



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: 20 February 2014

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THE PROSECUTOR

v.

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

**DECISION AUTHORISING THE PROSECUTION TO AMEND
ITS EXHIBIT LIST**

Office of the Prosecutor:

Mr Norman Farrell

Legal Representatives of**Participating Victims:**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 Hassan Habib Merhi:**Mr Mohamed Aouini, Ms Dorothee Le Fraper
du Hellen & Mr Khalil Jad**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

INTRODUCTION

1. On 14 January 2014, the Prosecution sought the Trial Chamber's leave to amend its exhibit list under Rule 91 of the Rules of Procedure and Evidence by replacing six expert reports with their updated versions.¹
2. The Prosecution argues that the proposed additional evidence is relevant and probative, that the additions to the exhibit list will not delay the proceedings, and that the proposed evidence has been disclosed to the Defence. The Prosecution notes that the additional evidence – relating to the second and third sections of the Prosecution case – results from its attempts to facilitate and streamline evidence presentation at trial, and that the amendment to the list would thus serve the interests of justice. The Prosecution also submitted that it intends to file a request with further substitutions for the investigator's notes remaining on the exhibit list.²
3. The proposed evidence includes updated versions of a chronology report and a report related to phone networks authored by expert witness PRH147, and of four reports related to the telephones attributed to the four Accused authored by expert witness PRH230.³
4. Counsel for Mr Badreddine, Mr Oneissi and Mr Sabra respond that the Prosecution did not provide them with versions of the updated expert reports identifying the amendments made and that the volume of the updated reports negatively impacts the Defence preparation for trial.⁴ Counsel for Mr Ayyash argue that the 'standards' applicable to the Electronic Presentation of Evidence (EPE) module were not disclosed to them and seek clarifications regarding Prosecution's intention to further substitute the investigator's notes remaining on the exhibit list.⁵ Counsel for Mr Ayyash and Mr Sabra request that a deadline be set for all the amendments to the expert reports.⁶ Counsel for Mr Oneissi request that the Prosecution's obligation to notify in advance the Defence of new or updated expert evidence, pursuant to the decision of 24 January 20014, be extended to include all

¹ *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, STL-11-01/PT/TC, Prosecution Submission Pursuant to Rules 91(G)(iii), 14 January 2014.

² Prosecution motion, paras 4-11.

³ Prosecution motion, paras 8-9.

⁴ Badreddine Defence Response to the "Prosecution submission pursuant to Rule 91(G)(iii)" dated 14 January 2014, 29 January 2014, para. 4; Réponse de la Défense de M. Oneissi aux "Prosecution Submission Pursuant to Rule 91(G)(iii)" en date du 14 janvier 2014, 29 January 2014, para. 15; Defence Response To Prosecution Submission Pursuant to Rule 91(G)(iii), 28 January 2014, paras 6, 9.

⁵ Ayyash Defence response, paras 3-4.

⁶ Ayyash Defence response, para. 2; Sabra Defence response, para. 8.

Prosecution's evidence relating to telephone communications.⁷ Counsel for Mr Hassan Habib Merhi did not respond.

5. On 3 February 2014, the Prosecution replied to the Defence responses, stating that on that date it provided the Defence with versions of the six reports identifying the differences between the original reports and the updated versions. The Prosecution clarified that the reference to 'standards applicable to the EPE module' was intended to indicate the compatibility of the reports with the technical requirements of the EPE module. The Prosecution also clarified that, if its motion is granted, it will no longer intend to rely on the investigator's notes mentioned in its motion as they have been superseded in the amended versions of the six reports.⁸

6. On 11 February 2014, the Trial Chamber joined the *Merhi* case (STL-13-04) to the *Ayyash* case (STL-11-01).⁹ Mr Merhi was added to the original four Accused. On 12 February 2014, the Trial Chamber adjourned the hearing for the immediate and foreseeable future until counsel for Mr Merhi have had sufficient time to prepare and while other matters remain under consideration.¹⁰

7. The Trial Chamber has previously held that it may, in the interests of justice, allow a party to amend its exhibit list but that, 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 proceedings; and, iv) whether granting the amendment would result in undue delay.¹¹

DISCUSSION

8. Having reviewed the submissions of the Prosecution and the four Accused (Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra), the Trial Chamber is satisfied that the six updated expert reports proposed by the Prosecution are *prima facie* relevant and probative.

⁷ Réponse de la Défense de M. Oneissi aux "Prosecution Submission Pursuant to Rule 91(G)(iii)" en date du 14 janvier 2014, 29 January 2014, paras 15-19.

⁸ Consolidated Reply to the Defence Responses to Prosecution Submission Pursuant to Rule 91(G)(iii), paras 3, 7, 8.

⁹ Official public transcript of 11 February 2014, page 91 line 24 to page 96 line 6.

¹⁰ Official public transcript of 12 February 2014, page 122, lines 11-23.

¹¹ 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.

9. The Trial Chamber and the Pre-Trial Judge have previously held that nothing in the Special Tribunal's Rules or Statute prevents the Prosecution from continuing its investigations after an indictment is confirmed¹² – nor are such continuous investigations a basis, as counsel for Mr Badreddine suggest,¹³ to consider that good cause cannot be shown for amendment of the exhibit list. Further, 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. 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 list.

10. As regards minimising any possible prejudice to the Defence caused by late amendment of the Prosecution's exhibit list and protection of the Accused's right to a fair and expedited trial, in its decision of 24 January 2014 the Trial Chamber ordered the Prosecution to notify the Defence in advance of any application to amend its witness or exhibit list when proposing to obtain new or updated expert evidence.¹⁴ The Trial Chamber thus considers that it is not necessary to set a definitive deadline for all amendments to expert reports and to request the Prosecution to confirm that the six expert reports are final and will not be further amended, as requested by counsel for Mr Ayyash and Mr Sabra.

11. Moreover, on 3 February 2014 the Prosecution provided counsel for the four Accused with versions of the six reports identifying the differences between the original reports and the updated versions. The Trial Chamber therefore considers that this is no longer a live issue.

12. Counsel for Mr Ayyash sought disclosure of the 'standards' related to the EPE module. Counsel also requested clarifications from the Prosecution in relation to its intention to further substitute the investigator's notes remaining on the exhibit list. In response, the Prosecution clarified that the reference in its motion to 'standards applicable to the EPE module' was intended to indicate the compatibility of the reports with the technical requirements of the EPE module. The Prosecution also submitted that it will no longer rely on the (superseded) investigator's notes mentioned in its motion.¹⁵ This makes the requests of counsel for Mr Ayyash redundant.

¹² STL-11-01/T/TC, Decision authorizing the Prosecution to amend its witness and exhibit lists, 24 January 2014, para. 7; 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.

¹³ Badreddine Defence response, para. 2.

¹⁴ STL-11-01/T/TC, Decision authorizing the Prosecution to amend its witness and exhibit lists, 24 January 2014, para. 14, Disposition.

¹⁵ STL-11-01/T/TC, Consolidated Reply to the Defence Responses to Prosecution Submission Pursuant to Rule 91(G)(iii), 3 February 2014, paras 3, 7-8.

13. Counsel for Mr Oneissi submitted that the Prosecution's obligation of providing advance notice to the Defence of new or updated expert evidence should be extended to include all Prosecution evidence relating to telephone communications. Large portions of the evidence in the second and third sections of the Prosecution case indeed appear to be based on telephone communications.¹⁶ The Trial Chamber has already ordered the Prosecution to notify the Defence in advance of any application to amend its witness or exhibit list when proposing to obtain new or updated expert evidence.¹⁷ This ruling already adequately addresses the concerns of counsel for Mr Oneissi.

14. Considering the stage of the trial and the question of undue delay, the Trial Chamber takes into account the submissions of counsel for Mr Badreddine, Mr Oneissi and Mr Sabra regarding the significant volume and potentially burdensome nature of the updated reports. However, the reports relate to the second and third sections of the Prosecution case. This will give the Defence sufficient preparation time and the versions of the reports identifying the differences between the original reports and the updated versions were disclosed to the Defence on 3 February 2014. Moreover, the Trial Chamber, in the decision of 24 January 2014, granted the Prosecution motion to remove 82 witnesses and 1619 exhibits from the lists which effectively overall reduced the Prosecution witness and exhibit lists. Adding the reports to the Prosecution's exhibit list will thus neither delay the proceedings nor prejudice the preparation of the Defence for trial.

15. Moreover, the Trial Chamber ordered an adjournment on 12 February 2014, which allows counsel for the four original Accused additional time to deal with the matter. Considering the stage of preparation detailed in their submission of 17 February 2014,¹⁸ counsel for Mr Merhi have not yet started working on the old material, so updating the exhibit list in this manner can cause no procedural prejudice.

16. Therefore, having balanced the right of the Prosecution to present evidence to support its case with the rights of counsel for the 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 list as requested. Counsel for Mr Merhi may make further submissions on this matter should they consider it necessary.

¹⁶ STL-11-01/PT/TC, Pre-Trial Conference of 29 October 2013, transcript page 9.

¹⁷ STL-11-01/T/TC, Decision authorizing the Prosecution to amend its witness and exhibit lists, 24 January 2014, para. 14, Disposition.

¹⁸ STL-11-01/PT/TC, Observations additionnelles concernant le temps nécessaire à la préparation de la défense des intérêts de M. Merhi, 17 February 2014, in particular para. 26.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

ALLOWS the motion;

GRANTS the Prosecution leave to amend the exhibit list by replacing the six original reports with their amended versions as listed in Annex A of the motion; and

GRANTS the Prosecution leave to file the amended exhibit list attached to its motion as Annex B.

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

Leidschendam,
The Netherlands

20 February 2014

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

