



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE PRESIDENT

Case No.: STL-11-01/T/PRES

Before: Judge David Baragwanath, President

Registrar: Mr Daryl Mundis

Date: 22 August 2014

Original language: English

Classification: Public

THE PROSECUTOR

v.

SALIM JAMIL AYYASH
MUSTAFA AMINE BADREDDINE
HASSAN HABIB MERHI
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA

DECISION ON PROSECUTION REQUEST FOR RECLASSIFICATION OF A MOTION

Prosecutor:

Mr Norman Farrell

Head of Defence Office:

Mr François Roux

Legal Representatives of Participating Victims:

Mr Peter Haynes, Mr Mohammad F. Mattar & Ms Nada Abdelsater-Abusamra

Counsel for Mr Salim Jamil Ayyash:

Mr Eugene O'Sullivan, Mr Emile Aoun & Mr Thomas Hannis

Counsel for Mr Mustafa Amine Badreddine:

Mr Antoine Korkmaz, Mr John Jones & Mr Iain Edwards

Counsel for Mr Hassan Habib Merhi:

Mr Mohamed Aouini, Ms Dorothee Le Fraper du Hellen & Mr Jad Khalil

Counsel for Mr Hussein Hassan Oneissi:

Mr Vincent Courcelle-Labrousse, Mr Yasser Hassan & Mr Philippe Larochelle

Counsel for Mr Assad Hassan Sabra:

Mr David Young, Mr Guénaél Mettraux & Mr Geoffrey Roberts



1. On 24 June 2014, the Head of Defence Office filed before me, confidentially and *ex parte*, a “Request to Change the Conditions Imposed by the Decisions of 21 December 2012 and 27 March 2013 Relating to the Assignment of Mr Nashabe”¹, so as to allow Dr Omar Nashabe to perform the functions of analyst-rapporteur for the Defence teams for Messrs Badreddine, Merhi and Oneissi; to be given access to confidential documents that counsel would provide to him; and to be entitled to those privileges, immunities and facilities provided to persons assisting counsel. On 14 July 2014, I dismissed the Request.² I also ordered the Head of Defence Office to file a public redacted version of the Request.³ The Head of Defence Office complied with this order.⁴

2. The Prosecutor has now submitted a motion in which he requests that the original Request submitted by the Head of Defence Office be reclassified from *ex parte* and confidential to *inter partes* confidential.⁵ He asserts that it is unclear “whether the redactions necessary for a public version of the Defence Office Request were necessary *vis-à-vis* the Prosecution in relation to a confidential *inter partes* version of the filing”.⁶ He also questions why the Annex to the original Request—which contains the contract proposed by the Head of Defence Office for Dr Nashabe—remains *ex parte* the Prosecutor.⁷

3. The Head of Defence Office responds that the Motion should be denied.⁸ He states that he redacted his original Request only with respect to filings that are confidential and *ex parte* the Prosecutor.⁹ The Head of Defence Office further argues that the proposed contract contained in

¹ STL, *Prosecutor v. Ayyash et al*, STL-11-01/T/PRES, F1595, Request to Change the Conditions Imposed by the Decisions of 21 December 2012 and 27 March 2013 Relating to the Assignment of Mr Nashabe, Confidential and *Ex Parte*, 24 June 2014 (“Request”). All further references to filings and decisions relate to this case number unless otherwise stated.

² F1618, Decision on the Head of Defence Office “Request to Change the Conditions Imposed by the Decisions of 21 December 2012 and 27 March 2013 Relating to the Assignment of Mr Nashabe”, 14 July 2014 (“Decision of 14 July 2014”), para. 25, Disposition.

³ Decision of 14 July 2014, para. 9, Disposition.

⁴ F1595, Public Redacted Version of the “Request to Change the Conditions Imposed by the Decisions of 21 December 2012 and 27 March 2013 Relating to the Assignment of Mr Nashabe” filed on 24 June 2014, 21 July 2014 (“Redacted Request”).

⁵ F1638, Prosecution Request for Reclassification as Confidential of Defence Office’s “Request to Change the Conditions Imposed by the Decisions of 21 December 2012 and 27 March 2013 Relating to the Assignment of Mr Nashabe” Filed Confidentially and *Ex Parte* on 24 June 2014, 8 August 2014 (“Motion”).

⁶ Motion, para. 3; *see also* paras 13, 14.

⁷ Motion, paras 15-18.

⁸ F1644, *Réponse à la demande du Procureur visant à obtenir la reclassification de la requête du Bureau de la Défense en date du 24 juin 2014*, 20 August 2014, para. 15.

⁹ *Id.* at paras 6-10.

the Annex is an internal document of the Defence Office that in principle needs not to be disclosed to the Prosecutor.¹⁰ He also states that the Prosecutor's Motion in this regard is moot, given that I dismissed the request to change the conditions of Dr Nashabe's employment.¹¹ The Head of Defence Office adds that the Request itself details the proposed changes and that the Prosecutor is not prejudiced if he does not have access to the Annex.¹²

4. I first note that the redactions made by the Head of Defence Office in the Redacted Request in compliance with the Decision of 14 July 2014 all relate to certain filings that remain confidential and *ex parte* the Prosecutor. Contrary to the Prosecutor's interpretation, the reference to "a confidential and *ex parte* filing" in that decision¹³ was not meant to indicate that the need for redactions was limited to one single filing. The lifting of the *ex parte* status of the original Request is therefore inapposite.

5. With respect to the Annex, I recall my previous order in which I lifted the *ex parte* status of certain submissions concerning this litigation vis-à-vis the Prosecutor.¹⁴ These included the original contract envisioned by the Head of Defence Office for Dr Nashabe.¹⁵ It would be inconsistent to apply now a different regime for any proposed amended contractual arrangements. Indeed, while I stated in the Decision of 14 July 2014 that the Annex may remain confidential,¹⁶ this referred to the document's status vis-à-vis the public, given that the Prosecutor normally has access to all confidential filings in this case. In this context, I reject the Head of Defence Office's argument that providing the Annex to the Prosecutor is not necessary because I denied the original Request to which it was attached. Only exceptional reasons may justify *ex parte* proceedings¹⁷ and access to the case record is not premised on whether or not a party is prejudiced by a decision. I thus order the reclassification of the Annex from confidential and *ex parte* to confidential.

¹⁰ *Id.* at para. 12.

¹¹ *Id.* at para. 13.

¹² *Id.* at para. 14.

¹³ Decision of 14 July 2014, para. 9.

¹⁴ STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/PRES, F0408, Public Redacted Version of Second Interim Decision Filed Confidentially on 10 September 2012, 8 October 2012, Disposition.

¹⁵ See STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/PRES, F0395, Public Redacted Version of "Request for Review of Registrar's Decision of 27 July 2012 in Relation to the Assignment of a Local Resource Person" filed 31 August 2012, 8 October 2012, Annex C, Confidential.

¹⁶ Decision of 14 July 2014, fn. 17.

¹⁷ See STL, *In the matter of El Sayed*, CH/AC/2013/01, Public Redacted Version of Decision on Appeal by the Prosecutor Against Pre-Trial Judge's Decision of 11 January 2013, Dated 28 March 2013, 28 March 2013, para. 7.

DISPOSITION

FOR THESE REASONS;

I

GRANT the Motion in part;

ORDER the Registrar to change the filing status of Annex A to the Request to Change the Conditions Imposed by the Decisions of 21 December 2012 and 27 March 2013 Relating to the Assignment of Mr Nashabe (F1595/A01) from confidential and *ex parte* to confidential; and

DISMISS the remainder of the Motion.

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

Dated 22 August 2014,

Leidschendam, the Netherlands



Judge David Baragwanath

President

