



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 with confidential and *ex parte* annex**

**THE PROSECUTOR**  
v.  
**SALIM JAMIL AYYASH**

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**ORDER RELATING TO THE LIFTING OF THE CONFIDENTIALITY OF THE  
INDICTMENT OF 14 JUNE 2019 AND OF OTHER RELATED DOCUMENTS**

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**Office of the Prosecutor:**  
Mr Norman Farrell

**Defence Office:**  
Ms Dorothee Le Fraper du Hellen



## **I. Procedural background**

1. On 14 December 2018, the Prosecutor requested the Pre-Trial Judge to confirm an indictment against Mr Salim Jamil Ayyash (“Accused”) for his role in the attacks carried out against Messrs Hamade, Hawi and El-Murr on 1 October 2004, 21 June 2005 and 12 July 2005 respectively (“connected attacks”).<sup>1</sup>

2. On 15 May 2019, the Pre-Trial Judge confirmed in part the Indictment of 14 December 2018 against Mr Ayyash and ordered the filing of a revised version of that indictment. He also ordered that the confidentiality of the Prosecutor’s Submission of 14 December 2018 and of the Decision of 15 May 2019 be maintained until further notice in order to ensure the integrity of the judicial process, to guarantee the protection of the witnesses concerned and to safeguard the proper conduct of the ongoing investigations.<sup>2</sup> By way of a decision of 29 May 2019, the Pre-Trial Judge dismissed the Prosecutor’s submission of that day seeking the correction or clarification of the Decision of 15 May 2019.<sup>3</sup>

3. On 6 and 17 June 2019, the Pre-Trial Judge rendered two decisions relating to redactions of a document submitted by the Prosecutor as supporting material and to the requests related thereto.<sup>4</sup>

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<sup>1</sup> STL, *Prosecutor v. Salim Jamil Ayyash*, STL-18-10/I/PTJ, F0001, Prosecution’s Submission of an Indictment for Confirmation and Order to Keep this Filing and its Annexes Confidential and Ex Parte; and Motion for an Arrest Warrant, Order for Transfer and Detention; and Order for Non-Disclosure, confidential and *ex parte*, 14 December 2018 (“Prosecution’s Submission of 14 December 2018” and “Indictment of 14 December 2018”).

<sup>2</sup> 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, confidential and *ex parte*, 15 May 2019 (“Decision of 15 May 2019”), disposition, pp. 52-54.

<sup>3</sup> STL, *Prosecutor v. Salim Jamil Ayyash*, STL-18-10/I/PTJ, F0006, Decision on the Prosecutor’s Request for the Correction or, alternatively, Clarification of the Decision of 15 May 2019, confidential and *ex parte*, 29 May 2019 (“Decision on the Dismissal of the Request for Clarification of 29 May 2019”), disposition, p. 3; STL, *Prosecutor v. Salim Jamil Ayyash*, STL-18-10/I/PTJ, F0005, Prosecution’s Request for a Revised or Corrected Version of the 15 May 2019 “Decision on the Review of the Indictment of 14 December 2018 Issued against Mr Salim Jamil Ayyash” or, alternatively, Clarification of the Decision, confidential and *ex parte*, 29 May 2019 (“Prosecution’s Request for Clarification”).

<sup>4</sup> STL, *Prosecutor v. Salim Jamil Ayyash*, STL-18-10/I/PTJ, F0008, Decision on the Prosecutor’s Request Concerning the Filing of of the Unredacted Version of Document [REDACTED] as Supporting Material, confidential and *ex parte*, 6 June 2019 (“Decision on the Redactions of 6 June 2019”), disposition, pp. 7 and 8; STL, *Prosecutor v. Salim Jamil Ayyash*, STL-18-10/I/PTJ, F0014, Decision on the Redactions to Document [REDACTED], confidential and *ex parte*, 17 June 2019 (“Decision on the Redactions of 17 June 2019”). See also, 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], confidential and *ex parte*, 4 June 2019 (“Prosecution’s Request on the Redactions of 4 June 2019”); STL, *Prosecutor v. Salim Jamil Ayyash*, STL-18-10/I/PTJ, F0011, Prosecution’s Submissions

4. On 14 June 2019, the Prosecutor filed the revised version of the Indictment (“Indictment”).<sup>5</sup>
5. On 19 June 2019, the Pre-Trial Judge declared that the Indictment was in conformity with the Decision of 15 May 2019 and, at the request of the Prosecutor, ordered that the Prosecution’s Submissions of 7 June 2019 and the Prosecutor’s Request of 14 June 2019 and their annexes, including the Indictment, as well as the Decision of 19 June 2019, not be made public until further notice.<sup>6</sup>
6. On 20 June 2019, the Prosecutor filed a signed confidential redacted version of the Indictment dated 14 June 2019 (“redacted Indictment”).<sup>7</sup>
7. Also on 20 June 2019, the Pre-Trial Judge issued an arrest warrant and an international arrest warrant against Mr Ayyash (“arrest warrant”) and (“international arrest warrant”).<sup>8</sup>
8. On 9 July 2019, the Pre-Trial Judge requested the Prosecutor’s submissions on the lifting of the confidentiality and, if applicable, the *ex parte* nature of the filings referred to above.<sup>9</sup>

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following the 6 June 2019 “Decision on the Prosecutor’s Request concerning the Filing of the Unredacted Version of the Document numbered [REDACTED] as Supporting Material”, confidential and *ex parte*, 13 June 2019 (“Prosecution’s Request on the Redactions of 13 June 2019”).

<sup>5</sup> STL, *Prosecutor v. Salim Jamil Ayyash*, STL-18-10/I/PTJ, F0012, Request Seeking Leave to Further Amend the Confirmed Indictment, Provision of the Proposed Amended Version of the Redacted Indictment for Service on the Accused, and Notification, confidential and *ex parte*, 14 June 2019 (“Prosecution’s Request of 14 June 2019”). On 7 June 2019, the Prosecution had filed a first revised version of the Indictment, distributed on 11 June 2019, stating that it had made the amendments referred to in the disposition of the Decision of 15 May 2019 and seeking amendments to the Indictment filed on 14 December 2018, see STL, *Prosecutor v. Salim Jamil Ayyash*, STL-18-10/I/PTJ, F0009, Prosecution’s Submissions following the 15 May 2019 “Decision on the Review of the Indictment of 14 December 2018 Issued against Mr Salim Jamil Ayyash” and Request Seeking Leave to Amend the Confirmed Indictment, confidential and *ex parte*, 7 June 2019 (“Prosecution’s Request of 7 June 2019”) and (“Indictment of 7 June 2019”).

<sup>6</sup> STL, *Prosecutor v. Salim Jamil Ayyash*, STL-18-10/I/PTJ, F0015, Decision on the 14 June 2019 Version of the Indictment and the Documents Filed Pursuant to the Decision of 15 May 2019, confidential and *ex parte*, 19 June 2019 (“Decision of 19 June 2019”), disposition, pp. 8 and 9.

<sup>7</sup> STL, *Prosecutor v. Salim Jamil Ayyash*, STL-18-10/I/PTJ, F0016, Prosecution’s Submission of the Signed Redacted Indictment for Service on the Accused, confidential and *ex parte*, 20 June 2019 (“Prosecution’s Submission of 20 June 2019”), with Annex A, Redacted Version of the Indictment, dated 14 June 2019, confidential.

<sup>8</sup> STL, *Prosecutor v. Salim Jamil Ayyash*, STL-18-10/I/PTJ, F0017, Warrant to Arrest Mr Salim Jamil Ayyash including Transfer and Detention Order, confidential, 20 June 2019; STL, *Prosecutor v. Salim Jamil Ayyash*, STL-18-10/I/PTJ, F0018, International Warrant to Arrest Mr Salim Jamil Ayyash including Transfer and Detention Request, confidential, 20 June 2019.

<sup>9</sup> STL, *Prosecutor v. Salim Jamil Ayyash*, STL-18-10/I/PTJ, F0020, Order to Obtain the Prosecutor’s Submissions on the Lifting of the Confidentiality of the Indictment of 14 June 2019 and Other Related Documents, confidential and *ex parte*, 9 July 2019 (“Order of 9 July 2019”).

9. On 22 July 2019, the Pre-Trial Judge granted the Prosecutor's request of the same day to exceed the 6,000 word limit provided for under Article 5 (1) (1) of the Practice Direction on Filing of Documents before the Special Tribunal for Lebanon ("Practice Direction") in the context of the submissions that he was required to file pursuant to the Order of 9 July 2019. The Prosecutor had in fact sought permission to exceed that limit to 9,000 words, citing the number and volume of the filings that had to be dealt with, as well as the need to provide detailed explanations in support of the redactions sought.<sup>10</sup> Having examined the reasons given by the Prosecutor in support of his request, and considering that exceeding the word limit as requested would not result in a delay to the proceedings, the Pre-Trial Judge granted the request.<sup>11</sup>

10. On 22 June 2019, the Prosecutor filed his submissions pursuant to the Order of 9 July 2019.<sup>12</sup> On 24 July 2019, the Pre-Trial Judge ordered the Prosecutor to file a number of further submissions.<sup>13</sup> On 26 July 2019, the Prosecutor filed them.<sup>14</sup>

11. On 8 August 2019, the Registrar filed a memorandum setting out the procedure followed for the transmission to the Lebanese authorities, on 4 July 2019, of the Redacted Indictment and the Warrant of Arrest with a view to their being served on the Accused.<sup>15</sup>

12. On 15 August 2019, the Pre-Trial Judge sought submissions from the Registrar regarding the lifting of the confidentiality of the Registrar's Memorandum of 8 August 2019, and where

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<sup>10</sup> E-mail from the Office of the Prosecutor to the Pre-Trial Judge, 11 July 2019, 11:34hrs.

<sup>11</sup> E-mail from the Pre-Trial Judge to the Office of the Prosecutor, 22 July 2019, 12:17hrs.

<sup>12</sup> STL, *Prosecutor v. Salim Jamil Ayyash*, STL-18-10/I/PTJ, F0021, Prosecution's Submissions following the Pre-Trial Judge's 9 July 2019 "Ordonnance en vue d'obtenir des observations du Procureur sur la levée de la confidentialité de l'Acte d'accusation du 14 juin 2019 et d'autres documents afférents", confidential and *ex parte* with annexes A, B, C, D, E, F, G, H and I also confidential and *ex parte*, 22 July 2019 ("Submissions of 22 July 2019").

<sup>13</sup> STL, *Prosecutor v. Salim Jamil Ayyash*, STL-18-10/I/PTJ, F0023, *Ordonnance en vue d'obtenir des observations supplémentaires du Procureur concernant la levée de la confidentialité des documents afférents à l'Acte d'accusation du 14 juin 2019*, confidential and *ex parte*, 24 July 2019 ("Order seeking additional submissions of 24 July 2019"), disposition, p. 3.

<sup>14</sup> STL, *Prosecutor v. Salim Jamil Ayyash*, STL-18-10/I/PTJ, F0024, Prosecution's Submissions following the Pre-Trial Judge's 24 July 2019 "Ordonnance en vue d'obtenir des observations supplémentaires du Procureur concernant la levée de la confidentialité des documents afférents à l'Acte d'accusation du 14 juin 2019", confidential and *ex parte* with annexes A, B and C, also confidential and *ex parte*, 26 July 2019 ("Submissions of 26 July 2019").

<sup>15</sup> STL, *Prosecutor v. Salim Jamil Ayyash*, STL-18-10/I/PTJ, F0022, Corrected Version of the "Registrar's Submission pursuant to Rule 48 (C) Reporting to the Pre-Trial Judge on the Service of the Redacted Indictment of 14 June 2019 and the Warrant of Arrest of 20 June 2019" of 24 July 2019, confidential, 8 August 2019, with annexes A and B also confidential ("Registrar's Memorandum of 8 August 2019").

appropriate, its annexes.<sup>16</sup> The Registrar provided the Pre-Trial Judge with his submissions on 21 August 2019 and filed them on 27 August 2019.<sup>17</sup>

13. On 12 September 2019, the President of the Tribunal consulted the Pre-Trial Judge pursuant to Rule 76 (E) of the Rules, who himself immediately thereafter sought submissions from the Prosecutor in relation to the imminent lifting of the confidentiality of the filings in the present proceedings. On 13 September 2019, after receiving the Prosecutor's submissions, the Pre-Trial Judge responded to the query from the President, stating that he had no objection to lifting the confidentiality of those documents, subject, where appropriate, to any redactions that he might deem necessary, and that he would render an order in that regard forthwith.

## **II. Statement of reasons**

14. The Pre-Trial Judge recalls the principle of making the indictment public after it has been confirmed, as well as the pre-trial proceedings, as laid down in the Rules of Procedure and Evidence ("Rules"). According to Rule 73 of the Rules, and subject to the provisions of Rule 74, the indictment shall be made public upon confirmation by the Pre-Trial Judge. Furthermore, Rules 76 (E) and 76 *bis* of the Rules deal with the advertisement of the indictment. Lastly, Rule 96 (A) of the Rules provides, unless otherwise stated in the Rules, that the pre-trial proceedings shall be public. It is only in exceptional circumstances that confidentiality should be considered in order to safeguard the conduct of the investigation and/or ensure the protection of individuals.

15. The Pre-Trial Judge has considered the arguments set forth by the Prosecution in its Submissions of 22 July 2019 and its Submissions of 26 July 2019 relating to the confidentiality of the filings referred to, as well as the redactions it proposed. For some filings, the redactions are proposed by the Prosecution in the alternative, insofar as the Prosecution primarily objects to lifting their confidentiality. In order to assess the relevance of the redactions proposed by the Prosecution, the Pre-Trial Judge has examined whether they ensured an appropriate balance between, on the one hand, the publicity of the proceedings, thereby contributing to guaranteeing

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<sup>16</sup> E-mail from the Office of the Pre-Trial Judge to the Registrar, 15 August 2019, 12:23hrs.

<sup>17</sup> See STL, *Prosecutor v. Salim Jamil Ayyash*, STL-18-10/I/PTJ, F0027, Registrar's Submission Pursuant to Rule 48(C) placing on the record an internal memorandum from the Registrar to the Pre-Trial Judge dated 21 August 2019, confidential with confidential annex, 27 August 2019, through which the Registrar's submission of 21 August 2019 entitled "Request to Lift Confidentiality of the Corrected Version of the "Registrar's Submission pursuant to Rule 48(C) reporting to the Pre-Trial Judge on the service of the Redacted Indictment of 14 June 2019 and the Warrant to Arrest of 20 June 2019" of 24 July 2019" was filed ("Registrar's Submission of 27 August 2019").

the transparency of the Tribunal's activities and providing proper information to the public, and on the other, the need to ensure the protection of the witnesses, the victims and their families, as well as the integrity of the Prosecution's investigations.

16. Having conducted that examination, the Pre-Trial Judge considers that the reasons provided by the Prosecution justify the majority of its proposed redactions and, where appropriate, that the confidential and *ex parte* nature of some filings be maintained. Other proposals were considered to be unfounded. The Pre-Trial Judge has provided the reasons for his decisions in a confidential and *ex parte* annex appended to the present order ("Annex to the Order"). The Pre-Trial Judge has also identified therein some additional redactions that were not proposed by the Prosecution, which he deemed necessary out of concern for consistency and in order to ensure the protection of the witnesses, the victims and their families.

17. In addition, the Pre-Trial Judge notes the fact that the Prosecution does not object to the lifting of the confidentiality of a number of filings in full: these are the Prosecutor's Request for Clarification, the Prosecution's Submission of 20 June 2019 with the exception of its annex, the arrest warrants and the Order seeking additional submissions of 24 July 2019. The Pre-Trial Judge therefore considers that they should be reclassified as public.

18. Lastly, the Pre-Trial Judge notes the fact that the Registrar does not object to the lifting of the confidentiality of the Registrar's Memorandum of 8 August 2019, excluding its annexes, and orders it to be reclassified as public. After reviewing the arguments set out in the Registrar's Submission of 27 August 2019 and its annex, the Pre-Trial Judge considers that their confidential nature, as well as that of the annexes to the Registrar's Memorandum of 8 August 2019, should be maintained.

### **III. Disposition**

**FOR THESE REASONS,**

**PURSUANT TO** Rules 73, 74, 77 and 96 (A) of the Rules,

**THE PRE-TRIAL JUDGE,**

**ORDERS** the lifting of the confidentiality, and where necessary, of the *ex parte* nature, of the following filings:

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- i) Prosecution's Request for Clarification;
- ii) Prosecution's Submission of 20 June 2019, in respect of its "Cover filing", excluding its annex containing the redacted Indictment;
- iii) Arrest warrant;
- iv) International arrest warrant;
- v) Decision on the dismissal of the request for clarification of 29 May 2019;
- vi) Order seeking additional submissions of 24 July 2019; and
- vii) Registrar's Memorandum of 8 August 2019, excluding its annexes;

**ORDERS** the Registry to reclassify those filings as public;

**ORDERS** the lifting of the confidential and *ex parte* nature of the following filings subject to the redactions authorised by the Pre-Trial Judge in the Annex to the Order:

- i) Prosecution's Submission of 14 December 2018, in respect of its "Cover filing", and its Annex A (Indictment of 14 December 2018);
- ii) Prosecution's Request on the redactions of 4 June 2019;
- iii) Prosecution's Request of 7 June 2019, in respect of its "Cover filing", and its Annex A (Indictment of 7 June 2019); and
- iv) Prosecution's Request of 14 June 2019, in respect of its "Cover filing", and its Annex A (Indictment);

**ORDERS** the Prosecutor to file, by 23 September 2019 at the latest, public redacted versions of those filings, in accordance with the Annex to the Order;

**ORDERS** the lifting of the confidential and *ex parte* nature of the following decisions and orders subject to the redactions set out in the Annex to the Order:

- i) Decision of 15 May 2019;
- ii) Decision on the redactions of 6 June 2019;
- iii) Decision of 19 June 2019; and
- iv) Order of 9 July 2019;

**STATES** that the Pre-Trial Judge will file public redacted versions of those decisions and orders, in accordance with the Annex to the Order; and

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**ORDERS** that the confidential and, where applicable, *ex parte* nature of the other filings filed in these proceedings be maintained until further notice.

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

Leidschendam, 16 September 2019

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Daniel Fransen  
Pre-Trial Judge



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