



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: **Mr Daniel Fransen**

The Registrar: **Mr Daryl Mundis**

Date: **25 February 2014**

Original language: **French**

Classification: **Public**

THE PROSECUTOR

v.

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

**PUBLIC REDACTED VERSION OF THE “DECISION AUTHORISING THE
WITHDRAWAL OF TWO INTERNAL MEMORANDA FROM THE PROSECUTION
EXHIBIT LIST” DATED 25 JULY 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. The subject of this order

1. By way of this decision, the Pre-Trial Judge grants the Prosecution request of 26 June 2013 in which it seeks leave to withdraw two documents from its exhibit list (the “Request”).¹

II. Statement of reasons

2. In the Request, the Prosecution identifies the following two internal memoranda prepared by staff members of the United Nations International Independent Investigation Commission (UNIIC) in the course of the investigation into the death of former Prime Minister Rafic Hariri:²

- a. the UNIIC Memorandum of 22 February 2007 entitled [REDACTED]; and
- b. the UNIIC Internal Memorandum entitled [REDACTED].

3. The Prosecution states that those two documents were inadvertently placed under Rule 91 (G) of the Rules of Procedure and Evidence (the “Rules”). It states that it does not intend to use those documents as exhibits during the proceedings. According to the Prosecution, those memoranda are not evidence. The information pertaining to the two documents can be found in other evidentiary sources.³ Furthermore, the Prosecution submits that those documents fall under Rule 111 of the Rules.⁴

4. The Defence for Mr Sabra (the “Defence”) responded to the Request on 8 July 2013 (the “Response”)⁵ and did not oppose the withdrawal of those two documents while stating that, in its opinion, the disclosure of the Memorandum of 22 February 2007 pursuant to Rule 113 of the Rules is not the result of an error. On the contrary, the Defence is of the opinion that the Prosecution disclosed that Memorandum being fully conscious of its exculpatory nature.⁶ The Defence points out that it is for the Trial Chamber, under Rule 149 (C) of the Rules, to rule on whether the Memorandum of 22 February 2007 can be considered as evidence.⁷

¹ STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Prosecutor’s Request to Withdraw Two Internal Memoranda from Exhibit List, Confidential, 26 June 2013. Any further references to filings or decisions relate to this case, unless otherwise indicated.

² Request, para. 3.

³ *Id.*, paras 4-5.

⁴ *Id.*, para. 6.

⁵ STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Defence Response to the Prosecutor’s Request to Withdraw Two Internal Memoranda from Exhibit List, Confidential, 8 July 2012 (*sic*).

⁶ *Id.*, para. 5

⁷ *Id.*, para. 10

5. Further to the Response, on 11 July 2013, the Prosecution sought leave of the Pre-Trial Judge to file a reply were he to consider, on the basis of the Response, that he should determine the classification of those two internal documents that are the subject of the Request or whether he considered that he should rule on the nature of the Prosecution's obligations to assist the Tribunal in establishing the truth.⁸

6. The Pre-Trial Judge considers that the arguments put forward by the Prosecution to justify the withdrawal of the aforementioned documents from its exhibit list are well-founded. Indeed, in accordance with Rule 91 (G) (iii) of the Rules, the Pre-Trial Judge considers that, insofar as the Prosecution does not intend to use them as evidence, withdrawing those documents from its exhibit list is in the interest of justice. Indeed, the withdrawal of those exhibits does not cause prejudice to the rights of the accused. Furthermore, it leads to a more efficient and expeditious preparation of the case in that it enables the Defence to invest those resources in other tasks. Lastly, the Pre-Trial Judge also notes that the Defence does not oppose the withdrawal of those documents.

7. The Pre-Trial Judge considers moreover that the arguments put forward by the Defence regarding the legal basis on which those memoranda were disclosed have no direct connection to the request submitted by the Prosecution in the Request. Where appropriate, that question will be discussed and determined by the Trial Chamber. Therefore, the reply being sought by the Prosecution is not needed in order to rule on the Request. As a consequence, there is no need to grant it.

⁸ STL, *The Prosecutor v. Ayyash et al.*, Case No. STL -11-01/PT/PTJ, Prosecution Request Seeking Leave to Reply to Defence Response to Prosecutor's Request to Withdraw Two Internal Memoranda from Exhibit List, Confidential, 11 July 2013, para. 1.

FOR THESE REASONS,

Pursuant to Rule 77 of the Rules,

THE PRE-TRIAL JUDGE,

DECLARES the Request admissible and well-founded;

AUTHORISES the withdrawal of the following documents from the Prosecution exhibit list:

- a. the UNIIC Memorandum of 22 February 2007 entitled [REDACTED]; and
- b. the UNIIC internal Memorandum entitled [REDACTED]; and

DECLARES that it is not necessary to grant the request for leave to reply submitted by the Prosecution.

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

Leidschendam, 25 February 2014

[stamp]

[signature]

Daniel Fransen

Pre-Trial Judge

