

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

Date: 3 July 2015

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

**DECISION DENYING CERTIFICATION TO APPEAL THE
'DECISION ON ADMISSIBILITY OF DOCUMENTS PUBLISHED ON THE
WIKILEAKS WEBSITE'**

Office of the Prosecutor:

Mr Norman Farrell, Mr Graeme Cameron
& Mr Alexander Hugh Milne

Counsel for Mr Salim Jamil Ayyash:

Mr Eugene O'Sullivan, Mr Emile Aoun &
Mr Thomas Hannis

Victims' Legal Representatives:

Mr Peter Haynes, Mr Mohammad F. Mattar
& Ms Nada Abdelsater-Abusamra

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 Jad Khalil

Counsel for Mr Hussein Hassan Oneissi:

Mr Vincent Courcelle-Labrousse, Mr Youssef
Hassan & Mr Philippe Larochelle

Counsel for Mr Assad Hassan Sabra:

Mr David Young, Mr Guénaél Mettraux &
Mr Geoffrey Roberts



INTRODUCTION

1. The Defence of the Accused, Mr Mustafa Amine Badreddine, seek certification, under Rule 126 (C) of the Special Tribunal’s Rules of Procedure and Evidence,¹ to appeal the Trial Chamber’s ‘Decision on Admissibility of Documents Published on the Wikileaks Website’, of 21 May 2015.² The Prosecution opposed the application.³

2. The Trial Chamber, in its decision, declined to admit into evidence two documents that Defence counsel found on the Wikileaks website, purportedly relating to two meetings between diplomats of the United States of America—the first with the former Lebanese Minister of Justice Mr Charles Rizk, and the second with the Lebanese Progressive Socialist Party leader, Mr Walid Jumblatt.⁴

3. Defence counsel attempted to tender the documents into evidence during the testimony of Mr Jumblatt and the former Lebanese Prime Minister, Mr Fouad Siniora. The Trial Chamber, however, was not satisfied that the Defence had proved that the documents were authentic or accurate.⁵

THE LEGAL PRINCIPLES FOR CERTIFICATION FOR APPEAL

4. Rule 126 (C), ‘Motions Requiring Certification’, requires the Trial Chamber to certify a decision for interlocutory appeal:

if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which an immediate resolution by the Appeals Chamber may materially advance the proceedings.

5. The Trial Chamber must be satisfied that an issue for certification meets the Rule’s strict requirements.⁶ This high threshold means certification for appeal is exceptional.⁷ A

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F1979, Badreddine Defence Motion for Certification to Appeal the “Decision on the Admissibility of Documents Published on the Wikileaks Website”, 28 May 2105.

² F1955, Decision on the Admissibility of Documents Published on the Wikileaks Website, 21 May 2105.

³ F1993, Prosecution Response to “Badreddine Defence Motion for Certification to Appeal the ‘Decision on the Admissibility of Documents Published on the Wikileaks Website’”, 9 June 2015.

⁴ Document 1DT2-0312, dated 6 July 2007, and exhibit 2D133 MFI (marked for identification) dated 8 April 2008.

⁵ Decision, paras 40-44.

⁶ STL-11-01/PT/AC/AR90.2, F0007, Decision on Defence Appeals against Trial Chamber’s “Decision on Alleged Defects in the Form of the Amended Indictment”, 5 August 2013, para. 7 and references therein.

⁷ STL-11-01/PT/AC/AR126.2, F0008, Decision on Appeal against Pre-Trial Judge’s Decision on Motion by Counsel for Mr Badreddine Alleging the Absence of Authority of the Prosecutor, 13 November 2012, para. 11 and references therein.

request for certification is concerned not with whether a decision was correctly reasoned or not but solely whether the challenged decision involves a precise issue, with an adequate legal or factual basis in the decision, which meets the requirements of Rule 126 (C).⁸ Judicial economy dictates that appeals on issues not meeting this threshold are heard, if necessary, once the Trial Chamber has rendered its judgment on the merits.⁹

SUBMISSIONS

6. Defence counsel submit that the decision has the effect of excluding a whole category of evidence, namely, ‘all the cables published on the Wikileaks website that may be relevant’ to the trial by requiring the Defence to bring evidence of the US Government acknowledging their authenticity or accuracy, notwithstanding its policy of neither confirming nor denying. The Trial Chamber had applied a less onerous standard in admitting other documents into evidence such as the recordings of deceased persons and press articles. This amounts to an overly and inappropriately stringent criteria of admissibility for this class of documentary evidence.¹⁰ This therefore impacts the fair and expeditious conduct of the proceedings. An erroneous exclusion of a whole category of evidence will have an irremediable effect on the trial thus necessitating immediate resolution by the Appeals Chamber.¹¹

7. The Prosecution responded that the decision is confined to two documents and that the Trial Chamber took an approach in evaluating the *prima facie* relevance of the two documents consistent with that of other international courts and tribunals applying near identical rules of evidence. Moreover, the Trial Chamber permitted Defence counsel to cross-examine witnesses on the content of the two documents.¹²

DISCUSSION

8. The decision is confined to the admission into evidence of two documents. The Trial Chamber was not satisfied of their authenticity and reliability. The decision says nothing about other documents that may be found on either the Wikileaks website or any other. The Trial Chamber assesses each document submitted for admission into evidence on its own merits. In declining to admit these two documents into evidence and in assessing their

⁸ Decision on Appeal on Absence of Authority of the Prosecutor, paras 13-15 and references therein.

⁹ STL-11-01/PT/AC/AR126.1, F0012, *Corrected Version of Decision on Defence Appeals Against Trial Chamber’s Decision on Reconsideration of the Trial in Absentia Decision*, 1 November 2012, para. 11.

¹⁰ Application, paras 3-4.

¹¹ Application, paras 5-6.

¹² Prosecution response, paras 4-8.

reliability, the Trial Chamber applied the general principles of international criminal procedural law.¹³ The Trial Chamber was asked to rule on the admissibility of two specific documents and did so. Moreover, the US Department of State has produced diplomatic cables in response to US Freedom of Information Act requests, thereby authenticating them.¹⁴ These two documents were not so authenticated.

9. Their relevance to the proceedings is, at best marginal, and their admission or non-admission into evidence cannot be an issue ‘that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial’ as required by Rule 126 (C). The application for certification to appeal is therefore dismissed.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

DISMISSES the application.

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

Leidschendam,
The Netherlands

3 July 2015

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy



¹³ Decision, paras 11-13.

¹⁴ For example see, United States District Court for the District of Columbia, *American Civil Liberties Union and another v. Department of State*, Civil Action No. 11-01072 (CKK), Memorandum Opinion, 23 July 2012, referred to in the Decision, para. 27.