



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE TRIAL CHAMBER

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

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

Registrar: Mr Daryl Mundis, Registrar

Date: 24 January 2014

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 WITNESS AND EXHIBIT LISTS**

Office of the Prosecutor:

Mr Norman Farrell
Mr Graeme Cameron
Mr Alexander Milne

Victims' Legal Representative:

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 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 18 December 2013, the Prosecution sought the Trial Chamber's leave to amend its witness and exhibit lists under Rule 91 of the Rules of Procedure and Evidence by removing 82 witness statements and 1619 exhibits, and adding 10 witness statements and 255 exhibits, respectively.¹
2. The Prosecution argues that the proposed additional evidence is relevant and probative, that the additions to the witness and exhibit lists will not delay the proceedings and that the proposed evidence has been disclosed to the Defence. The Prosecution notes that the additional evidence generally results from its attempts to streamline evidence presentation and to update the telephone attribution reports related to each of the four Accused. The majority of the additions relate to the second and third sections of the Prosecution case and adding these witnesses and exhibits to the Rule 91 lists would thus serve the interests of justice.² The Prosecution also seeks to substitute a shorter extract³ for one document already on its exhibit list.⁴
3. The proposed additional evidence includes one expert witness whose evidence relates to call data records,⁵ three new expert reports related to cell site analysis and call data records,⁶ one new statement of an expert witness whose evidence relates to call data records,⁷ 6 witnesses who will provide evidence in relation to the identity of Mr. Badreddine,⁸ one witness whose evidence relates to the attribution of a mobile telephone to a contact of Mr. Ayyash,⁹ a former Prosecution investigator¹⁰ and one witness who took photographs of the crime scene.¹¹
4. On 2 January 2014, counsel for Mr. Ayyash responded to the Prosecution motion, objecting to the addition of two of the 10 proposed additional witnesses (PRH669 and PRH673) for failing to show good cause.¹² Regarding three proposed new expert reports,¹³ counsel argue that the Prosecution breaches the Pre-Trial Judge's Working Plan directing the Prosecution to file 'all

¹ *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, STL-11-01/PT/TC, Prosecution Submission Pursuant to Rules 91(G)(ii) and (iii), 18 December 2013.

² Prosecution motion, paras 7-8, 14, 17, 20, 24.

³ ERN 10009142-10009151.

⁴ R91-200292, ERN 10008919-10009235.

⁵ PRH673.

⁶ ERN D0345943-D0346170, D0346171-D0346243, D0346244- D0346261 prepared by PRH435 and PRH673.

⁷ ERN 60289424-60289430 prepared by PRH348.

⁸ PRH664, PRH667, PRH668, PRH671, PRH665 and PRH666.

⁹ PRH669.

¹⁰ PRH670.

¹¹ PRH672.

¹² Response by the Ayyash Defence to the "Prosecution submission pursuant to Rule 91(G)(ii) and (iii)" dated 18 December 2013, 2 January 2014, paras 6-7.

¹³ ERN D0345943-D0346170, D0346171-D0346243, D0346244- D0346261.

expert reports it intends to rely on at trial' by 15 November 2012.¹⁴ Counsel for Mr. Badreddine also oppose the Prosecution motion for failing to show good cause and argue that the volume¹⁵ of some of the proposed evidence impacts the Defence expert's work and planning.¹⁶ No responses were filed by counsel for Mr. Oneissi or counsel for Mr. Sabra.

5. The Trial Chamber has previously held that it may, in the interests of justice, allow a party to amend its witness and exhibit lists. In doing so, it 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* 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.¹⁷

DISCUSSION

6. Having reviewed the Parties' submissions, the Trial Chamber is satisfied that the additional 10 witness statements and 255 exhibits proposed by the Prosecution are *prima facie* relevant and probative.
7. The Trial Chamber is satisfied that good cause exists to amend the witness and exhibit lists. Nothing in the Special Tribunal's Rules and Statute prevents the Prosecution from continuing its investigations after an indictment is confirmed¹⁸ – nor are such continuous investigations a basis, as counsel for Mr. Badreddine suggest, to consider that good cause cannot be shown.¹⁹ The mere fact that names of the proposed new witnesses were not in the initial telephone attribution reports cannot prevent the Prosecution from seeking new evidence.²⁰ Likewise, the Prosecution's previous decision to use PRH669's statement for one purpose (as an exhibit) is not inconsistent

¹⁴ Ayyash Defence response, para. 8, citing STL-11-01/PT/PTJ, Order on a Working Plan and on the Joint Defence Motion Regarding Trial Preparation, 25 October 2012, p. 15.

¹⁵ Badreddine Defence Response to "Prosecution submission pursuant to Rule 91(G)(ii) and (iii)" dated 18 December 2013, 2 January 2013, paras 3-7: Two of the proposed expert reports (D0345943-D0346170 and D0346171-D0346243) comprise 228 and 73 pages, respectively and the updated attribution report in relation to Mr. Badreddine increased from 293 to 689 pages.

¹⁶ Badreddine Defence response, paras 3-7.

¹⁷ STL-11-01/PT/TC, Decision on Prosecution's Motion to Admit into Evidence Photographs, Videos, Maps, and 3-D Models, 13 January 2014, para. 3; First Decision on the Prosecution Motion for Admission of Written Statements under Rule 155, 20 December 2013, para. 5; Decision Authorising the Prosecution to Amend its Exhibit List and to Redact Exhibit 55, 19 November 2013, para. 4.

¹⁸ STL-11-01/PT/PTJ, Order on a Working Plan and on the Joint Defence Motion Regarding Trial Preparation, 25 October 2012, paras 36-37.

¹⁹ Badreddine Defence response, para. 5 (iii); Prosecution motion, paras 25, 27-29.

²⁰ Badreddine Defence response, para. 4 (ii); Ayyash Defence response, para. 5.

with a later decision to use PRH669 for a different purpose (as a witness).²¹ Provided that the requirements for amending an exhibit and witness list are generally met, the Trial Chamber will not scrutinize in detail the chain of events leading to a decision to seek to amend a witness and exhibit list.

8. Counsel for Mr. Badreddine correctly identified two points on which the Prosecution made no specific efforts to show good cause, namely that the Prosecution is only now re-contacting its experts to clarify the evidence, and that the three new expert reports were only recently commissioned.²² This failure does not assist the Trial Chamber and could be a basis for summary dismissal in these respects. However, the evidence which the Prosecution seeks leave to add to its exhibit list appears to be an effort to clarify or develop the evidence of existing expert witnesses PRH348²³ and PRH435.²⁴ A clear understanding of an expert witness's opinion will assist the Parties and facilitate the conduct of these proceedings. The Trial Chamber is therefore satisfied that good cause exists to amend the exhibit and witness lists notwithstanding the motion's limitations. Any potential burden to the Defence by expanding PRH435's evidence is considered below.
9. Regarding the additional expert evidence, the Trial Chamber does not find the Prosecution has breached the Working Plan, as counsel have submitted.²⁵ The Prosecution appears to have filed, at the appropriate time, the expert reports upon which it *then* intended to rely.²⁶ By filing its motion, the Prosecution has alerted the Parties to the new circumstances and sought the Trial Chamber's authorization.
10. Considering the stage of the trial and the question of undue delay, the Trial Chamber takes into account the submissions of counsel for Mr. Ayyash and Mr. Badreddine regarding the significant volume and potentially burdensome nature of some of the proposed evidence. However, the motion also decreases the burden on the Defence by removing 82 witnesses and 1619 exhibits from the lists. The Trial Chamber will grant this request, which is unopposed by any Defence counsel. Accordingly, since the motion was filed one month before the start of trial proceedings

²¹ Ayyash Defence response, para. 4.

²² Ayyash Defence response, paras 5(i), (ii).

²³ Prosecution motion, para. 20.

²⁴ Prosecution motion, para. 24.

²⁵ Badreddine Defence response, para. 2.

²⁶ STL-11-01/PT/PTJ, Order on a Working Plan and on the Joint Defence Motion Regarding Trial Preparation, 25 October 2012, paras 38-39 ('expert reports ... are likewise subject to the general principles elaborated in the working plan regarding [Rules 110 and 113] and established by ... this order; Pre-Trial Judge orders the Prosecution to file by 15 November 2012, *inter alia*, 'all expert reports it intends to rely on at trial').

and effectively reduces the Prosecution witness and exhibit lists overall, the Trial Chamber does not consider the requested amendments unduly burdensome. Nor should the amendments cause any undue delay.

11. Further, most of the additional evidence pertains to the second and third sections of the Prosecution case. This will give the Defence the maximum preparation time possible; moreover, the documents were, with one exception, disclosed to the Defence by the date of the Prosecution motion. The Prosecution has also estimated that the ten proposed witnesses will take just eight hours of court time. Adding witnesses to the Prosecution's witness list will thus neither delay the proceedings nor prejudice the preparation of the Defence for trial.
12. The Trial Chamber is satisfied, furthermore, that the addition of the new expert materials²⁷ in particular is not unduly burdensome or likely to cause delay. The three new expert reports do not relate to the first section of the Prosecution case and were disclosed to the Defence when the motion was filed. Furthermore, only one of the expert reports relates to a new witness, PRH673; the other two reports are additional reports prepared by an expert witness, PRH435, who is already on the witness list. Likewise, the new statement of expert witness PRH348 is relatively brief (seven pages), and relates to a report²⁸ which has been on the exhibit list since November 2012 and was disclosed to the Defence on 14 November 2012. Adding the proposed statement to the Prosecution's exhibit list will thus neither delay the proceedings nor prejudice the preparation of the Defence for trial.
13. Therefore, having balanced the right of the Prosecution to present evidence to support its case with the rights of counsel for the four Accused to adequately prepare for trial, the Trial Chamber is satisfied that it is in the interests of justice to allow the amendment of the exhibit and witness lists as requested.
14. Notwithstanding this, the Trial Chamber shares the concern expressed by counsel for Mr. Ayyash and Mr. Badreddine of the difficulty of addressing new expert reports filed at this late stage. Therefore, given the additional complexity of such evidence, the Prosecution must give notice to the Defence as soon as practicable if it is taking steps to obtain new evidence from an expert not on its witness list. It should not wait until the date of filing an application to amend its witness list.

²⁷ ERN D0345943-D0346170, D0346171, D0346244-D0346261.

²⁸ R91-606437.

DISCLOSURE

Counsel for Mr. Badreddine argue that PRH667's statement and the 'civil status documents of alleged family members of Mr. Badreddine' were not disclosed in a timely manner.²⁹ However, they have failed to state the basis on which they consider that they were entitled to earlier disclosure of the witness statement. Regarding the 'civil status documents', even if documents 'related to the identity of Mr. Badreddine' constituted a sufficiently specific request for the purpose of Rule 110 (B), it is unclear to the Trial Chamber whether the 'civil status documents of alleged family members of Mr. Badreddine' would fall within the requested category.³⁰

15. Counsel for Mr. Badreddine report that the *curriculum vitae* of proposed new expert witness PRH673 has not been disclosed.³¹ If this has not been already rectified, the Prosecution is directed to do so.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

ALLOWS the motion;

GRANTS the Prosecution leave to amend the witness list by adding the witnesses listed in Annex C of the motion, and removing the witnesses listed in Annex A;

GRANTS the Prosecution leave to amend the exhibit list by adding the exhibits listed in Annex D of the motion, and removing the exhibits listed in Annex B, and additionally requested in paragraph 10 of its motion;

GRANTS the Prosecution leave to file the amended witness and exhibit lists attached to its motion as Annexes E and F;

ORDERS the Prosecution to notify the Defence in advance of any application to amend its witness or exhibit list if it is proposing to obtain new or updated expert evidence; and

ORDERS the Prosecution to disclose the *curriculum vitae* of PRH673.

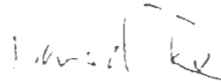
²⁹ Badreddine Defence response, paras 4 (i), 5 (iv).

³⁰ Badreddine Defence response, para. 5, Annex.

³¹ Badreddine Defence response, para. 4 (iii).

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

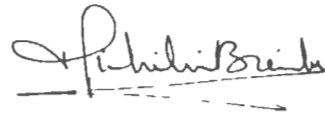
24 January 2014



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

