and Certification of "the Decision on Issues Related to the Inspection Room and Call Data Records" Dated 18 June 2013, confidential, 9 August 2013.

<sup>8</sup> STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/AC/AR126.4, The Defence for Hussein Hassan Oneissi Appeal to the Pre-Trial Judge's "Decision On Issues Related to the Inspection Room and Call Data Records" Dated 18 June 2013, confidential, 19 August 2013; *Addendum* to the Defence for Hussein Hassan

### III. THE SUBMISSIONS

6. In the Submissions, the Prosecution makes two requests.

7. First, the Prosecution asks the Pre-Trial Judge to grant an extension of time until 30 September 2013 to conduct the validation process of the original CDRs and to make three additional databases available to the Defence in SQL format.<sup>9</sup> The Prosecution estimates that the provision of the three additional SQL databases in the Inspection Room will require “until at least 30 September 2013”<sup>10</sup> because it will “require a sizeable amount of time for development and uploading,” processes that “rely solely on the availability of the Prosecution’s database administrators” with other workload related to trial preparations, including the additional process ordered by the Pre-Trial Judge for purposes of validation of CDRs.<sup>11</sup>

8. Second, the Prosecution requests the Pre-Trial Judge to take note of the redactions it has proposed to the 18 June 2013 Decision and its associated filings, in the event that he orders that public redacted versions of the same be filed.<sup>12</sup>

### IV. DISCUSSION

#### A. Validation by 30 September 2013

9. In the 18 June 2013 Decision, the Pre-Trial Judge expressed his concerns that “he, together with the Parties and the LRV, are all working off the same version of material supporting the Indictment, and on which the Prosecution intends to rely at trial”.<sup>13</sup> He therefore ordered the Prosecution to propose its own method for validating the faithfulness of the Raw Data in the Inspection Room in the manner requested by the Defence.<sup>14</sup>

10. The Pre-Trial Judge notes that in its Submissions, the Prosecution proposed an approach for the validation of the data received [REDACTED] only, since the problem is not

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Oneissi Appeal to the Pre-Trial Judge’s “Decision On Issues Related to the Inspection Room and Call Data Records” Dated 18 June 2013, confidential, 22 August 2013; Prosecution Response to the Oneissi Defence’s Appeal of the Pre-Trial Judge’s “Decision on Issues Related to the Inspection Room and Call Data Records” of 18 June 2013, confidential, 30 August 2013.

<sup>9</sup> Submissions, para. 20.

<sup>10</sup> *Id.*, para. 9.

<sup>11</sup> *Id.*, paras. 8 and 13.

<sup>12</sup> *Id.*, para. 18.

<sup>13</sup> 18 June 2013 Decision, para. 89.

<sup>14</sup> *Id.*, paras 94 and 95.

presented in respect of other providers of data, most notably [REDACTED]. That proposed approach involves undertaking to conduct “a complete audit of [REDACTED] CSTs, attest to their accuracy (in both the “original” and subsequent [REDACTED] data), and file written submissions for the differences found in the data, if any.”<sup>15</sup> This approach, the Prosecution submits, provides a “full validation”<sup>16</sup> and “will also ensure that there is a single source of raw data”,<sup>17</sup> but will require until at least 30 September 2013 to be completed.<sup>18</sup>

11. The Pre-Trial Judge also notes the Prosecution’s submission that “[w]ith regard to [REDACTED] raw CDRs, the Prosecution has only one version developed into SQL [and] therefore submits that the ordered ‘validation’ can apply only to data [REDACTED].”<sup>19</sup> This aspect of the Prosecution’s proposed validation appears to be consistent with the Decision, since the Pre-Trial Judge held that “the deeper problem to which the Defence seeks a solution” is “with respect to the validation of the integrity of the two versions of the Raw Data in existence”<sup>20</sup> and where there is only one version, no issue as to validation arises.

12. Since the validation process of the “original” CDRs [REDACTED] proposed by the Prosecution meets the concerns of the Pre-Trial Judge, as expressed in the 18 June 2013 Decision, and since the time period requested is *prima facie* justified, the Prosecution is granted until 30 September 2013 to implement it.

### **B. Additional Databases in SQL Format**

13. In the 18 June 2013 Decision, the Pre-Trial Judge found that the Prosecution is obliged to provide to the Defence all CDRs in SQL format that are in its possession at least for the period from 1 January 2003 until 1 October 2005 (or part thereof where the Prosecution does not currently have the materials).<sup>21</sup> In practice, that required the Prosecution to provide, in SQL format, the following supplementary CDRs for the relevant period: [REDACTED], [REDACTED], and [REDACTED].<sup>22</sup>

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<sup>15</sup> Submissions, para. 12.

<sup>16</sup> *Ibid.*

<sup>17</sup> Submissions, para. 14.

<sup>18</sup> *Id.*, para. 13.

<sup>19</sup> *Id.*, para. 11.

<sup>20</sup> 18 June 2013 Decision, para. 93.

<sup>21</sup> *Id.*, para. 55.

<sup>22</sup> *Ibid.*

14. The Prosecution estimates that the provision of these three additional SQL databases in the Inspection Room will require, for the reasons summarised in the Submissions' section above, "until at least 30 September 2013", and requests that time in order to implement this aspect of the Decision.<sup>23</sup>

15. The Pre-Trial Judge considers that, since the time period requested is *prima facie* justified, the Prosecution is granted until 30 September 2013 to provide these three additional SQL databases in the Inspection Room.

### C. Redactions to the 18 June 2013 Decision and its Filings

16. As the Pre-Trial Judge has stated previously:

"[T]he principle of the publicity and transparency of the proceedings [are] enshrined in Articles 16(2) and 20(4) of the Statute and Rule 96 of the Rules. Exceptions are only permitted in specific and limited circumstances since, as the Appeals Chamber pointed out, "[c]onfidential submissions and decisions – although sometimes necessary by their very nature conflict with this policy of openness."<sup>24</sup>

17. The Pre-Trial Judge also recalls Article 7 of the Tribunal's Practice Direction on Filing of Documents (the "Practice Direction").<sup>25</sup> In accordance with the principles of the Statute, the Rules of Procedure and Evidence (the "Rules") and the Practice Direction, the Pre-Trial Judge observes that in the case at hand, the filings by the Prosecution and the Defence (the "Parties"), as well as the 18 June 2013 Decision, contain sensitive information that must be redacted.

18. Therefore, the Pre-Trial Judge, having considered the Prosecution's submissions, authorises the Prosecution's proposed redactions to the filings on which the 18 June 2013 Decision ruled, as well as of the 18 June 2013 Decision<sup>26</sup> and orders the Parties – consistent with the 18 June 2013 Decision– to file a public redacted version of their confidential filings accordingly. The Pre-Trial Judge further states that he will file the public redacted version of the 18 June 2013 Decision separately.

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<sup>23</sup> Submissions, para. 9.

<sup>24</sup> Decision relating to the Prosecution Motion to Reclassify the Sabra Defence's Second Motion Seeking the Cooperation of Lebanon, confidential, 15 mars 2013, para. 14; STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/AC, Corrected version of Decision on the Pre-Trial Judge's Request pursuant to Rule 68(G), 29 March 2012, para. 12.

<sup>25</sup> Practice Direction on Filing of Documents before the Special Tribunal for Lebanon, reference STL/PD/2010/01/Rev.2, 14 June 2013.

<sup>26</sup> Submissions, Annexes B to F, confidential, 25 June 2013.

19. Lastly, the Pre-Trial Judge invites the Parties to file before him their submissions containing motivated reasons for not reclassifying the 9 August 2013 Decision and this decision as well as the filings related thereto, as public, together with proposed redactions as the case may be.

**V. DISPOSITION**

**FOR THESE REASONS,**

**THE PRE-TRIAL JUDGE,**

**PURSUANT TO** Rules 77(A), 96(A) of the Rules and Article 7(6) of the Practice Direction,

**GRANTS** the Request;

**ORDERS** the Prosecution to implement the validation process it has proposed by 16:00 on 30 September 2013 at the latest;

**ORDERS** the Prosecution to provide the three additional SQL databases in the Inspection Room by 16:00 on 30 September 2013 at the latest;

**ORDERS** the Prosecution to file a notice, by 16:00 on 30 September 2013 at the latest, certifying that it has met its obligation according to this decision;

**STATES** that a public redacted version of the 18 June 2013 Decision will be filed forthwith;

**ORDERS** the Parties, with regard to the 18 June 2013 Decision, to file public redacted versions of their filings within five working days of this decision; and

**INVITES** the Parties to file before him their submissions containing motivated reasons for not reclassifying the 9 August 2013 Decision and this decision as well as the filings related thereto, as public, together with proposed redactions as the case may be, within five working days of this decision.

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

Leidschendam, 19 September 2013.



Daniel Fransen  
Pre-Trial Judge

