



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
“ORDER ON THE TRANSFER OF PART OF THE CASE FILE TO THE TRIAL CHAMBER
PURSUANT TO RULE 95 OF THE RULES” DATED 12 AUGUST 2013**

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. By way of this order, the Pre-Trial Judge transfers to the Trial Chamber a part of the case file, pursuant to Rule 95 of the Rules of Procedure and Evidence (the “Rules”), containing the exhibits filed by the Prosecution in the case of *Ayyash et al.*, in accordance with Rule 91 of the Rules.

II. Procedural background

2. On 28 June 2011, the Pre-Trial Judge rendered a decision relating to the examination of the indictment of 10 June 2011 issued by the Prosecutor (the “Indictment of 10 June 2011”). Under the terms of that decision, Messrs Ayyash, Badreddine, Oneissi and Sabra (the “Accused”) were indicted in the context of the attack of 14 February 2005 which resulted in the death of Mr Rafic Hariri and others and injured other persons (the “Decision of 28 June 2011”).¹

3. On 19 July 2012, the Pre-Trial Judge set a tentative date for the start of trial proceedings of 25 March 2013, in light of, notably, his consultation with the Parties during the Status Conference of 12 June 2012.²

4. On 23 January 2013, the Defence requested the postponement of the trial date in accordance with Article 16 of the Statute and Rules 69 and 77 (A) of the Rules.³

5. On 21 February 2013, at the request of the Defence, the Pre-Trial Judge postponed the trial date. He also requested the observations of the Parties and of the Legal Representative of Victims with regard to the setting of a new tentative date for trial.⁴

¹ STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/I/PTJ, Decision Relating to the Examination of the Indictment of 10 June 2011 issued against Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine, Mr Hussein Hassan Oneissi & Mr Assad Hassan Sabra, confidential, 28 June 2011. A public redacted version dated the same day was filed on 16 August 2011. This decision confirms the counts contained in the Indictment of 10 June 2011 with the exception of the attempted homicide of 231 other persons which does not fall under the constituent elements of a terrorist act but under those of intentional attempted homicide. See para. 53. Any further reference to filings or decisions refer to that case number, unless otherwise indicated.

² STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Order Setting a Tentative Date for the Start of Trial Proceedings, 19 July 2012, Disposition (“Order Setting the Date of Trial”).

³ Joint Defence Motion to Vacate Tentative Date for Start of Trial, confidential, 23 January 2013, with a public redacted version dated 24 January 2013.

⁴ Decision relating to the Defence Motion to Vacate the Date for the Start of Trial, 21 February 2013.

6. On 12 April 2013, the Pre-Trial Judge authorised⁵ the amendments to the Indictment of 10 June 2011, sought by the Prosecution on 8 November 2012⁶ and on 6 February 2013⁷ (the “Indictment of 6 February 2013”).

7. On 5 July 2013, the Pre-Trial Judge ordered the Prosecution and the Defence to submit, respectively on 15 July 2013 and on 15 August 2013, the pre-trial briefs linked to the Indictment of 6 February 2013⁸ (the “Decision of 5 July 2013”). The Prosecution also stated that it was revising its witness and exhibit lists.⁹

8. On 10 July 2013, the Prosecution filed a notice in which it proposes to update its witness and exhibit lists.¹⁰ On 15 July 2013, it filed a corrigendum to that notice¹¹ with a corrected notice.¹² In the corrected notice, the Prosecution pointed out that it no longer intended to rely on 6,511 exhibits nor on 68 witnesses from its initial lists. Essentially, the exhibits and witnesses that it wished to remove from the witness and exhibit lists related to forensic analyses.

9. On 15 July 2013, in accordance with the Decision of 5 July 2013, the Prosecution filed its updated pre-trial brief with new witness and exhibit lists pursuant to Rule 91 of the Rules¹³ (the “Prosecution’s Submission of 15 July 2013”). In its Submission, the Prosecution requested leave to add three witnesses and 115 exhibits and to remove 37 exhibits in addition to those that were mentioned on 10 July 2013. Among the exhibits the Prosecution sought leave to remove are certain reports filed as documentary evidence in support of the Indictment of 10 June 2011, [REDACTED].

⁵ Decision relating to the Prosecution Requests of 8 November 2012 and 6 February 2013 for the Filing of an Amended Indictment, 12 April 2013.

⁶ Filing of the Amended Indictment in Compliance with the Decision of 25 October 2012 & Request for Amended Arrest Warrants and Orders/Requests for Transfer and Detention, confidential, 8 November 2012.

⁷ Prosecution Request for Leave to Include Further Amendments to its Proposed Amended Indictment, 6 February 2013.

⁸ Decision on the Prosecution Motion entitled “Prosecution Motion Regarding the Defence Pre-Trial Briefs”, 5 July 2013.

⁹ Transcript, Status Conference, 3 July 2013, pp. 14-15.

¹⁰ Prosecution’s Notice of Intention in Relation to Exhibits and Witnesses and Notice of Reclassification, 10 July 2013.

¹¹ 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.

¹² Corrected Version of “Prosecution’s Notice of Intention in Relation to Exhibits and Witnesses and Notice of Reclassification,” filed on 10 July 2013, 15 July 2013.

¹³ Prosecution’s Submission Pursuant to Rule 91, confidential, 15 July 2013.

10. On 31 July 2013, the Pre-Trial Judge authorised¹⁴ a further amendment to the Indictment of 6 February 2013, which had been sought on 21 June 2013.¹⁵

11. On 2 August 2013, the Pre-Trial Judge set a tentative date for the start of trial of 13 January 2014.¹⁶

12. On 5 August 2013, the Pre-Trial Judge authorised the amendments to the Prosecution witness and exhibit lists.¹⁷

13. On 7 August 2013, the Pre-Trial Judge changed the dates for the filing of the pre-trial briefs.¹⁸ He ordered the Prosecution to file the pre-trial brief for 19 August 2013 and Counsel for the Defence to do so for 2 September 2013 (the “Order of 7 August 2013”).

III. Statement of reasons

14. Rule 95 (A) of the Rules provides that the Pre-Trial Judge shall submit to the Trial Chamber a complete file containing certain materials, notably after having received the documents filed by the Prosecution and the Defence, in accordance with Rules 90 and 91 of the Rules. Those materials include, amongst others, all the documents filed by the Parties and the victims participating in the proceedings, as well as any evidentiary material received. That file also contains a detailed report, the content of which is set out in Rule 95 (A) (vii) of the Rules. The purpose of this file is to enable the Trial Chamber to prepare effectively for trial.¹⁹ In point of fact, the transfer of evidence, witness statements, expert reports and the detailed report must allow the judges of the Trial Chamber “to perform their statutory duties in full knowledge of the facts in the interest and respect for the rights of the Accused.”²⁰

¹⁴ Corrected version, Decision relating to the Prosecution Request of 21 June 2013 for Leave to Amend the Indictment of 6 February 2013, confidential, 31 July 2013, with a public redacted version dated 2 August 2013.

¹⁵ Prosecution Further Request for Leave to Amend the Indictment, confidential, 21 June 2013. The request was officially filed with the Court Management and Support Section on 21 June 2013, the date mentioned on the cover page. The Prosecution however signed the request on 18 June 2013. The Prosecution filed a public redacted version of that request on 1 July 2013.

¹⁶ Order Setting a New Tentative Date for the Start of Trial Proceeding, 2 August 2013.

¹⁷ Decision on Two Prosecution Submissions in Relation to Amending the Prosecution Rule 91 Filings, 5 August 2013.

¹⁸ Order on the Defence Request for a Variance of the Deadline for Re-filing the Defence Pre-Trial Briefs, 7 August 2013.

¹⁹ Decision relating to the Requests for Certification of the Decisions of 25 October 2012 and 15 November 2012, para.18 et seq.

²⁰ *Id.*, para. 25.

15. In particular, the Pre-Trial Judge recalls that:

Rules 155 and 156 of the Rules provide that the Trial Chamber rule on the admission of written statements and transcripts of testimonies from witnesses. This procedure necessarily implies that the Trial Chamber review these documents to be able to rule on their admission.²¹

16. The need to resolve certain issues pending before the Pre-Trial Judge precludes him from closing the file at the present time, including the detailed report, pursuant to Rule 95 (A) of the Rules, and transferring it to the Trial Chamber. For instance, the updated pre-trial briefs of Counsel for the Defence – documents that are essential to the procedure enabling, in particular, the Pre-Trial Judge to draw up his report – will be filed at a later stage and will have therefore to be examined.²² Furthermore, the Defence has not yet given its views on the authenticity of the exhibits disclosed by the Prosecution, in accordance with Rule 91 (G) (iii) of the Rules. Lastly, the exhibit list the Prosecution intends to offer and the list of witnesses it intends to call at trial have recently been revised downwards and still have to be examined by the Pre-Trial Judge, pursuant to Rule 95 (A) (viii) of the Rules. Therefore, at this stage of the proceedings, the Trial Chamber cannot be seized of the case, in accordance with Rule 95 (B) of the Rules.

17. Nevertheless, with a view to expeditious proceedings, the Pre-Trial Judge considers that the part of the file that consists of evidence filed by the Prosecution, pursuant to Rule 91 of the Rules, should be transmitted to the Trial Chamber henceforth. In point of fact, in light of the size and complexity of the case,²³ the transfer of the file, albeit partial, will allow the Trial Chamber to familiarise itself with the file, to prepare effectively for trial and to perform its duties in accordance with Article 20 of the Statute.

²¹ *Id.*, para. 21.

²² Decision of 5 July 2013, Disposition, p. 12; Ayyash and Badreddine Joint Request for a Variance of the Deadline Set for Re-filing of the Defence Pre-Trial Brief, 2 August 2013. Order of 7 August 2013, Disposition, p. 5.

²³ Following several updates of its exhibit lists, the Prosecution currently intends to offer approximately 8,250 exhibits and call 590 witnesses. The exhibits and witnesses which were recently removed from the witness and exhibit lists are essentially linked to forensic analyses. See the Prosecution's Submission of 15 July 2013, Annexes C and D.

18. Furthermore, the Pre-Trial Judge considers that the transfer of those exhibits, at this stage, is not in substance prejudicial to the rights of the Defence since those exhibits have already been disclosed to the Defence and must, in any event, be disclosed to the Trial Chamber.

19. At the end of the pre-trial procedure, the complete file containing all the exhibits that it still has not received and the detailed report provided for under Rule 95 (A) (vii) of the Rules shall be submitted to the Trial Chamber. In accordance with Rule 95 (B), it shall therefore be seized of the case.

20. Included in the exhibits to be submitted to the Trial Chamber are reports on the analysis of evidence relating to telecommunications that the Prosecution intends to offer as evidence during the trial. Those reports were produced after the confirmation of the Indictment of 10 June 2011 and form part of the updated exhibit list. As they are crucial to the understanding of the file, the Pre-Trial Judge wishes to make, as of now, some general observations regarding those reports. Those observations will be completed when the detailed report is submitted pursuant to Rule 95 (A) (vii) of the Rules.

21. It will be recalled that, in support of the Indictment of 10 June 2011, the Prosecution filed the Telecommunications Report as documentary evidence. However, after the exhibit list had been updated, on 15 July 2013, the Prosecution confirmed that it no longer intended to rely on that report despite it being presented as definitive on 5 September 2012.²⁴ In point of fact, it intends to rely on a series of individual and thematic reports explaining in detail some of the subjects mentioned in the initial report.

22. These reports whose purpose, as indicated by the Prosecution, is to render “comprehensible”²⁵ the exhibits on which they are based, and to enable their analysis, deal with the following subjects:

²⁴ Transcript, Rule 91 Meeting, 5 September 2012, pp. 33-36.

²⁵ Prosecution’s Submission of 15 July 2013, para. 39.

- i. Cell site analysis. This analysis is to be found in the report entitled [REDACTED],²⁶ dated 24 September 2012 and produced by [REDACTED], Prosecution Witness No. PRH435;
- ii. Attribution of telephones to Mr Ayyash. This analysis is to be found in two reports: one produced by [REDACTED], dated 4 November 2012, entitled [REDACTED], Prosecution Witness No. PRH230,²⁷ and the other one produced by [REDACTED], dated 19 October 2012, entitled [REDACTED] containing report [REDACTED];²⁸
- iii. Attribution of telephones to Mr Badreddine. This analysis is to be found in two reports: one entitled [REDACTED]²⁹ produced by [REDACTED] and dated 31 October 2012; and the other one entitled [REDACTED]³⁰ produced by [REDACTED] and dated 6 November 2012;
- iv. Attribution of a telephone to Mr Oneissi. This analysis is to be found in a document entitled [REDACTED]³¹ produced by [REDACTED] and dated 24 October 2012;
- v. Attribution of a telephone to Mr Sabra. This analysis is to be found in a document entitled [REDACTED]³² produced by [REDACTED] and dated 19 October 2012;
- vi. Analysis of telephone networks. This analysis is to be found in a report entitled [REDACTED]³³ dated 2 November 2012 and produced by [REDACTED], Prosecution Witness No. PRH147;
- vii. Chronology of events. This analysis is to be found in a report entitled [REDACTED]³⁴ dated 13 November 2012 and produced by [REDACTED],

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ [REDACTED].

³² [REDACTED].

³³ [REDACTED].

accompanied by an addendum entitled [REDACTED],³⁵ likewise produced by [REDACTED] and dated 15 November 2012; and

- viii. Extraction and analysis of the call data records. This analysis appears in the witness statement of [REDACTED] of 8 August 2012, Prosecution Witness No. PRH111.³⁶

23. In the interests of clarity, the Pre-Trial Judge points out that the call data, referred to as “Raw Data”, released by the telephone companies, which is used in support of those reports, does not form part of the documentary evidence and was not therefore disclosed to the Defence in that capacity. However, the Prosecution has provided for the Defence, firstly, certain call data on which it relied in an Inspection Room situated within the Tribunal and, secondly, certain call data referred to as “Raw Data” on the Z Drive, which is accessible to the Defence.³⁷

24. Furthermore, the Pre-Trial Judge calls upon the Trial Chamber to consider the possibility of appointing an expert with specialist knowledge who could advise it on technical issues relating to telephony.

25. Lastly, the Pre-Trial Judge remains at the disposal of the Trial Chamber for any question or request for clarification it might wish to make regarding the submitted exhibits, or for any other exhibit for which it would like information as of now.

IV. The Disposition

FOR THESE REASONS,

Pursuant to Rules 77 and 95 of the Rules,

THE PRE-TRIAL JUDGE,

SUBMITS to the Trial Chamber the part of the case file referred to in Rule 95 of the Rules, which is comprised of the exhibits filed by the Prosecution in the case of *Ayyash et al.*, pursuant to Rule 91 of the Rules; and

³⁴ [REDACTED].

³⁵ [REDACTED].

³⁶ [REDACTED].

³⁷ Decision on Issues related to the Inspection Room and Call Data Records, confidential, 18 June 2013, Section II, Overview.

ORDERS the Registry to give the Trial Chamber access to the exhibits filed by the Prosecution in the case of *Ayyash et al.*, pursuant to Rule 91 of the Rules.

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

Leidschendam, 25 February 2014

[stamp]

[signature]

Daniel Fransen
Pre-Trial Judge

