

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:** 9 February 2016

**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**

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**DECISION ON AYYASH DEFENCE REQUEST TO STRIKE PORTIONS  
OF AN EXPERT REPORT**

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**Office of the Prosecutor:**

Mr Norman Farrell, Mr Graeme Cameron  
& Mr Alexander Milne

**Victims' Legal Representatives:**

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 Iain Edwards &  
Ms Mylène Dimitri

**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 Yasser  
Hassan

**Counsel for Mr Assad Hassan Sabra:**

Mr David Young, Mr Guénaël Mettraux &  
Mr Geoffrey Roberts



## INTRODUCTION

1. The Prosecution's case against the five Accused relies heavily on telecommunications data and evidence related to mobile telephones.<sup>1</sup> Part of this evidence is in the form of expert reports submitted under Rule 161 of the Special Tribunal's Rules of Procedure and Evidence, by Prosecution witness Mr John Edward Philips (PRH435).

2. On 18 August 2015, the Trial Chamber ruled Mr Philips to be an expert 'in relation to the field of telecommunications and cell site analysis'<sup>2</sup> and, following a challenge to his qualifications by counsel for the Accused Mr Mustafa Amine Badreddine, determined that he was qualified as an expert on 'the workings of GSM generally as applied to cell site analysis'.<sup>3</sup> Mr Philips testified from 18 to 26 August 2015 regarding these general topics, and one of his reports, titled 'An Introduction to Cell Site Analysis as Applied to GSM Networks', was admitted into evidence.<sup>4</sup> The Prosecution intends to call him twice more to testify on the contents of other reports he has authored that are yet to be tendered into evidence.<sup>5</sup>

3. In October 2015, the Trial Chamber granted the Prosecution leave to add two new reports by Mr Philips to its exhibit list.<sup>6</sup> In a notice filed pursuant to Rule 161, counsel for the Accused Mr Salim Jamil Ayyash state that they do not accept the two new reports and wish to cross-examine Mr Philips.<sup>7</sup> They also challenge Mr Philips' qualifications in regard to five sections of his report titled 'Common Mission Phones?' dated 29 June 2015, and seek to have those portions struck from the report.<sup>8</sup>

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F1444, Redacted Version of the Consolidated Indictment, 7 March 2014, para. 14.

<sup>2</sup> Transcript of 18 August 2015, p. 8.

<sup>3</sup> Transcript of 18 August 2015, p. 39.

<sup>4</sup> See Transcripts of 18 August 2015, 19 August 2015, 20 August 2015, 21 August 2015, 24 August 2015, 25 August 2015 and 26 August 2015. The report, dated 24 September 2012, was admitted into evidence as exhibit P549. See Transcript of 18 August 2015, p. 40.

<sup>5</sup> Transcript of 23 July 2015, pp. 58-63; Transcript of 18 August 2015, p. 44.

<sup>6</sup> F2270, Decision Authorising the Prosecution to Amend its Exhibit List, 15 October 2015.

<sup>7</sup> F2293, Notice by the Ayyash Defence Pursuant to Rule 161 Regarding Two Reports Authored by PRH435 and Request to Strike Portions of One Report, 30 October 2015.

<sup>8</sup> Ayyash request, para. 5. The five contested sections are: section 5.4.8.26 to 5.4.8.33; section 5.5; section 5.6; section 5.7; and section 5.8.1.39 to 5.8.1.48.

4. The Prosecution responded to the request,<sup>9</sup> and counsel for Mr Ayyash replied.<sup>10</sup>

### **SUBMISSIONS**

5. Counsel for Mr Ayyash argue that the five sections they ask the Trial Chamber to strike from Mr Philips' report deal with the hierarchy among the alleged users of so-called 'mission' telephones, the alleged users' potential roles, and speculation as to the 'purported targets of the alleged missions', and that there is no evidence that Mr Philips possesses any specialised knowledge, skill or training allowing him to express expert opinion on these subjects.<sup>11</sup> Therefore, any discussion he engages in with regard to these issues falls outside of his area of expertise, as identified by the Trial Chamber.<sup>12</sup>

6. The Prosecution contends that the Trial Chamber's ruling on Mr Philips' expertise applied only to his August 2015 testimony and the report then admitted into evidence.<sup>13</sup> It is accordingly incorrect to assume that the Trial Chamber's determination on his expertise was intended to apply to future testimony by Mr Philips regarding any of his other reports.<sup>14</sup> If that were the case, the Ayyash Defence should have raised all its challenges to his expertise prior to his testimony. In any event, the Trial Chamber's finding that Mr Philips is an expert in relation to 'telecommunications and cell site analysis' is broad enough to cover the five sections challenged by Defence counsel.<sup>15</sup> Finally, the Prosecution points out that the challenge to Mr Philips' report is 'unfair' because it was made four months after its disclosure on 29 June 2015.<sup>16</sup>

7. Counsel for Mr Ayyash replied, arguing that although the Prosecution first disclosed the report on 29 June 2015, it was only formally disclosed as a Rule 91 exhibit on 16 October 2015, once

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<sup>9</sup> F2318, Response to Ayyash Defence Request to Strike Portions of an Expert Report, 12 November 2015.

<sup>10</sup> F2329, Reply by the Ayyash Defence to Prosecution Response to Ayyash Defence Request to Strike Portions of an Expert Report, 18 November 2015.

<sup>11</sup> Ayyash request, para. 6.

<sup>12</sup> Ayyash request, paras. 6-7.

<sup>13</sup> Prosecution response, para. 2.

<sup>14</sup> Prosecution response, paras 3 and 8-10.

<sup>15</sup> Prosecution response, paras 12-18.

<sup>16</sup> Prosecution response, para. 10.

the Trial Chamber granted leave for it to be added to the exhibit list. Counsel for Mr Ayyash's challenge accordingly falls within the thirty day period required by Rule 161 (B).<sup>17</sup>

### DISCUSSION

8. The Trial Chamber determined Mr Philips' qualification generally, on 18 August 2015, in light of his first report and the evidence he was scheduled to give at the time, which covered the field of telecommunications and cell site analysis,<sup>18</sup> and the workings of GSM generally as applied to cell site analysis.<sup>19</sup>

9. Any new challenge to Mr Philips' qualifications to testify about specific technical matters or provide evidence in a report, requires further evidence from him regarding his specific expertise on the challenged aspects of that testimony or reports. The Trial Chamber would then hold a short *voir dire* to determine whether he is qualified to testify about those areas, as it did when he testified previously.

10. The Trial Chamber accordingly considers premature the request to strike portions of Mr Philips' report. It will defer its decision on the request until Mr Philips' return and decide on any challenges to his qualifications then.

11. With regard to Rule 161 (B)<sup>20</sup> and in the specific circumstances here, the thirty days to file a notice indicating whether a Party accepts an expert witness statement, wishes to cross-examine the expert witness, or challenges his or her qualifications or the relevance of all or parts of the report, run from the Trial Chamber's decision granting the Prosecution leave to add Mr Philips' two reports to its exhibit list.

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<sup>17</sup> Ayyash reply, paras 5-9.

<sup>18</sup> Transcript of 18 August 2015, p. 8.

<sup>19</sup> Transcript of 18 August 2015, p. 39.

<sup>20</sup> The provision states: "Within thirty days of disclosure of the statement of the expert witness, or such other time prescribed by the Pre-Trial Judge or the Trial Chamber, the opposing Party shall file a notice indicating whether: (i) it accepts the expert witness statement; (ii) it wishes to cross-examine the expert witness; or (iii) it challenges the qualifications of the witness as an expert or the relevance of all or parts of the report and, if so, which parts."

**DISPOSITION**

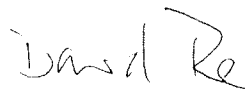
**FOR THESE REASONS**, the Trial Chamber:

**DEFERS** its decision on counsel for Mr Salim Jamil Ayyash's request to strike portions from Mr John Edward Philips' report of 29 June 2015 titled 'Common Mission Phones?' until it has heard from Mr Philips regarding his qualifications to provide the opinions expressed in the report.

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

Leidschendam, the Netherlands

9 February 2016



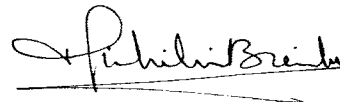
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Judge David Re, Presiding



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Judge Janet Nosworthy



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Judge Micheline Braidy

