

**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:** 25 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 PROSECUTION REQUEST TO ADD  
WITNESS PRH708 TO ITS WITNESS LIST**

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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:**

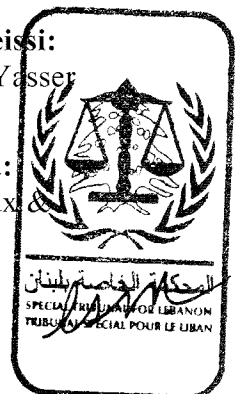
Mr Mohamed Aouini, Ms Dorothee Le Fraper  
du Hellen & Mr Jad Khalil

**Counsel for Mr Hussein Hassan Oneissi:**

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

**Counsel for Mr Assad Hassan Sabra:**

Mr David Young, Mr Guénaél Mettraux &  
Mr Geoffrey Roberts



## INTRODUCTION

1. The Prosecution seeks leave to add Witness PRH708 to its witness list filed under Rule 91 of the Special Tribunal's Rules of Procedure and Evidence.<sup>1</sup> Only counsel for the Accused Mr Mustafa Amine Badreddine have responded to the motion.<sup>2</sup>

## SUBMISSIONS

2. The Prosecution submits that Witness 708's evidence is *prima facie* relevant to its case regarding Mr Badreddine's alleged conduct, and his alleged alias of Sami Issa, and is corroborative of evidence already received by the Trial Chamber, notably during the testimony of Witness PRH416.<sup>3</sup>

3. It argues further that it has good cause for only adding this witness to its witness list now, as his name and identity were brought to the Prosecution's attention for the first time on 21 September 2015, when Prosecution investigators were interviewing Witness 416.<sup>4</sup> The Prosecution then initiated inquiries to locate him, and obtained two statements from him on 10 and 17 December 2015, which it disclosed to the Defence the day after each one was taken.<sup>5</sup> According to the Prosecution, adding Witness 708 will not prejudice Defence preparations for trial, as the Defence received the witness statements before the motion was filed and were on notice of the Prosecution's intention to use this evidence at trial. Moreover, the witness will not appear before May 2016 and his evidence overlaps with that of Witness PRH089, whose cross-examination by counsel for Mr Badreddine was deferred by the Trial Chamber.<sup>6</sup>

4. Counsel for Mr Badreddine object to the motion. They argue that the Prosecution has not demonstrated good cause for its late addition of this witness, and that it was not sufficiently diligent in the steps it undertook to identify and contact him.<sup>7</sup> In addition, the Defence argues that the

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F2405, Prosecution Request to add one Witness to its Witness List, 18 January 2016.

<sup>2</sup> F2431, Badreddine Defence Response to the "Prosecution Request to Add One Witness to its Witness List", 1 February 2016.

<sup>3</sup> Prosecution motion, paras 2-4.

<sup>4</sup> Prosecution motion, para. 6.

<sup>5</sup> Prosecution motion, paras 6-11.

<sup>6</sup> Prosecution motion, paras 13.

<sup>7</sup> Badreddine response, para. 3.

prejudice is irremediable, because Witness 416 and Witness PRH306 have already testified and answered questions on the issues that lie at the heart of Witness 708's evidence. Recalling either of them would not remedy the prejudice.<sup>8</sup> Finally, counsel speculate that the real reason for adding Witness 708 could be because of a change in the Prosecution's case theory.<sup>9</sup> Defence submits that the Trial Chamber should accordingly deny the Prosecution's request.

### **DISCUSSION**

5. The Trial Chamber may, in the interests of justice, allow a party to amend its witness 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.<sup>10</sup> 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; (iii) whether granting the amendment would result in undue delay.<sup>11</sup>

6. Having carefully reviewed the witness's two statements, the Trial Chamber considers his evidence to be relevant to and probative of Mr Badreddine's alleged alias as Sami Issa. The evidence corroborates that of Witness 416 and, as stated in the Trial Chamber's oral order of 15 December 2015,<sup>12</sup> it also overlaps with that of Witness 89, who has not yet been cross-examined by counsel for Mr Badreddine.

7. Following a review of the Parties' submissions, the Trial Chamber is also satisfied that the Prosecution was not negligent in the steps or the time it took to locate and interview Witness 708. As information about the witness only surfaced during the trial, good cause exists for the request to be made now. The Trial Chamber disagrees that adding Witness 708 will cause irreversible prejudice to the Defence. Depending on the outcome of his testimony and its impact on evidence already heard,

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<sup>8</sup> Badreddine response, paras 4-6.

<sup>9</sup> Badreddine request, para. 4.

<sup>10</sup> F2263, Decision on Prosecution Request to Amend its Witness and Exhibit Lists, 13 October 2015, para. 28; F2149, Decision on Prosecution Motion to Admit 62 Photographs, 28 August 2015, para. 3; F2062, Decision on 'Prosecution Motion for the Admission of Locations Related Evidence', 9 July 2014, para. 66.

<sup>11</sup> Decision of 28 August 2015, para. 3.

<sup>12</sup> Oral decision postponing Badreddine Defence's cross-examination of PRH089, Transcript of 15 December 2015, pp. 34-35.

counsel may consider recalling Witness 416 at a later point, subject to demonstrating good cause to do so. The Trial Chamber therefore allows the Prosecution to add Witness 708 to its witness list.

### **CONFIDENTIALITY**

8. The Prosecution has classified its motion and annex as confidential and *ex parte*. It explains that its reason for doing so is because the distribution list for confidential filings includes individuals who are not authorised to receive transcripts of closed session hearings. By receiving the motion, these individuals would therefore be in receipt of information to which they would not otherwise be privy. Filing its motion confidentially and *ex parte*, albeit with the Defence being listed as recipients on the motion's cover page, is the only way to ensure that only those individuals who have access to the relevant confidential transcripts have access to the motion.<sup>13</sup>

9. The Defence filed its response confidentially and *ex parte* as the Prosecution motion was filed under this classification. It argues, however, that in light of information already discussed in open session in court, the original classification is not justified.<sup>14</sup>

10. The Trial Chamber observes that although most of the elements mentioned in the motion have indeed been discussed in open court,<sup>15</sup> some have not.<sup>16</sup> Accordingly, only those individuals who have access to the relevant confidential transcripts should receive the motion, response and respective annexes. The Trial Chamber therefore orders that the filings remain confidential and *ex parte*, and instructs the Court Management Services Section to liaise with the Parties to identify the specific distribution so as to preserve the Trial Chamber's previously ordered protective measures.

11. In line with its practice to date, the Trial Chamber nevertheless orders the Parties to file public redacted versions of their submissions.

### **DISPOSITION**

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

**GRANTS** the Prosecution leave to amend its witness list to add Witness PRH708;

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<sup>13</sup> Prosecution motion, para. 16.

<sup>14</sup> Badreddine response, para. 2.

<sup>15</sup> Transcript of 14 December 2015, pp. 5-9.

<sup>16</sup> See for instance, Prosecution motion, paras 5 and 9.

**ORDERS** the Prosecution motion, the response by counsel for Mr Badreddine, and the respective annexes to remain confidential and *ex parte* until further order, and to be made accessible only to individuals identified by the Parties after liaising with the Court Management Services Section; and

**ORDERS** the Parties to file public redacted versions of their filings.

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

Leidschendam, the Netherlands

25 February 2016

David Re

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Judge David Re, Presiding

Janet Nosworthy

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Judge Janet Nosworthy

Micheline Braidy

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Judge Micheline Braidy

