

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: 28 August 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 ON PROSECUTION MOTION TO ADMIT 62 PHOTOGRAPHS**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 Dorothée Le Fraper
du Hellen & Mr Jad Khalil

Counsel for Mr Hussein Hassan Oneissi:

Mr Vincent Courcelle-Labrousse, Mr Yasser
Hassan & Mr Philippe Larochele

Counsel for Mr Assad Hassan Sabra:

Mr David Young, Mr Guénaél Méry &
Mr Geoffrey Roberts



INTRODUCTION

1. The Prosecution seeks to amend its exhibit list, filed under Rule 91 of the Special Tribunal's Rules of Procedure and Evidence, by adding 62 photographs and to admit them into evidence, under Rules 149 (C) and 154.¹ These photographs show areas that the former Lebanese Prime Minister, Mr Rafik Hariri, visited and the routes he took to travel to those areas in the months before his assassination on 14 February 2005, in Beirut.²

SUBMISSIONS

2. The photographs show Faraya, Faqra, the Nahr El Kalb tunnel, Zouk Mosbeh, *Place d'Étoile*, and the Lebanese Parliament. The Prosecution submits that these photographs are relevant and probative of the locations Mr Hariri visited and the routes he took to those areas. According to the Prosecution, those involved in preparing his assassination observed Mr Hariri at these locations and on these routes.³ The Prosecution intends to use these photographs with witnesses to describe these locations.⁴ No Defence counsel responded to the motion.

DISCUSSION

A. Amendment of the exhibit list

3. The Trial Chamber may, in the interests of justice, allow a party to amend its exhibit list, but 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.⁵ The evidence must be *prima facie* relevant and probative, and the Trial Chamber may consider general factors that include: (i) whether the Prosecution has shown good cause for not seeking the amendments at an earlier stage; (ii) the stage of the proceedings; and (iii) whether granting the amendment would result in undue delay.⁶

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Mehri, Oneissi, and Sabra*, F2089, Prosecution Motion to Admit a Set of 62 Photographs, 22 July 2015. Rule 149 (C) provides, 'A Chamber may admit any relevant evidence which it deems to have probative value.' Rule 154 reads, 'Subject to Rules 155, 156 and 158, the Trial Chamber may admit evidence in the form of a document or other record, consistently with Rule 149 (C) and (D).'

² Prosecution motion, para. 1.

³ Prosecution motion, para. 2.

⁴ Prosecution motion, paras 2, 5.

⁵ F2062, Decision on 'Prosecution Motion for the Admission of Locations Related Evidence,' 9 July 2015, para. 66.

⁶ Decision of 9 July 2015, para. 66.

4. The Prosecution's motion seeks to amend its exhibit list by adding 62 photographs and to admit into evidence these photographs. The Trial Chamber, having reviewed these photographs, finds that they are all *prima facie* relevant and probative. Adding these photographs to the exhibit list will not unduly impact Defence preparations nor cause significant delay. The Trial Chamber is satisfied that it is in the interest of justice to allow the Prosecution to amend its exhibit list.

B. Admission into evidence of photographs under Rule 154

5. Admitting evidence 'from the bar table', under Rule 154, without requiring a witness to produce or to identify it, is a well-established practice before international courts and tribunals. Material tendered in this manner—like any other evidentiary material—must meet the basic requirements for the admission of evidence in Rule 149 (C) and (D), in that it must be relevant and probative, and its probative value must not be outweighed by its prejudicial effect. Only *prima facie*—rather than definite—reliability and probative value is required at this stage. Probative value, in this sense, is distinct from the weight that the Trial Chamber may ultimately give to a document or record. The tendering party must also demonstrate, with clarity and specificity, where and how each document or record fits into its case.⁷

6. The Trial Chamber is satisfied that those photographs are relevant and probative of the locations Mr Hariri visited and the routes he travelled to get to those areas in the months before his assassination. Moreover, the Defence does not oppose their admission into evidence. And, as specified in its motion, the Prosecution witnesses will use these photographs to describe these locations. The Trial Chamber accordingly finds these photographs admissible under Rule 154.

⁷ Decision of 9 July 2015, para. 66.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

GRANTS the Prosecution leave to amend its exhibit list by adding the 62 photographs;

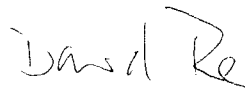
DECLARES the 62 photographs admissible under Rule 154; and

DECIDES that it will, at a suitable stage in the proceedings, formally admit the 62 photographs into evidence.

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

Leidschendam,
The Netherlands

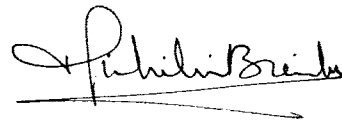
28 August 2015



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

