

**THE PRE-TRIAL JUDGE**

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

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

The Registrar: **Mr Daryl Mundis**

Date: **24 September 2014**

Original language: **French**

Classification: **Public**

**THE PROSECUTOR**

v.

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

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**ORDER ON LIFTING THE CONFIDENTIALITY OF  
THE PROSECUTION FILINGS IN THE *MERHI* CASE**

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**Office of the Prosecutor:**

Mr Norman Farrell

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Mr Eugene O'Sullivan

**Legal Representative of Victims:**

Mr Peter Haynes

**Counsel for Mr Mustafa Amine Badreddine:**

Mr Antoine Korkmaz

**Counsel for Mr Hassan Habib Merhi:**

Mr Mohamed Aouini

**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 rules on the question of the reclassification of the filings submitted confidentially and *ex parte* by the Prosecution, prior to the confirmation of the indictment in the *Merhi* case.

## **II. Procedural background**

2. On 13 May 2014, Counsel for the Defence for Mr Merhi filed a motion<sup>1</sup> seeking the lifting of the confidentiality of certain confidential and confidential and *ex parte* documents as well as access to decisions and confidential and *ex parte* documents filed in the *Merhi* case,<sup>2</sup> prior to the confirmation of the indictment (the “Motion”).

3. On 28 May 2014, the Registry<sup>3</sup> and the Prosecution<sup>4</sup> responded to the Motion.

4. On 9 July 2014, the Pre-Trial Judge granted the Motion in part and ordered the Prosecution, *inter alia*, to (a) make public the documents mentioned at paragraph 17 (i) of the Motion or submit motivated proposals for redactions, in accordance with Article 16 of the Statute and Rule 96 of the Rules of Procedure and Evidence (the “Rules”); and (b) review all the other documents filed in the *Merhi* case that would remain confidential and *ex parte* and file its observations with regard to maintaining, in whole or in part, the classification of each document and, where appropriate, submit motivated proposals for redactions in support of those documents that would remain classified as “confidential” or “confidential and *ex parte*”, by 24 July 2014 at the latest (the “Decision of 24 July 2014”).<sup>5</sup>

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<sup>1</sup> STL, *The Prosecutor v. Ayyash et al.*, STL-11-01/T/PTJ, F1528, *Requête de la Défense de Merhi sollicitant la levée de la confidentialité et l'accès aux documents confidentiels ex parte de la procédure*, 13 May 2014. Any further reference to filings or decisions relates to that case number, unless otherwise indicated.

<sup>2</sup> STL-13-04.

<sup>3</sup> F1545, Registry Submission pursuant to Rule 48 (C) Regarding the Motion by the Merhi Defence Seeking Access to Confidential and *Ex Parte* Filings, 28 May 2014.

<sup>4</sup> F1547, Prosecution Response to « *Requête de la Défense de Merhi sollicitant la levée de la confidentialité et l'accès aux documents confidentiels ex parte de la procédure* », 28 May 2014.

<sup>5</sup> F1612, Decision on Counsel for Mr Merhi's Motion for Reclassification of and Access to Material, 9 July 2014.

5. On 24 July 2014, the Prosecution filed a notice regarding the reclassification of the filings submitted prior to the confirmation of the indictment in the *Merhi* case (the “Notice”).<sup>6</sup>
6. On 8 August 2014, the Pre-Trial Judge ordered<sup>7</sup> the Registry to make public a number of Prosecution filings and to reclassify others as “confidential”. The Pre-Trial Judge also ordered the Prosecution (a) to file public versions of some of its filings, subject to the authorised redactions; (b) with regard to Filing F0001: to file “a confidential version of Annex B and its supporting documents to Submission of an Indictment for Confirmation<sup>8</sup>, subject to the authorised redactions”; and (c) concerning Filing F0001: to file “its observations with regard to maintaining the confidential and *ex parte* classification of Annex C to the Submission of an Indictment for Confirmation”,<sup>9</sup> or “to file redaction proposals after consultation with the Lebanese authorities if it deems it necessary and to inform the Pre-Trial Judge accordingly by 12 September 2014 at the latest” (the “Order of 8 August 2014”).
7. On 15 August 2014, the Prosecution filed a request seeking additional redactions to Annex B to Filing F0001 (the “Prosecution Request”).<sup>10</sup>
8. On 4 September 2014, the Prosecution submitted its proposed redactions to Annex C to Filing F0001 (the “Prosecution Filing”).<sup>11</sup>

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<sup>6</sup> F1628, Prosecution Notice on the Reclassification of Pre-Confirmation Filings Pursuant to the Decision of the Pre-Trial Judge, dated 9 July 2014, confidential, with Annex A, confidential, Annexes B-E, confidential and *ex parte*, 24 July 2014. A public redacted version of that Notice was filed on 31 July 2014.

<sup>7</sup> F1636, Order Relating to Making Public the Prosecution’s Submissions in the *Merhi* Case, 8 August 2014. The Pre-Trial Judge filed a corrigendum and a corrected version of his order on 2 September 2014. *Cf.* F1636, Corrigendum to “Order Relating to Making Public the Prosecution’s Submissions in the *Merhi* Case”, 2 September 2014; F1636, Corrected Version “Order Relating to Making Public the Prosecution’s Submissions in the *Merhi* Case”, 8 August 2014.

<sup>8</sup> STL, *The Prosecutor v. Merhi*, STL-13-04/I/PTJ, F0001, Annex B Declaration of [...], Chief of Investigations, confidential and *ex parte*, 5 June 2013 (“Annex B”).

<sup>9</sup> STL, *The Prosecutor v. Merhi*, STL-13-04/I/PTJ, F0001, Annex C Report from the Lebanese [authorities], dated 27 June 2012, confidential and *ex parte*, 5 June 2013 (“Annex C”).

<sup>10</sup> F1639, Prosecution Request for Authorization to Apply Additional Redactions to Annex B to the 5 June 2013 “Submission of an Indictment for Confirmation” and to Related Materials, with Annexes A and B, confidential and *ex parte*, 15 August 2014.

<sup>11</sup> F1657, Prosecution Proposed Redactions to Annex C to the Submission of an Indictment for Confirmation, filed in the *Merhi* Case, with Annex A, confidential and *ex parte*, 4 September 2014.

### III. Statement of reasons

9. The Pre-Trial Judge recalls that the confidentiality and publicity regime as well as the provisions and the applicable legal standards in this case, prior to joinder, have been previously set out in his orders of 16 August 2011,<sup>12</sup> 21 September 2011,<sup>13</sup> 13 October 2011,<sup>14</sup> 6 December 2011,<sup>15</sup> 8 February 2012,<sup>16</sup> 9 July 2014<sup>17</sup> and 8 August 2014.<sup>18</sup> These are applied *mutatis mutandis* to the filings and documents submitted in the *Merhi* case.

#### A. The Prosecution Request: Annex B to Filing F0001

10. Annex B consists of the declaration from the former Chief of Investigations of the Office of the Prosecutor (the “Declaration”) and its reference materials. By way of the Order of 8 August 2014, the Pre-Trial Judge authorised the redactions proposed by the Prosecution in its Notice.<sup>19</sup>

11. The Prosecution states that after reviewing the Declaration and the reference materials, it realised it had omitted to mention a number of redactions in its Notice.<sup>20</sup> Consequently, the Prosecution seeks authorisation to apply these additional redactions which it deems necessary so as to protect the ongoing investigations and which are consistent with the previously authorised redactions.<sup>21</sup>

12. The Pre-Trial Judge has examined all the proposed redactions and considers that they are justified in view of the concerns expressed by the Prosecution with regard to the ongoing

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<sup>12</sup> STL, *The Prosecutor v. Ayyash et al.*, STL-11-01/I/PTJ, F0032, Order on Lifting the Confidentiality of the Indictment Against Messrs Ayyash, Badreddine, Oneissi and Sabra and Other Documents, 16 August 2011.

<sup>13</sup> STL, *The Prosecutor v. Ayyash et al.*, STL-11-01/I/PTJ, F0048, Order to Make Public the Prosecution’s Submissions Concerning the *Ayyash et al.* Case, 21 September 2011.

<sup>14</sup> STL, *The Prosecutor v. Ayyash et al.*, STL-11-01/I/PTJ, F0051, Order Relating to the Prosecutor’s Request for Clarification of the Order of 21 September 2011 to Make Public the Prosecution’s Submissions Concerning the *Ayyash et al.* Case, 13 October 2011.

<sup>15</sup> STL, *The Prosecutor v. Ayyash et al.*, STL-11-01/I/PTJ, F0085, Order Relating to Making Public the Prosecutor’s Submissions Concerning the *Ayyash et al.* Case, 6 December 2011.

<sup>16</sup> STL, *The Prosecutor v. Ayyash et al.*, STL-11-01/I/PTJ, F0117, Order Making Public Certain Prosecutor’s Submission in the *Ayyash et al.* Case, 8 February 2012.

<sup>17</sup> Decision of 9 July 2014, para. 20.

<sup>18</sup> Order of 8 August 2014, para. 7.

<sup>19</sup> *Id.*, para. 14.

<sup>20</sup> Prosecution Request, paras 2 and 4.

<sup>21</sup> *Id.*, para. 3.

investigations.<sup>22</sup> Consequently, the Pre-Trial Judge considers that Annex B to Filing F0001 must be reclassified as “confidential”, subject to the authorised redactions.

### **B. The Prosecution Filing: Annex C to Filing F0001**

13. Annex C consists notably of a report from the Lebanese authorities (the “Report”), one related request for assistance from the Prosecution (the “Request for Assistance”)<sup>23</sup> and two letters of transmission of the Lebanese authorities (the “Letters of Transmission”) for which the Prosecution also proposes redactions.

14. In point of fact, upon consultation with the Prosecution, the Lebanese authorities requested the redaction of information which could identify certain individuals mentioned in Annex C. Therefore, the Prosecution proposes the redaction of any information which might lead to the identification of the persons concerned. The Prosecution states that the proposed redactions do not in any way affect the understanding of the Report, that the redactions are necessary so as to protect the ongoing investigations and recalls that when the Report was initially filed redactions of the same nature had already been applied to it.<sup>24</sup>

15. With regard to the Request for Assistance, the Prosecution submits that, as a general rule, it is not under an obligation to disclose that type of document, but that, in the case at hand, the Request for Assistance forms part of the documents of Annex C. As a consequence, the Prosecution proposes the redaction of information relating to a staff member of the Office of the Prosecutor.<sup>25</sup>

16. The Pre-Trial Judge considers that the proposed redactions are justified in view of the concerns expressed by the Prosecution with regard to the ongoing investigations and the need to protect individuals. Moreover, he notes that the Prosecution omitted to redact certain information in the Report and the Letters of Transmission that might lead to the identification of the persons concerned. Questioned on the matter, the Prosecution informed the Pre-Trial Judge by email that this information should effectively be redacted.<sup>26</sup> Accordingly, the Pre-Trial Judge considers that Annex C to Filing F0001 must be reclassified as “confidential”, subject to the authorised

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<sup>22</sup> The Pre-Trial Judge notes that documents 70 to 74 (inclusive), as listed in the table annexed to the Statement, are not referenced in the footnotes thereof.

<sup>23</sup> Prosecution Filing, paras 1 and 5.

<sup>24</sup> Prosecution Filing, paras 1-3 and Notice, para. 17.

<sup>25</sup> *Id.*, para. 5.

<sup>26</sup> *Cf.* Exchange of emails between the Office of the Pre-Trial Judge and the Office of the Prosecutor on 17 and 18 September 2014.

redactions, including the redactions proposed in Annex A to the Prosecution Filing and those confirmed by the Prosecution via email that should be redacted in the aforementioned Annex. The Pre-Trial Judge recalls that there is no reason, at this stage, to file a public version of Annex C.<sup>27</sup>

#### IV. Disposition

#### FOR THESE REASONS,

Pursuant to Rule 96 of the Rules,

#### THE PRE-TRIAL JUDGE,

**ORDERS** the Prosecution to file a confidential version of Annex B to Filing F0001, subject to the authorised redactions.

**ORDERS** the Prosecution to file a confidential version of Annex C to Filing F0001, subject to the authorised redactions.

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

Leidschendam, 24 September 2014

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Daniel Fransen  
Pre-Trial Judge




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<sup>27</sup> Order of 8 August 2014, para. 15.