

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 March 2015

Original language: English

Type of document: Public

THE PROSECUTOR

v.

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

**ORDER TO THE PROSECUTION ON REDACTIONS AND
WRITTEN REASONS FOR DECISION ON ‘SABRA URGENT REQUEST TO
LIFT REDACTIONS’**

Office of the Prosecutor:

Mr Norman Farrell, Mr Graeme Cameron
& Mr Alexander Milne

**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 Dorothée 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 Guénaël Mettraux &
Mr Geoffrey Roberts



INTRODUCTION

1. These are the written reasons for the Trial Chamber's oral decision of 13 March 2015, ordering the Prosecution to immediately disclose to the Defence a statement by Witness PRH042, Mr Bassem Al Sabeh, and a 'transcript of PRH042', both dated 13 October 2011.¹ Mr Al Sabeh testified from 16 to 19 March 2015.² This written decision also contains an order to the Prosecution to review any remaining redacted witness statements.

BACKGROUND AND SUBMISSIONS

2. On 25 July 2013, upon the Prosecution's application, the Pre-Trial Judge authorised redactions to 111 Prosecution witness statements—including Mr Al Sabeh's statement of 13 October 2011—under Rule 116 (A).³ This Rule allows the Prosecutor to be relieved of an obligation to disclose material ordinarily subject to disclosure, if the disclosure may, notably, cause grave risk to the security of a witness or his family. The Pre-Trial Judge, upon a Defence request, reconsidered his decision of 25 July 2013, but declined to reverse it.⁴

3. On 10 March 2015, counsel for the Accused, Mr Assad Hassan Sabra, filed a motion asking the Trial Chamber to order the Prosecution to disclose Mr Al Sabeh's statement and the transcript in an unredacted form.⁵ They described the documents as being 'heavily redacted' in accordance with the Pre-Trial Judge's decision.⁶ Counsel for Mr Sabra argued that, to effectively prepare to cross-examine Mr Al Sabeh, they needed the unredacted versions of these documents to ensure that they knew the exact purport, scope and tenor of the witness's account.⁷

4. Counsel argued that the Pre-Trial Judge's initial assessment that the redactions were necessary must be revised, because, at that time, the proposed redactions did not relate to evidentiary content.⁸

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, Transcript no. 127 of 13 March 2015, pp. 2-3.

² F1873, Prosecution Witness Schedule for the Weeks Commencing 9 & 16 March 2015, 6 March 2015.

³ STL-11-01/PT/PTJ, F1016, Decision on Prosecution's Application to Authorise Necessary Redactions Dated 8 March and 18 March 2013, 25 July 2013.

⁴ F1039, Reconsideration of the Decision on Prosecution's Applications to Authorise Necessary Redactions Dated 8 and 18 March 2013, of 25 July 2013, 9 August 2013.

⁵ STL-11-01/T/TC, F1878, Sabra Urgent Request to Lift Redactions, 10 March 2015.

⁶ Sabra motion, para. 4.

⁷ Sabra motion, para. 6.

⁸ Sabra motion, para. 12.

However, as the Prosecution had now ‘qualified’ as relevant the political events in Lebanon in the months leading to Mr Rafik Hariri’s assassination on 14 February 2005, any information by a witness within the realm of ‘political’ themes had become *prima facie* relevant to Defence preparations.⁹

5. Counsel asked, in the alternative, the Trial Chamber to (i) itself review the redacted information to determine which of the redactions might contain information relevant and necessary to Defence preparation, and (ii) order the Prosecution to review the redactions authorised by the Pre-Trial Judge for the remaining witnesses affected by his 25 July 2013 decision.¹⁰

6. The Prosecution opposed the Defence motion, arguing that the redactions aimed to secure the safety of the witness and his family, and that the redacted information did not concern any allegations against the Accused or the political context surrounding Mr Hariri’s assassination.¹¹

7. On 12 March 2015, the Trial Chamber ordered the Prosecution to provide it with the statement and transcript to allow it to assess the necessity of the redactions.¹²

DISCUSSION

8. The Trial Chamber carefully examined the two documents. What the Sabra Defence unwittingly called the ‘transcript’ is in fact a transcription of the Prosecution’s interview with Mr Al Sabeh, on 13 October 2011, the contents of which were then largely reproduced in the witness statement of the same date. Both documents relate to the same interview. Although Defence counsel already had the redacted version of the statement, they did not have the complete transcription of the interview (of about 16 pages), but only a two-page selection of passages that could not be properly qualified as a summary.

9. For the reasons below, the Trial Chamber concluded that the disclosure of the unredacted statement of 13 October 2011 and the transcription of the interview would not cause grave risk to Mr Al Sabeh or his family.

⁹ Sabra motion, para. 13.

¹⁰ Sabra motion, para. 17.

¹¹ F1879, Prosecution Response to “Sabra Urgent Request to Lift Redactions”, 12 March 2015, para. 2.

¹² Transcript no. 126 of 12 March 2015, pp. 49-50.

10. The purpose of the Prosecution's interview with Mr Al Sabeh on 13 October 2011 appears to have been to assess his security situation and determine whether he would require protective measures. Mr Al Sabeh, however, testified publically, without the Prosecution requesting any in-court protective measures. Additionally, the information in the statement and transcription dates from October 2011 and relates to events occurring between 2006 and October 2011. The Prosecution did not provide any updated information as to whether Mr Al Sabeh had any security concerns.

11. Further, most of the information redacted from the statement is largely reproduced, unredacted, in Mr Al Sabeh's statement of 10 June 2010, and in particular at paragraphs 24, 25 and 28. The Trial Chamber considers that this effectively renders futile the redaction of the same information in another statement. As to the remaining redactions, the Trial Chamber is of the view that the information is sufficiently general and predictable in nature for a public figure and a long-standing member of Parliament, to render redactions unnecessary.

12. Additionally, and more importantly, some of the redacted information in the two documents, in the Trial Chamber's view, is disclosable under Rule 110 (B) as 'material to the preparation of the defence'.

Mr Al Sabeh's statement of 13 October 2011

13. Although the Pre-Trial Judge's decision of 25 July 2013 was consistent with the approach he then adopted in relation to disclosing witness statements, the Trial Chamber held that it should order the removal of the redactions to the statement dated 13 October 2011. The Prosecution did not demonstrate, objectively, any reason why the Defence should not be entitled to the redacted information. For these reasons, the Trial Chamber ordered the Prosecution to disclose the statement in accordance with Rule 110 (A) (ii).

Transcription of 13 October 2011 interview

14. As to the transcription of the interview of 13 October 2011, the Trial Chamber did not consider that any basis existed for the non-disclosure of this document to the Defence; its contents are reproduced, in any event, in the statement of the same date. It accordingly ordered the Prosecution to disclose it.

15. The Trial Chamber underlines that the disclosure to the Defence of the unredacted statement and transcription does not prevent the Prosecution, or the Defence for that matter, from asking the court to publically broadcast a redacted version of these documents during this or another witness's testimony.

Order to revise redactions to other witness statements

16. Counsel for Mr Sabra also asked the Trial Chamber to order the Prosecution to 'review the redactions requested for 109 witnesses in its Requests of 8 and 18 March to ascertain whether they remain necessary under Rule 116 (A) (ii)';¹³ although, in reality, this may be 110, or another figure.¹⁴

17. The Trial Chamber reviewed the redactions to Mr Al Sabeh's statement and, notwithstanding the Prosecution's opposition to disclosing the two documents in unredacted form, considered that the documents contained information that was 'material to Defence preparations' under Rule 110 (B). These documents should have been disclosed to Defence counsel well in advance of the witness's testimony. On this basis, and consistent with the reasoning ordering their disclosure, the Trial Chamber is of the view that it should grant the relief sought at paragraph 17 (iii) of the Defence motion.

18. The Trial Chamber therefore orders the Prosecution to reassess the redactions authorised by the Pre-Trial Judge in his decision of 25 July 2013, to the remaining witness statements, to determine whether they are still necessary.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

ORDERED the Prosecution to disclose the unredacted version of Mr Bassem Al Sabeh's statement of 13 October 2011 and the transcription of the same date; and

¹³ Sabra motion, para. 17.

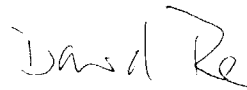
¹⁴ The Pre-Trial Judge's decision of 25 July 2013 authorises redactions to 111 witness statements, of which the statement of Mr Al Sabeh is only one.

ORDERS the Prosecution to reassess the redactions authorised by the Pre-Trial Judge in his Decision on Prosecution's Applications to Authorise Necessary Redactions Dated 8 and 18 March 2013, filed 25 July 2013, to determine whether these are still necessary.

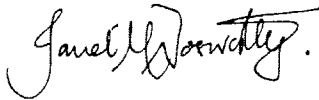
Done in Arabic, English, and French, the English version being authoritative.

Leidschendam,
The Netherlands

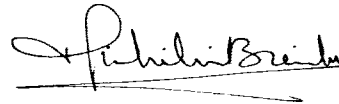
20 March 2015



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

