



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: 12 April 2016

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

**ORDER ALLOWING WITNESS PRH707 TO OBTAIN INFORMATION
IN RELATION TO SIX ISSUES**

Office of the Prosecutor:Mr Norman Farrell, Mr Graeme Cameron
& Mr Alexander Hugh Milne**Defence Office:**

Mr François Roux

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 &
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 & Ms Natalie von
Wistinghausen**Counsel for Mr Assad Hassan Sabra:**Mr David Young, Mr Guénaél Mettraux &
Mr Geoffrey Roberts

INTRODUCTION

1. Witness PRH707 is the officially designated representative of Alfa, one of the two Lebanese mobile telecommunication service providers. During Witness 707's nine days of examination-in-chief in January and February 2016, six issues arose in relation to which he requested permission to consult Alfa's business records and the relevant Alfa operational advisory teams. Witness 707 will rely upon the information received from these sources to provide full answers in relation to the six issues. The Prosecution notified the Trial Chamber of the six issues together with the relevant transcript references:¹

- (i) Customer complaint log for 2004-2005;²
- (ii) Confirmation of origin of values used to produce shape files provided by Alfa in 2013;³
- (iii) Change of Cell ID in the event of the destruction of cell sites during the 2006 war;⁴
- (iv) Delivery of Invoices to post-paid customers in 2004-2005;⁵
- (v) Options for invoice payment in 2004 and 2005;⁶ and
- (vi) Questions in relation to Exhibit P792.⁷

SUBMISSIONS AND DISCUSSION

2. Counsel for all five Accused, Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine, Mr Hassan Habib Merhi, Mr Hussein Hassan Oneissi, and Mr Assad Hassan Sabra objected to the Trial Chamber allowing the witness to consult Alfa's business records and the relevant Alfa advisors or teams. The Prosecution should have obtained the information in relation to the six issues during Witness 707's interview. Witness 707's evidence is inadmissible because its content is unreliable hearsay, the reliability and probative value of which was not adequately justified by the Prosecution. Counsel for Mr Ayyash, in

¹ STL-11-01/T/TC, F2462, Prosecution Notice in Relation to Proposed Follow-up Inquires to Alfa for Witness PRH707, 22 February 2016.

² Transcript of hearing on 15 February 2016, pp 66 and 69.

³ Transcript of hearing on 15 February 2016, pp 84-85.

⁴ Transcript of hearing on 15 February 2016, pp 81-82; transcript of hearing on 16 February 2016, pp 38-39.

⁵ Transcript of hearing on 17 February 2016, pp 29 and 30.

⁶ Transcript of hearing on 17 February 2016, pp 33 and 34.

⁷ Transcript of hearing on 18 February 2016, pp 29-31.

particular, argued that the Prosecution should call to testify those who provided some of the information to Witness 707 so that they confirm its reliability and the truthfulness.⁸

3. The Trial Chamber has carefully reviewed—in the context of Witness 707’s evidence as a whole—the questions the witness could not properly answer without further consulting Alfa’s business records or its employees. It considers, in the circumstances, that it is in the interests of justice and efficiency that the Trial Chamber receives the best evidence and has a complete record of all evidence Witness 707 can give.

4. The evidence of Witness 707 falls, in some part, within the category of a company representative testifying about a corporation’s practices and business records. Here, because of the wide scope of his evidence—relating to Alfa’s business practices at the relevant time—some information will not have been within the witness’s personal knowledge, but rather will have been obtained from other sources within the company, such as its business records, company employees or other departments.

5. During his evidence it became apparent that, to provide the Trial Chamber with the best available evidence on the six identified issues, Witness 707 would have to further consult business records or his colleagues.

6. The general rule applicable to the proceedings before the Trial Chamber is that once a witness gives the solemn declaration, they must not discuss their evidence with anyone else. The issue, therefore, is whether there are compelling reasons sufficient to depart from this general rule. The Trial Chamber is convinced that there are.

7. It is apparent that the witness can go no further with some parts of his proposed evidence without making further attempts to obtain relevant information within his company. It is essential that the Trial Chamber receives the best evidence on these issues in a timely manner.

8. For this reason, the Trial Chamber is convinced that compelling reasons exist to depart from the normal rule prohibiting witnesses from communicating about their testimony with others outside of the court-room.

⁸ Transcript of hearing on 18 February 2016, pp 40-43.

9. In determining the reliability of the proposed evidence, the Trial Chamber must assess the source and the degree, if any, of hearsay. It is therefore essential that the witness carefully notes the source of the information obtained in relation to each of the six areas.

10. The Trial Chamber will therefore allow Witness 707 to consult Alfa's business records and to attempt to obtain additional information in relation to the six issues, from the relevant Alfa advisors or teams to whom he referred during his testimony.

11. Witness 707 must note the source of any information, including the names of anyone providing it. That includes noting how any other person consulted obtained that information. This information must be disclosed to the Defence.

12. The Victims and Witnesses Unit of the Special Tribunal is instructed to contact Witness 707 to inform him of this and provide him with this order.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

ALLOWS Witness PRH707 to consult Alfa's business records and to attempt to obtain from the relevant Alfa advisors or teams the information relating to the six issues that arose during his testimony;

INSTRUCTS Witness PRH707 to note the source of any information obtained; and

INSTRUCTS the Victims and Witnesses Unit of the Special Tribunal to contact Witness PRH707 to inform him of this order and to provide a copy of it to him.

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

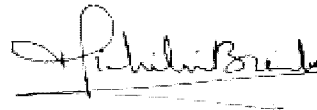
Leidschendam,
The Netherlands
12 April 2016



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

