



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE TRIAL CHAMBER

Case No.: STL-11-01/PT/TC

Before: Judge David Re, Presiding
Judge Janet Nosworthy
Judge Micheline Braidy
Judge Walid Akoum, Alternate Judge

Registrar: Mr. Daryl Mundis, Registrar

Date: 19 November 2013

Original language: English

Type of document: Public

THE PROSECUTOR

v.

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

**DECISION AUTHORISING THE PROSECUTION TO AMEND
ITS EXHIBIT LIST AND TO REDACT EXHIBIT 55**

Office of the Prosecutor:
Mr. Norman Farrell

Counsel for Mr. Salim Jamil Ayyash:
Mr. Eugene O'Sullivan
Mr. Emile Aoun

Victims' Legal Representative:
Mr. Peter Haynes

Counsel for Mr. Mustafa Amine Badreddine:
Mr. Antoine Korkmaz
Mr. John Jones

Counsel for Mr. Hussein Hassan Oneissi:
Mr. Vincent Courcelle-Labrousse
Mr. Yasser Hassan

Counsel for Mr. Assad Hassan Sabra:
Mr. David Young
Mr. Guénaël Mettraux



INTRODUCTION

1. The Prosecution has sought leave to add a witness statement containing two photo-boards (exhibit 55) to its exhibit list, and has sought authorisation to redact the proposed exhibit.
2. On 10 September 2013, the Prosecution sought the Pre-Trial Judge's leave to amend its witness and exhibit lists under Rule 91 of the Rules of Procedure and Evidence.¹ On 11 October 2013, the Pre-Trial Judge requested submissions from the Prosecution regarding a redacted witness statement (exhibit 55) in the request.² On 17 October 2013, the Prosecution responded and sought authorisation to redact the exhibit.³ On 18 October 2013, the Pre-Trial Judge partially allowed the application to amend the witness and exhibit lists,⁴ but deferred deciding whether to permit adding exhibit 55 to the exhibit list pending receipt of any responses from the Defence to the redaction application.⁵ Counsel for the Accused, Mr. Mustafa Amine Badreddine and Mr. Hussein Hassan Oneissi, thereafter responded.⁶
3. On 25 October 2013, the Pre-Trial Judge submitted his report under Rule 95 seizing the Trial Chamber with the case file and a number of undecided applications and motions, including these two.⁷

AMENDING AN EXHIBIT LIST

4. The Trial Chamber may, in the interests of justice, allow a party to amend its exhibit list. In doing so, the Chamber must balance the Prosecution's interest in presenting any available evidence against the rights of an accused person to adequate time and facilities to prepare for trial. General factors for consideration include: i) whether the proposed evidence is *prima facie*

¹ STL, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, Case No. STL-11-01/PT/PTJ, Prosecution Submission Pursuant to Rules 91(G)(ii) and (iii), Confidential, 10 September 2013, see also, STL-11-01/PT/PTJ, Corrigendum to Annex D to the "Prosecution Submission Pursuant to Rules 91(G)(ii) and (iii)", Confidential, 12 September 2013; STL-11-01/PT/PTJ, Badreddine Defence Response to "Prosecution Submission Pursuant to Rule 91(G)(ii) and (iii)" of 10 September 2013, Confidential, 25 September 2013; STL-11-01/PT/PTJ, Second Corrigendum to Annex D to the "Prosecution Submission Pursuant to Rules 91(G)(ii) and (iii)" of 10 September 2013, Confidential, 25 September 2013; STL-11-01/PT/PTJ, Badreddine Defence Response to "Second Corrigendum to Annex D to the 'Prosecution Submission Pursuant to Rules 91(G)(ii) and (iii)' of 10 September 2013", Confidential, 4 October 2013.

² STL-11-01/PT/PTJ, Internal Memorandum of the Pre-Trial Judge, Confidential, 11 October 2013.

³ STL-11-01/PT/PTJ, Prosecution's Application to Authorize Necessary Redactions, Confidential, 17 October 2013. A CD-ROM containing exhibit 55 accompanied the application.

⁴ STL-11-01/PT/PTJ, Decision on the Prosecution's Second Submission Pursuant to Rule 91(G)(ii) and (iii), 18 October 2013, p. 8.

⁵ PTJ Decision of 18 October 2013, para. 15.

⁶ STL-11-01/PT/PTJ, Badreddine Defence Response to "Prosecution's Application to Authorize Necessary Redaction", Confidential, 22 October 2013; The Defence for Hussein Hassan Oneissi Response to "Prosecution's Application to Authorize Necessary Redactions" Dated 17 October 2013, Confidential, 22 October 2013.

⁷ STL-11-01/PT/PTJ, Rapport du Juge de la mise en état établi conformément à l'article 95, paragraphe A) du Règlement de procédure et de preuve, confidentiel, 25 octobre 2013.

relevant and probative; ii) whether the Prosecution has shown good cause for not seeking the amendments at an earlier stage; iii) the stage of the trial; and, iv) whether granting the amendment would result in undue delay.⁸

5. The Prosecution submitted that it identified this exhibit while reviewing the evidence it intended to present at trial, that the exhibit is relevant and probative, that the trial has not yet commenced, that its addition to the exhibit list will not delay the proceedings, and – at the time of the application – that the Trial Chamber had not been seized of the case. Adding this exhibit to the exhibit list now would thus serve the interests of justice.⁹
6. Counsel for Mr. Badreddine responded that the Prosecution had not demonstrated how the exhibit is *prima facie* relevant and probative. Adding it to the exhibit list is therefore not in the interests of justice. Moreover, the Prosecution has failed to show good cause for not seeking to add the proposed exhibit at an earlier stage.¹⁰
7. Exhibit 55 is the witness statement of a Prosecution employee who compiled two photo-boards for use in the investigation. The photo-boards are annexed to exhibit 55 and include faces that are allegedly those of two of the Accused. Using photo-boards is an investigative technique common to criminal investigations throughout the world; the statement's relevance appears to relate only to the manner of creating the photo-boards. The Trial Chamber therefore considers that exhibit 55 is *prima facie* relevant and probative. Good cause exists for the Prosecution not having earlier sought to add the exhibit to its list as the statement was made only on 7 August 2013. Adding this exhibit to the list will neither delay the proceedings nor prejudice the preparation of the Defence for trial. The Trial Chamber is therefore satisfied that adding exhibit 55 to the Rule 91 list is in the interests of justice.

⁸ STL-11-01/PT/PTJ, Decision on the Prosecution Submission Pursuant to Rule 91(G)(ii) and (iii), 18 September 2013, para. 11. See also, Decision on Two Prosecution Submissions in Relation to Amending the Prosecution Rule 91 Filings, 5 August 2013, para. 20.

⁹ Prosecution Rule 91 Request, paras 17-19. The Prosecution disclosed exhibit 55 to the Defence with the proposed redactions already implemented on 20 September 2013.

¹⁰ Badreddine Response to the Rule 91 Request, paras 6-7.

APPLICATION TO REDACT EXHIBIT 55

8. The Prosecutor, under Rule 116 (A), may ask the Trial Chamber to relieve it of its obligation to disclose certain material to the Defence where disclosure: (i) may prejudice ongoing or future investigations, (ii) may cause grave risk to the security of a witness or his family, or (iii) for any other reasons that may be contrary to the public interest or the rights of third parties.
9. Various names, including those of two of the Accused, appear on the two photo-boards in exhibit 55. Relying on the third criteria, the Prosecution seeks authorisation to redact the names on the basis that disclosing this information would be contrary to the interest of the third parties, and in particular, may endanger their personal safety. The Prosecution also submitted that it has not redacted any actual evidence from the document, and that the Registry's Victims and Witnesses Unit concurs with the proposed redactions.¹¹ The Prosecution noted that it had already redacted information in the exhibit that is within Rule 111.¹² The Trial Chamber hence is unaware of the content of this information, and does not understand why the Prosecution would include such material in a witness statement apparently intended for use as evidence, only to later redact it. The Trial Chamber discourages this practice.
10. Counsel for Mr. Badreddine submitted that, because of its confidential and *ex-parte* status, a meaningful response to the redaction application is impossible. They also requested the Trial Chamber to state the legal basis for any redaction(s) authorised.¹³ Counsel for Mr. Oneissi submitted that arguments supporting redaction applications should be contained in the request itself, rather than in an annexe, and that the Prosecution has offered no legal justification for the proposed redactions. Additionally, as the totality of a witness statement is evidentiary in nature, the proposed redactions prejudice the rights of the Accused to a fair trial.¹⁴
11. Rule 116 (B) specifies that the Trial Chamber first decides whether the information sought to be redacted would ordinarily be subject to disclosure, and then examines the Prosecution's proposed counter-balancing measures, as set out in its statement accompanying the application. As the Prosecution acknowledges that exhibit 55 is within Rule 110 (A) (ii), the Trial Chamber is

¹¹ Redaction Application, paras 1, 3; Redaction Application, Confidential and *Ex-Parte* Annex A, paras 4, 7.

¹² Rule 111, titled *Disclosure of Reports, Memoranda or Other Internal Documents*, reads: 'Reports, memoranda, or other internal documents prepared by a Party, its assistants or representatives in connection with the investigation or preparation of a case are not subject to disclosure or notification under the Rules. For purposes of the Prosecutor, this includes reports, memoranda, or other internal documents prepared by the UNIIC or its assistants or representatives in connection with its investigative work'.

¹³ Badreddine Response to Redaction Application, para. 4.

¹⁴ Oneissi Response to Redaction Application, paras 9-10, 14-16, 22-23.

satisfied that it is subject to disclosure. The Prosecution's statement relating to the proposed counter-balancing measures indicates that exhibit 55 can be disclosed to the Defence with the proposed redactions.

12. The proposed redactions would withhold from the Defence only the names contained on the photo-boards of 'third parties' who are otherwise unconnected to the case (and the two Accused, whose identity is obvious). The photo-boards appear to have been used, with witnesses, for identification purposes during the investigation, but by using numbers in place of names, consistent with normal investigatory practices. Accordingly, the statement's relevance appears confined to establishing how the photo-boards were created, including explaining the provenance of the photographs. In this sense, the statement and the photo-boards appear to fall loosely within the category of chain of custody evidence. The Trial Chamber therefore has difficulty in seeing the legitimate forensic purpose of revealing the names of the third parties in circumstances where: i) the statement itself explains the provenance of the photographs; and, ii) the names were apparently not shown to the witnesses.
13. Moreover, disclosing this personal information would contravene the rights to privacy of those whose faces appear on the photo-boards and, if revealed publicly, may indeed affect their personal safety. The Trial Chamber is thus satisfied that redacting the names could not prejudice the rights of the Accused to a fair trial and it is thus in the interest of justice to authorise the proposed redactions to exhibit 55.
14. Finally, and in regard to the Defence arguments about a lack of transparency, the Trial Chamber highlights that Rule 116 (A) expressly provides that 'the Prosecutor may apply *ex parte* to the Trial Chamber sitting *in camera*' to examine the proposed redactions. The Prosecution followed this procedure. This decision, however, is public.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

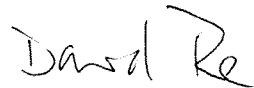
GRANTS the Prosecution leave to amend its exhibit list by adding exhibit 55; and

AUTHORISES the proposed redactions to exhibit 55.

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

Leidschendam,
The Netherlands

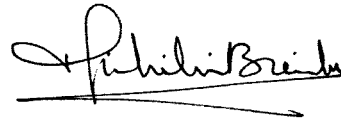
19 November 2013



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

