

**THE PRE-TRIAL JUDGE**

Case No.: **STL-13-04/I/PTJ**

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

The Registrar: **Mr. Daryl Mundis**

Date: **10 October 2013**

Original language: **English**

Classification: **Public**

THE PROSECUTOR
v.
HASSAN HABIB MERHI

**ORDER ON PARTIALLY LIFTING THE CONFIDENTIALITY OF THE
INDICTMENT AGAINST MR. HASSAN HABIB MERHI**

Office of the Prosecutor:
Mr. Norman Farrell

Defence Office:
Mr. François Roux



1. In this order, the Pre-Trial Judge rules on the Prosecution Request for Partially Lifting the Confidentiality of the Indictment in the *Merhi* case (the “Request”).¹
2. On 5 June 2013 the Prosecution submitted an indictment for confirmation against Mr. Hassan Habib Merhi (the “Indictment” and “Mr. Merhi” respectively).²
3. On 31 July 2013, the Pre-Trial Judge issued a decision confirming the Indictment,³ and ordering that the decision, together with the Indictment, remain confidential until such time as the Indictment is effectively served on Mr. Merhi, or until further notice (the “Decision of 31 July 2013”).⁴
4. In its Request, the Prosecution submits that the public advertisement of a redacted version of the Indictment will inform Mr. Merhi “in greater detail” about it, and it will also inform the public about the nature and cause of the charges against him, thereby potentially increasing the likelihood that Mr. Merhi surrenders to the Tribunal or is apprehended.⁵
5. The Prosecution submits furthermore that the redactions proposed to the Indictment in confidential *ex parte* annex A to the request are largely consistent with those already approved in the *Ayyash et al.* case.⁶ They are intended: to retain, as confidential, information that identifies witnesses in the Indictment; to protect the personal details of deceased victims; and to protect the identities and personal details of the victims who were injured as a result of the attack.⁷
6. In the Request, the Prosecution seeks an order partially lifting the confidentiality of the Indictment, but only once the Pre-Trial Judge is notified either of a decision by the

¹ STL, *Prosecutor v. Merhi*, Case No. STL-13-04/PT/PTJ (*sic*), Prosecution Request for Partially Lifting the Confidentiality of the Indictment, Confidential and *Ex Parte* with Confidential and *Ex Parte* Annex A, 4 October 2013.

² STL, *Prosecutor v. Merhi*, Case No. STL-13-04/I/PTJ, Prosecution’s Submission of an Indictment for Confirmation and Order to Keep this Filing and its Annexes Confidential and *Ex Parte*; and Motion for an Arrest Warrant, Order for Transfer and Detention; and Order for Non-Disclosure, Confidential and *Ex Parte* with Confidential and *Ex Parte* annexes A to F, 5 June 2013.

³ STL, *Prosecutor v. Merhi*, Case No. STL-13-04/I/PTJ, Decision Relating to the Examination of the Indictment of 5 June 2013 Against Mr. Hassan Habib Merhi, Confidential, 31 July 2013.

⁴ Decision of 31 July 2013, p. 29. This order was made subject to the exception that the Indictment could be disclosed to the competent authorities of the Lebanese Republic and to those of other States to whom the Prosecutor might transmit the Indictment, pursuant to Rule 74 of the Rules.

⁵ Request, para. 3.

⁶ Request, para. 5 referring to STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/PTJ, Redacted Version of the Decision Relating to the Prosecution Request of 21 June 2013 for Leave to Amend the Indictment of 6 February 2013, dated 31 July 2013, 2 August 2013 (the “Decision of 2 August 2013”), para. 32.

⁷ Request, para. 4.

President pursuant to Rule 76(E) of the Rules of Procedure and Evidence (the “Rules”), or of the immanence of such decision, including its public advertisement pursuant to Rule 76*bis*.⁸

7. Rule 76(E) of the Rules provides that:

Where the President establishes that reasonable attempts have been made to serve the indictment, the summons to appear or the warrant of arrest to the accused, but that they have failed, he may, after consulting the Pre-Trial Judge, order the service of process to be effected in an alternative manner, including procedures of public advertisement.

8. The Pre-Trial Judge notes the “Order Pursuant to Rule 76(E)” (the “President’s Order”)⁹ in which the President orders that “the service of process in *Prosecutor v. Merhi*, Case No. STL-13-04, be effected in an alternative manner, including procedures of public advertisement”.¹⁰

9. The President has determined that the requirements of Rule 76(E) have been fulfilled, and having consulted the Pre-Trial Judge, has ordered the service of process by alternative means.

10. The Pre-Trial Judge notes that Rule 76*bis*, referred to in the President’s Order, provides for a form of public advertisement, the significance of which is that, if within 30 days of the advertisement contemplated by that Rule the accused is not under the Tribunal’s authority, then under Rule 105*bis*, the Pre-Trial Judge shall ask the Trial Chamber to initiate proceedings *in absentia*.¹¹

11. The Prosecution has requested that the confidentiality of the Indictment be partially lifted, pending such an order by the President and subject to the approval of its proposed redactions.¹²

12. The Pre Trial Judge recalls that, as he has held previously in a decision in the *Ayyash et al.* case, the need to ensure the good conduct of the ongoing investigations, and to guarantee the protection of the witnesses and the victims, justified maintaining a degree of confidentiality to protect those interests. The same principles apply equally in the present instance.

⁸ Request, para. 1. The Prosecution attaches to its Request in Confidential *Ex Parte* Annex A the public redacted version of the Indictment “to facilitate the Rule 76*bis* advertisement process”, Request, para. 2.

⁹ STL, *Prosecutor v. Merhi*, STL-13-04/I/PRES, Order Pursuant to Rule 76 (E) with confidential and *ex parte* annexes, 10 October 2013.

¹⁰ President’s Order, para. 1.

¹¹ President’s Order, para. 10.

¹² Request, paras 1, 7.

13. The Pre-Trial Judge considers, accordingly, that at the present stage of the proceedings it is appropriate to lift the confidentiality of the Indictment, subject to the redactions proposed thereto that are hereby approved. Furthermore, and as a result, it is appropriate that the confidentiality of the Decision of 31 July 2013 also be lifted, albeit subject to such redactions to be proposed by the Prosecution and approved by the Pre-Trial Judge.

FOR THESE REASONS,

THE PRE-TRIAL JUDGE,

PURSUANT TO Rules 74 and 77(E) of the Rules;

GRANTS the Request;

ORDERS the lifting of the confidentiality of the Indictment, subject to the redactions proposed thereto by the Prosecution; and

ORDERS the Prosecution, by 12:00 on Friday 11 October 2013, to notify the Pre-Trial Judge of the redactions it proposes, if any, to the Decision of 31 July 2013.

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

Leidschendam, 10 October 2013.



Daniel Fransen
Pre-Trial Judge

