

THE PRE-TRIAL JUDGE

Case No.: **STL-11-01/PT/PTJ**

The Pre-Trial Judge: **Judge Daniel Fransen**

The Registrar: **Mr. Daryl Mundis**

Date: **25 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 DEFENCE MOTION REGARDING THE TRANSCRIPTS OF THE 3 JULY 2013 STATUS CONFERENCE

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. In this decision, the Pre-Trial Judge rules on the “Motion for Reclassification of Closed Session of Status Conference Held on 3 July 2013 and for Revision of Redactions of Public Official Transcript” (the “Motion”)¹ received from the respective Counsel for Messrs. Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi and Assad Hassan Sabra (the “Defence”).

II. PROCEDURAL BACKGROUND

2. On 3 July 2013, the Pre-Trial Judge convened a status conference (the “Status Conference”), a portion of which was conducted in closed session.²

3. The Registry circulated the official confidential and public redacted versions of the English, French and Arabic transcripts of the Status Conference (with the portion conducted in closed session redacted from the public version) respectively on the 9³, 10⁴ and 11⁵ of July 2013.

4. On 11 July 2013, the Defence filed the Motion.

5. On 22 July 2013, the Prosecution filed a response to the Motion (the “Response”).⁶

III. SUBMISSIONS

1. The Motion

6. The Defence recalls that, although part of the proceedings of the Status Conference were held in open session⁷, a large portion of the proceedings took place in closed session

¹ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Defence Motion for Reclassification of Closed Session of Status Conference Held on 3 July 2013 and for Revision of Redactions of Public Official Transcript, confidential, 11 July 2013. All further references to filings and decisions relate to this case number unless otherwise stated.

² Public Status Conference, 3 July 2013.

³ Official Confidential English Transcript - Status Conference held on 03 July 2013, 9 July 2013; Official, English Public Redacted Transcript of the Status Conference of 3 July 2013, 9 July 2013.

⁴ Official Confidential French Transcript - Status Conference held on 03 July 2013, 10 July 2013; Official, French Public Redacted Transcript of the Status Conference of 3 July 2013, 10 July 2013.

⁵ Official Confidential Arabic Transcript - Status Conference held on 03 July 2013, 11 July 2013; Official, Arabic Public Redacted Transcript of the Status Conference of 3 July 2013, 11 July 2013.

⁶ Prosecution’s Response to the “Defence Motion for Reclassification of Closed Session of Status Conference Held on 3 July 2013 and for Revision of Redactions of Public Official Transcript”, confidential with confidential annex A, 22 July 2013.

due to “discussions about the Prosecution’s further request to amend the indictment (the “Further Request”)⁸ and its impact on setting a new trial date”.⁹

7. The Defence submits that — in accordance with Rules 96(A) and 139(B) of the Rules of Procedure and Evidence (the “Rules”),¹⁰ together with the Tribunal’s case law¹¹ — although confidentiality is necessary under certain circumstances, it must be limited and proportionate. The Defence further observes that the “vast majority of the closed session portion of the hearing of 3 July 2013 comprises references to the Further Request”¹² for which a public redacted version has been filed. Consequently, save for three issues that must remain confidential, nothing prevents the Pre-Trial Judge from ordering the reclassification of the closed session portion of the transcript from confidential to public and thus order that a new public redacted version be filed.¹³

8. The Defence enumerates the three confidential issues mentioned in the official transcript and notes that their redactions remain essential to prevent the disclosure of sensitive information “which may adversely affect ongoing investigations”.¹⁴

9. The Defence therefore deems that, provided the Pre-Trial Judge approves its proposed redactions¹⁵, the classification of portions of the transcript as confidential is no longer justified.

⁷ The Defence recalls the Pre-Trial Judge’s order to omit a portion of the proceedings in open session from the public transcript and to edit accordingly the public broadcast of the hearing. See Motion, para. 3; Order to Redact the Public Transcript and the Public Broadcast of a Hearing, confidential, 3 July 2013. A public redacted version of this order was filed the following day.

⁸ Prosecution Further Request for Leave to Amend the Indictment, confidential, 21 June 2013. A public redacted version of the request was filed on 1 July 2013.

⁹ Motion, para. 2.

¹⁰ *Id.*, paras. 6 and 7; Rule 96(A) states that “[s]ubject to sub-paragraph (B), pre-trial filings, proceedings and orders shall be public, unless otherwise provided by the Rules or decided by the Pre-Trial Judge at the request of a Party”. Rule 139(B) states that “[t]he Trial Chamber, after hearing the Parties and giving due consideration to any matters relating to witness or victim protection, may order the disclosure of all or part of the record of closed proceedings when the reasons for ordering its non-disclosure no longer exist”. This rule applies *mutatis mutandis*, in proceedings before the Pre-Trial Judge, see Rule 97 of the Rules.

¹¹ Motion, paras. 8 and 9. The Defence recalls the position of the President of the Tribunal who ruled that “[t]he principle of open justice, that this Tribunal and its Appeals Chamber have emphasized time and again, does not need reiteration. By rendering the administration of justice transparent, publicity contributes to the achievement of a fair trial”; see STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PRES, Order on Request to Redact Transcript of Hearing, confidential, 12 April 2013, para. 6. A public redacted version of this order was filed the same day.

¹² Motion, para. 11.

¹³ *Ibid.*

¹⁴ Motion, para. 12.

¹⁵ *Id.*, Annexes A and B, confidential, 11 July 2013.

2. The Response

10. With regard to the principle of publicity guaranteed by the Rules¹⁶, the Prosecution agrees with the Defence and considers that the majority of the closed session part of the Status Conference can be reclassified as public. Nonetheless, the Prosecution submits that the redactions proposed by the Defence are insufficient and therefore provides the Pre-Trial Judge with additional redactions to protect the Prosecution's confidential "investigations and internal decision making".¹⁷ The Prosecution considers that the redactions are justified by the necessity to protect sensitive information,¹⁸ and avers that if its proposed redactions were to be rejected by the Pre-Trial Judge an informed public would easily draw conclusions from the above information.¹⁹ Consequently, the Prosecution does not oppose the Motion, provided the Pre-Trial Judge authorises the Prosecution's redactions in addition to the redactions proposed by the Defence.²⁰

11. Both the Defence and the Prosecution suggest that their respective proposed redactions should apply to the English, French and Arabic versions of the transcript.²¹ As such, the Prosecution suggests the Pre-Trial Judge to order the Registry's Language Services Section to apply the redactions to the three language versions of the transcript.²²

IV. DISCUSSION

12. The Pre-Trial Judge recalls that at the Status Conference both the Prosecution and the Defence requested that some issues be discussed in closed session. Considering their submissions, the Pre-Trial Judge ordered a closed session.²³

13. 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,

¹⁶ See *supra* footnote 10.

¹⁷ Response, para. 4.

¹⁸ *Id.*, para. 2.

¹⁹ *Id.*, para. 5.

²⁰ *Id.*, paras 1 and 7; Annex A - Confidential Transcript of the Status Conference, dated 3 July 2013 and Highlighted with Proposed Redactions Suggested by the Defence and the Prosecution, confidential, 22 July 2013.

²¹ *Id.* para. 6; Motion, para. 1.

²² Response, para. 6.

²³ Official, English Public Redacted Transcript of the Status Conference of 3 July 2013, 9 July 2013, p. 11-12 and 20.

“[c]onfidential submissions and decisions – although sometimes necessary by their very nature conflict with this policy of openness.”²⁴

14. Moreover the Pre-Trial Judge recalls that, in accordance with Article 7 of the Tribunal’s Practice Direction on Filing of Documents (the “Practice Direction”):²⁵

“(1) Documents filed on the Case File are deemed public records unless they are protected from disclosure by the Statute, the Rules, an order or a decision by a Judge or Chamber, in which case the appropriate classification must be indicated, as per Article 6.”

[...]

“(6) A Judge or Chamber may change, *proprio motu* or upon request of a Participant, the classification of a document by an order or decision. In either instance, the Judge or Chamber may seek the views of the Participant who submitted the document prior to issuing its order or decision.”

15. In this case, the Pre-Trial Judge notes that sections of the transcript of the proceedings held in closed session refer to sensitive information that must be protected so as not to prejudice the ongoing investigations. However, the Pre-Trial Judge observes that a portion of the hearing referred to the Further Request whose contents were indeed partly filed publicly. Accordingly, the Pre-Trial Judge deems that the interests of justice would be better served if a new public redacted version of the transcript was authorised, with fewer redactions related to the closed session of the hearing.

16. Moreover, the Pre-Trial Judge notes that the redactions proposed by the Prosecution exceed the redactions proposed by the Defence. Nonetheless, this does not constitute a disagreement. The Prosecution has merely identified further redactions which are appropriate, in addition to those proposed by the Defence. Consequently, the Pre-Trial Judge considers that both sets of proposed redactions are justified.

17. Furthermore, having carefully reviewed the redactions to the transcript proposed by the Prosecution and the Defence, the Pre-Trial Judge has himself identified further information which must be redacted in order to remain consistent with the redactions proposed.

²⁴ Decision relating to the Prosecution Motion to Reclassify the Sabra Defence’s Second Motion Seeking the Cooperation of Lebanon, confidential, 15 March 2013, para. 14 citing 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.

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

18. In light of the foregoing, the Pre-Trial Judge considers that — in order to uphold the publicity and the transparency of the proceedings — the redactions to the transcript proposed by the Parties must be applied to the Arabic, English, and French versions, and new public redacted versions must be created accordingly.

19. The Pre-Trial Judge therefore grants the Motion, authorises the redactions proposed by the Defence and the Prosecution, and orders further redactions as detailed in the confidential annex to this decision.

V. DISPOSITION

FOR THESE REASONS,

PURSUANT TO Rules 96(A), 97, 139(B) of the Rules and Article 7(6) of the Practice Direction,

THE PRE-TRIAL JUDGE,

GRANTS the Motion;

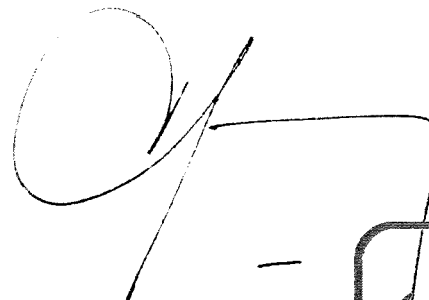
AUTHORISES the redactions to the Arabic, English and French versions of the public redacted transcript of the Status Conference proposed by the Defence and the Prosecution and in accordance with the confidential annex to this decision; and

ORDERS the Registry to apply the authorised redactions to the transcript of the Status Conference in Arabic, English and French, and to create new public redacted versions thereof.

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

Leidschendam, 25 September 2013.




Daniel Fransen
Pre-Trial Judge

