



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

Date: 11 March 2014

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

Public Redacted Version of
**“DECISION ON URGENT REQUEST FOR AUTHORIZATION TO
 TRANSFER CALL DATA RECORDS OFFSITE” of 10 February 2014**

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



INTRODUCTION

1. On 4 February 2014, counsel for Mr. Mustafa Amine Badreddine filed an urgent confidential and *ex parte* request to authorise the transfer of telecommunications data from the Special Tribunal's inspection room¹ and the Z-drive² to the offices of its telecommunications expert, Mr. Bevan Clues of Clues and Co., Colchester, United Kingdom.³ Specifically, counsel for Mr. Badreddine requested the Trial Chamber to authorise (i) the transfer of the full content of the Z-drive, together with Mr. Clues' work product from the inspection room, and; (ii) the transfer of additional data from the inspection room on an *ad hoc* basis, without further leave from the Trial Chamber.

2. Mr. Clues travels regularly to the Special Tribunal from the United Kingdom to extract and analyse raw call data records from the inspection room and the Z-drive. However, counsel for Mr. Badreddine submit that it would be more cost-effective and efficient for Mr. Clues and his staff to work with the call data records at their premises in the United Kingdom. Counsel further submit that providing an efficient and flexible working framework to their expert will lead in turn to improved trial preparations by the Defence. Counsel propose the following procedure;

- data will be physically transferred from the Special Tribunal to Clues and Co.'s laboratory in the United Kingdom by
 - a USB drive, secured by fingerprint recognition and password protection (for materials stored in the inspection room), and
 - a high-capacity hard disk, secured by way of fingerprint recognition and password protection (for the content of the Z-drive, approximately 4 terabytes in data volume);
- data would be personally transported by Mr. Clues, who is scheduled to be at the Special Tribunal on 10 February 2014;

¹The inspection room is not technically a "room", rather a facility created within the Tribunal primarily to give the Defence access to the Defence for the Prosecution's SQL Database. The SQL Database is a database generated from a subset of the raw telecommunications data that the Prosecution has in its possession. This is because the Prosecution has only analysed and/or uploaded that data which it considers are relevant to its case, and which the rules require it to provide for inspection.

² The Z-drive is a discrete disclosure drive containing *inter alia* telecommunication data obtained in Lebanon.

³ *Prosecutor v. Ayyash, Badreddine, Oneissi, and Sabra*, STL-11-01/T/TC, Urgent request for authorisation to transfer CDR data offsite per 'Decision on issues related to the inspection room and call data records', Confidential and *Ex Parte*, 4 February 2014.

- data would remain in a locked case on Mr. Clues' person at all times while in transit from the Special Tribunal until his arrival at the Clues & Co. premises;
- data would be protected while at the Clues & Co. premises [REDACTED]; and
- data would only be accessed by Clues & Co. staff who are highly experienced and familiar with confidentiality obligations.

3. The Pre-Trial Judge has previously decided that:

The Defence shall be able to retrieve data from the network drive for storage and use on the Defence network within the Tribunal's premises in Leidschendam. However, no such data shall be removed from the premises of the Tribunal, except in exceptional circumstances and with prior authorisation of a Judge or Chamber (such restriction shall apply *inter alia* but shall not be limited to USB keys, laptops, and expedition by email).⁴

4. The Pre-Trial Judge has also previously granted similar requests sought by counsel for Mr. Oneissi and counsel for Mr. Ayyash for the transfer of data.⁵

5. The Trial Chamber finds that it is in the interests of justice to follow the procedure established by the Pre-Trial Judge in his decisions of 18 June 2013 and 25 July 2013.

6. The Trial Chamber is satisfied that, subject to receiving submissions from the Prosecution, exceptional circumstances exist to grant the request. The Trial Chamber acknowledges that working with the call data records in the United Kingdom would be more cost-effective and efficient for the Defence expert, and that providing an efficient and flexible working framework to the expert will lead in turn to improved Defence trial preparation. However, considering the sensitivity and volume of the data on Z-drive, the Trial Chamber will not order the transfer of the entire content of the Z-Drive without first hearing from the Prosecution. The Trial Chamber is further satisfied of the urgency of the request, as the expert is expected to be on the premises of the Special Tribunal on 10 February 2014. The Prosecution therefore has until 16:00 on Tuesday 11 February 2014 to file any submissions on this issue.

7. Counsel propose sufficient safeguards to preserve confidentiality and to ensure secure transmission of the materials under the responsibility of their expert. The Trial Chamber, subject to

⁴ STL-11-01/PT/PTJ, Decision on Issues Related to the Inspection Room and Call Data Records, Confidential, 18 June 2013, para. 83 (7).

⁵ STL-11-01/PT/PTJ, Decision on Urgent Defence Requests Regarding the Extraction of Information from the Inspection Room, 25 July 2013.

any submissions from the Prosecution, would authorise the transfer of the data on the basis of the procedure proposed by counsel and on the same conditions set by the Pre-Trial Judge in his decision of 25 July 2013, which require the Defence to: (i) compile and maintain lists of all persons who have access to information that is removed from the premises of the Tribunal; (ii) retain copies of all information that is removed from the premises of the Tribunal, and to keep a current log of all such information, and; (iii) to protect the confidentiality of evidence in the proceedings.

8. The request was filed confidentially and *ex parte* the Prosecution and the Legal Representative of the Victims as ‘it provides information regarding investigation and analyses conducted by the Defence expert’, and ‘information related to the internal systems management between the Defence Office and Defence’.⁶ The Trial Chamber finds that a sufficient basis exists for the classification of the *filing* as *ex parte* both the Prosecution and the Legal Representatives of Victims, but not the decision.

DISPOSITION

FOR THESE REASONS, the Trial Chamber, unless otherwise ordered by noon on 12 February 2014:

AUTHORISES the transfer of Mr. Clues’ work product from the inspection room and the full content of the Z-drive, and the transfer of additional information from the inspection room on an *ad hoc* basis without the need for further authorisation;

ORDERS counsel for Mr. Badreddine to:

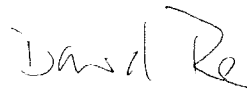
- comply with the procedure they have proposed for the transfer of material to Clues and Co. as set out in paragraph 2 of this decision;
- compile and maintain lists of anyone who has access to information that is removed from the premises of the Special Tribunal pursuant to this decision;
- retain copies of all information that is removed from the premises of the Special Tribunal pursuant to this decision, and to keep a log of all such information;
- to provide this decision to all third parties who are given material the subject of this decision and inform them not to disseminate or copy such material, and to return the material to counsel for Mr. Badreddine after use; and
- to inform any such third parties of the effect of Rule 60 bis (A) (ii) and to provide them with a copy of Rule 60 *bis.*; and

⁶ Request, para. 25.

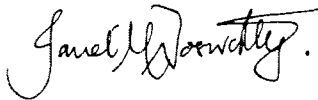
REMINDS counsel for Mr. Badreddine of paragraph 5 of the Code of Conduct for Counsel, which specifies that counsel shall protect the confidentiality of evidence in the proceedings, and that Rule 60 *bis* applies, in particular, to any violation of the terms of this decision.

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

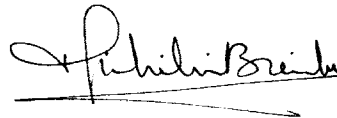
Dated 11 March 2014
Leidschendam
The Netherlands



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

