



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE PRE-TRIAL JUDGE

Case No.: **STL-18-10/I/PTJ**

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

The Registrar: **Mr Daryl Mundis**

Date: **16 September 2019**

Original language: **French**

Classification: **Public**

THE PROSECUTOR
v.
SALIM JAMIL AYYASH

**PUBLIC REDACTED VERSION OF THE “DECISION ON THE PROSECUTOR’S
REQUEST CONCERNING THE FILING OF THE UNREDACTED VERSION OF
DOCUMENT [REDACTED] AS SUPPORTING MATERIAL” DATED 6 JUNE 2019**

Office of the Prosecutor:
Mr Norman Farrell

Defence Office:
Ms Dorothee Le Fraper du Hellen



I. Introduction

1. On 15 May 2019, the Pre-Trial Judge issued a Decision on the review of the Indictment of 14 December 2018 (the “Indictment”) against Mr Salim Jamil Ayyash in relation to the attacks against Mr Hamade, Mr Hawi and Mr El-Murr.¹ Under that Decision, the Pre-Trial Judge *inter alia* ordered the Prosecutor to file as supporting materials “Disclosures” 34 and 35, including an unredacted version of document [REDACTED] – which consists of the record of the interview of [REDACTED] (the “statement”).²

2. On 4 June 2019, the Prosecutor filed a request (the “Request”)³ in which he requests the Pre-Trial Judge to: (i) acknowledge that the Prosecution is not in a position to provide a version of the statement [REDACTED];⁴ (ii) allow the redactions to the statement authorized by the Trial Chamber in the *Ayyash et al.* case pursuant to Rule 116 of the Rules to be maintained,⁵ and (iii) amend the Decision in respect of the order to provide an unredacted version of the statement.⁶ In this Decision, the Pre-Trial Judge rules on that Request.

II. The Prosecutor’s submissions

3. [REDACTED].⁷ [REDACTED].⁸ [REDACTED].⁹

4. Furthermore, the Prosecutor seeks to maintain the redactions [REDACTED] on the ground that they were authorized by the Trial Chamber under Rule 116 of the Rules in the *Ayyash et al.* case¹⁰ and submits that those protection measures should apply in the present

¹ STL, *Prosecutor v. Salim Jamil Ayyash*, STL-18-10/I/PTJ, F0003, Decision on the Review of the Indictment of 14 December 2018 issued against Mr Salim Jamil Ayyash, 15 May 2009, confidential and *ex parte* (“Decision”).

² *Id.*, para. 96, disposition, p. 54. Further to the requests for clarification by the Pre-Trial Judge, “Disclosures” 34 and 35 were filed for information purposes on 30 March and 12 April 2019 by the Prosecutor, who stated that he intended to file them as supporting materials when filing the revised version of the Indictment. These documents were taken into account by the Pre-Trial Judge in his deliberation. See Decision, footnote 2.

³ STL, *Prosecutor v. Salim Jamil Ayyash*, STL-18-10/I/PTJ, F0007, Prosecution Notification, and Request for Amendment of the “Decision on the Review of the Indictment of 14 December 2018 Issued against Mr. Salim Jamil Ayyash”, concerning the Order to File as Part of the Indictment Supporting Materials the Unredacted Version of Document [REDACTED], 4 June 2019, confidential and *ex parte*.

⁴ Request, paras 1, 6 and 14 (i).

⁵ *Id.*, paras 12 and 14 (ii).

⁶ *Id.*, para. 14 (ii).

⁷ *Id.*, paras 1 and 4.

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

case.¹¹ According to the Prosecutor, that redacted information does not form part of the Indictment Supporting Material and is not material to the confirmation of the indictment in the present case.¹² He contends that the redactions under Rule 116 of the Rules are necessary to protect the integrity of the proceedings in the *Ayyash et al.* case and the safety of [REDACTED] and that, insofar as Rule 133 of the Rules applies, those protection measures continue to have effect in all other proceedings.¹³ The Prosecutor draws particular attention to the fact that if the statement in its unredacted form were to become part of the Indictment Supporting Material, it should be disclosed to Mr Ayyash under Rule 110 (A) (i) of the Rules, as such voiding the ruling of the Trial Chamber in the *Ayyash et al.* case with respect to Mr Ayyash.¹⁴

III. Statement of reasons

A. Preliminary comments

5. The Pre-Trial Judge considers that, in principle, the supporting materials that are submitted to him in support of a request for the confirmation of an indictment, in the context of confidential and *ex parte* proceedings, must not be redacted. This is why he ordered the Prosecutor to file an unredacted version of the statement contained in Disclosure 34.

6. Moreover, the Pre-Trial Judge notes that when the statement was submitted, the Prosecutor in no way requested an exception to his disclosure obligations [REDACTED] for authorisation to file a redacted version of that document when it is later filed as supporting material. It was only upon reviewing that document, the statement of an individual taken by the Office of the Prosecutor itself, that the Pre-Trial Judge noted the presence of redactions, with no other type of explanation or justification, or, *a fortiori*, request in that regard. If the Prosecutor intended to rely on [REDACTED] in support of such redactions, he should have done so before filing the said document.

7. Lastly, the Pre-Trial Judge notes that, in support of his requests, the Prosecutor relies on the decisions of another chamber, the Trial Chamber, taken in the context of another case,

¹¹ Request, paras 3 and 11.

¹² *Id.*, paras 2, 7 and 9.

¹³ *Id.*, paras 8, 11 and 12.

¹⁴ *Id.*, paras 7 and 10.

Ayyash et al. However, these measures and decisions, which occurred in 2017 at the latest, do not automatically apply in the proceedings at hand and are not binding on the Pre-Trial Judge.

B. The redactions under [REDACTED]

8. As regards the redactions to the statement, specifically enumerated in paragraph 4 of the Request [REDACTED].¹⁵

9. [REDACTED],¹⁶ [REDACTED].¹⁷

10. Accordingly, should the Prosecutor consider that, in this case, redactions to the statement are necessary [REDACTED]. [REDACTED], the Pre-Trial Judge at this point cannot rule on the merit of those redactions.

11. In order to support his request, the Prosecutor must therefore provide this material and update it. In the meantime, the Pre-Trial Judge postpones ruling on this request.

12. Furthermore, the Pre-Trial Judge notes that, beyond the redactions explicitly listed in paragraph 4 of the Request, the Prosecutor has kept [REDACTED] from the statement without comment. [REDACTED].¹⁸ Consequently, the Pre-Trial Judge requests the Prosecutor to provide further details on that withdrawal, in particular on its legal basis (where appropriate Rule 116 of the Rules, [REDACTED] or any other Rule).

C. The redactions under Rule 116 of the Rules

13. As regards the redactions under Rule 116 of the Rules, the Pre-Trial Judge considers that it is inappropriate to submit to him supporting materials which include a document containing such redactions. He recalls that an “[a]pplication and grounds for non-disclosure” under Rule 116 (A) of the Rules applies to documents which should ordinarily be disclosed, notably under Rule 110 of the Rules, and to information in the possession of the Prosecutor “not obtained under or otherwise subject to Rule 118”. In the case of redactions requested under Rule 116 (A)

¹⁵ Request, para. 6.

¹⁶ [REDACTED].

¹⁷ *Id.*, paras 24 and 26.

¹⁸ [REDACTED].

of the Rules, the chamber dealing with this request, in this case the Pre-Trial Judge,¹⁹ must have access to the “information that [the Prosecutor requests]to be kept confidential” and must verify the measures sought in view of the arguments presented by the Prosecutor. He must be able to rule specifically on the issue of whether or not the proposed measures prejudice the procedural rights of the accused person or persons in the case with which he his seized and whether or not those measures are in the interests of justice.

14. Consequently, the fact that the Trial Chamber in the *Ayyash et al.* case previously authorized certain redactions to the statement under Rule 116 of the Rules given the potential risk caused by such disclosure to [REDACTED] and that it held it unlikely that such disclosed information is material to the preparation of the Defence²⁰ is in itself irrelevant here. If the Prosecutor considers that redactions justified under Rule 116 of the Rules must apply here, he should request them at the appropriate time and, if necessary, request that the Pre-Trial Judge rule on the issue. The Pre-Trial Judge recalls in that regard that this is precisely what he had indicated in the Decision,²¹ that is, that nothing prevents the Prosecutor from later requesting authorisation under Rule 116 of the Rules to file a redacted version of the statement for the purposes of disclosing the documents specified in Rule 110 of the Rules to Mr Ayyash.

15. Moreover, contrary to the Prosecutor’s submission, redaction of information on the basis of Rule 116 of the Rules is not necessarily tantamount to a measure seeking to ensure the protection of a victim or witness under Rule 133 of the Rules, which might apply *mutatis mutandis* in any other case before the Tribunal.²²

IV. Disposition

FOR THESE REASONS,

Pursuant to Rule 77 of the Rules;

THE PRE-TRIAL JUDGE,

¹⁹ See Rule 97 of the Rules of Procedure and Evidence.

²⁰ [REDACTED].

²¹ See Decision, footnote 158.

²² See Request, para. 11.

POSTPONES ruling on the request to authorise redactions to the statement [REDACTED];

ORDERS the Prosecutor to: (i) [REDACTED]; (ii) [REDACTED]; and (iii) provide further details [REDACTED], and in particular in respect of its legal basis;

STATES that the statement, as supporting material, cannot contain redactions further to Rule 116 of the Rules;

SUSPENDS the obligation of the Prosecutor, in accordance with the Decision, to file an unredacted version of the statement pending a decision on the redactions of that document [REDACTED];

ORDERS the Prosecutor to file, by 13 June 2019 at 16:00 hours at the latest, submissions on the time he deems necessary to submit the additional information in relation to his request for redactions [REDACTED]; and

DISMISSES the Request in all other respects.

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

Leidschendam, 16 September 2019

[stamp]

[signature]

Daniel Fransen
Pre-Trial Judge

