

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:** 13 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**

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**DECISION ALLOWING MR GARY PLATT (WITNESS PRH147) TO GIVE EXPERT  
OPINION EVIDENCE**

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**Office of the Prosecutor:**

Mr Norman Farrell, Mr Graeme Cameron  
& Mr Alexander Hugh 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 Dorothée Le Fraper  
du Hellen & Mr Jad Khalil

**Counsel for Mr Hussein Hassan Oneissi:**

Mr Vincent Courcelle-Labrousse, Mr Yasser  
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**Counsel for Mr Assad Hassan Sabra:**

Mr David Young, Mr Guénaél Mettraux &  
Mr Geoffrey Roberts



## INTRODUCTION

1. This decision provides the reasons for the Trial Chamber's decision delivered in court on 6 April 2016 allowing Mr Gary Platt (Witness PRH147) to provide expert opinion evidence in two limited areas: 'matters connected with (1) the surveillance of criminal networks; and (2) the identification and organization of covert communications networks.'<sup>1</sup>

## BACKGROUND

2. Mr Platt is an investigator employed, since March 2010, by the Special Tribunal's Office of the Prosecutor and is its Communications Evidence Coordinator. According to his *curriculum vitae*,<sup>2</sup> before his employment with the Special Tribunal, he worked for 15 years in police forces in the United Kingdom investigating criminal offences including murder, kidnapping and terrorism. He is experienced in investigating crimes involving telephones and communications data. He has also completed law enforcement courses and training on intelligence, surveillance, telephone forensics, call site data usage and collection and has lectured in the United Kingdom and other countries.

3. Initially, the Prosecution submitted a motion seeking to have Mr Platt declared as an expert under Rule 161 of the Special Tribunal's Rules of Procedure and Evidence.<sup>3</sup> Counsel for all Accused opposed the motion, with counsel for Mr Hussein Hassan Oneissi, Mr Mustafa Amine Badreddine and Mr Hassan Habib Merhi requesting a *voir dire* hearing before Mr Platt's evidence to allow the questioning of his qualifications and expertise.<sup>4</sup> The Trial

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<sup>1</sup> Transcript, 6 April 2016, p. 2, lines 12-14.

<sup>2</sup> Exhibit P794.

<sup>3</sup> *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, STL-11-01/T/TC, F2489, Prosecution Motion for the Admission of Witness PRH147 as an Expert Witness, 11 March 2016. The Prosecution also requested that a decision by the Trial Chamber on the admission of Mr Platt's report be deferred. Rule 161 provides that a full statement of an expert witness to be called by a Party shall be disclosed and within thirty days the opposing party shall notify whether it accepts the report, wishes to cross-examine the witness or challenges the qualifications of the expert witness or the relevance of the report. If accepted, the report or statement may be admitted into evidence without the expert witness testifying in person.

<sup>4</sup> F2501, Badreddine Consolidated Response to Prosecution Motions for the Admission of Witnesses PRH620 and PRH147 as Expert Witnesses, 17 March 2016, paras 5, 7, 20; F2518, Defence for Hussein Hassan Oneissi Response to the "Prosecution Motion for the Admission of Witness PRH147 as an Expert Witness" of 11 March 2016, 23 March 2016, paras 2, 15, 28, 33; F2521, Ayyash Defence Response to "Prosecution Motion for the Admission of Witness PRH147 as an Expert Witness", 24 March 2016; F2523, Sabra Response to "Prosecution Motion for the Admission of Witness PRH147 as an Expert Witness", 29 March 2016; F2524, Réponse de la Défense de Merhi à la "Prosecution Motion for the Admission of Witness PRH147 as an Expert Witness, 29 March 2016, para. 2.

Chamber ordered a *voir dire* and deferred its decision on whether to qualify Mr Platt as an expert until after the hearing.<sup>5</sup> The hearing was held on 4 and 5 April 2016.

### **DISCUSSION**

4. The Trial Chamber has previously held that a decision on whether to qualify a witness as an expert under Rule 161 rests on whether he or she is:

‘a person whom by virtue of some specialized knowledge, skill or training can assist the trier of fact to understand or determine an issue in dispute.’ Accordingly, to determine whether a person is an expert, the Trial Chamber should consider past and current professional experience and training, publications and other relevant information, as described in a *curriculum vitae* or other pertinent documents accompanying the report.<sup>6</sup>

5. The issue, therefore, is whether Mr Platt possesses such ‘specialized knowledge, skill or training’ that could assist the Trial Chamber. If answered in the affirmative, then the Trial Chamber has to examine whether there are any discretionary reasons not to allow him to provide expert opinion evidence. The Defence has argued that Mr Platt’s employment at the Office of the Prosecutor of the Special Tribunal is a reason precluding this.

#### **I. Specialized knowledge, skill or training**

6. The Prosecution submitted that, in light of Mr Platt’s professional experience and qualifications, he meets the threshold of Rule 161.<sup>7</sup> In its view, Mr Platt is qualified in the field of telecommunications evidence and surveillance, and, under that broad heading, in identifying appropriate and relevant telecommunications data; interpreting call data records; establishing the characteristics, nature and degree of covertness of phone networks; and in concluding whether specific telephone users were engaged in surveillance.<sup>8</sup> Mr Platt’s expertise would assist in leading the Trial Chamber through a vast array of material and evidence which the Trial Chamber would have difficulty doing on its own.<sup>9</sup>

7. Counsel for all five Accused opposed the Prosecution’s motion, in both their written submissions and at the end of the *voir dire* hearing, taking the collective position that Mr Platt does not possess the kind of specialized knowledge and expertise to be admitted as an expert

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<sup>5</sup> F2529, Decision on the Admission of Mr Gary Platt (Witness PRH147) as an Expert Witness, 31 March 2016.

<sup>6</sup> F1610, Decision on Expert Witness PRH120, Professor Fouad Hussein Ayoub, and Expert Witness PRH508, Dr. Issam Mansour, 7 July 2014, para. 6.

<sup>7</sup> Prosecution Motion, paras 4, 11-12; Transcript, 5 April 2016, p. 107, lines 13-19.

<sup>8</sup> Transcript, 4 April 2016, p. 58, line 5 to p. 59, line 9.

<sup>9</sup> Prosecution Motion, para. 12; Transcript, 5 April 2016, p. 108, lines 12-15.

under Rule 161. Defence Counsel variously submitted that Mr Platt was not an expert but an investigator or analyst; does not possess academic qualifications, formal training or publications in telecommunications analysis; has no experience within telephone networks; has no knowledge of telephone networks or the Lebanese telecommunications system; does not possess any competence that the Trial Chamber does not itself hold; that it had not been ascertained that Mr Platt had previously provided expert testimony in the United Kingdom (and this in any event was not determinative); and that providing an opinion as to the degree of coactness and the organization of telephone networks was not an appropriate subject for expert testimony.<sup>10</sup>

8. The Trial Chamber carefully reviewed Mr Platt's *curriculum vitae*, qualifications, experience and the submissions of the Parties at the *voir dire* hearing. As they reveal, over the course of his career, Mr Platt has had extensive experience in investigating crimes involving covert telephones and telephone networks, including the collecting of data to assist in identifying them, and in surveillance. Many of these cases involved telecommunications information such as call data records and cell site data, and other information obtained from mobile handsets and SIM cards. The Prosecution submitted that Mr Platt's exposure to, and involvement in, such cases equipped him with the necessary knowledge and skills to assist the Trial Chamber in these areas.<sup>11</sup>

9. Mr Platt has a Master's degree in international law<sup>12</sup> but no other formal qualifications and has not published in peer reviewed academic journals or publications. But that does not, of itself, determine whether he possesses specialized knowledge, skill or training. Neither does whether he has previously appeared as an expert witness. Much depends on the field in question and the expertise sought to be recognized by the moving party. Here, the Prosecution asked the Trial Chamber to recognize Mr Platt as an expert in four specific areas: identifying appropriate and relevant telecommunications data; interpreting call data records; establishing the characteristics, nature and degree of coactness of covert phone networks; and in concluding whether specific telephone users were engaged in surveillance. Thus, the fact that Mr Platt has not previously worked within telephone companies or networks either in the

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<sup>10</sup> Badreddine Response, paras 2, 5, 7; Oneissi Response, paras 2-3, 15-16, 25-28; Ayyash Response, paras 6-13; Sabra Response, paras 7-10, 14, 16-18; Merhi Response, para. 2; Transcript, 5 April 2016, p. 116, lines 13-15; p. 119, lines 19-25.

<sup>11</sup> Transcript, 5 April 2016, p.107, line 20 to p. 110, line 10.

<sup>12</sup> Transcript, 5 April 2016, p. 73, lines 10-25.

United Kingdom or Lebanon is of limited relevance to the areas of expertise identified by the Prosecution.

10. In light of his extensive experience in investigating crimes involving mobile telephones and telecommunications data, and his understanding of the associated technical information, the Trial Chamber is satisfied that Mr Platt is an investigator with expertise in two relevant areas: (1) the surveillance of criminal networks; and (2) the identification and organization of covert communications networks. It is satisfied that he possesses specific and ‘specialized knowledge, skill or training’, based on his experience, that enables him to offer an expert opinion on these matters. It is knowledge that the Trial Chamber itself does not have, and that could aid its understanding of the material and evidence relating to these particular areas. Therefore, Mr Platt falls within the test of a person who possesses ‘specialized knowledge, skill or training’ that could assist the Trial Chamber.

11. However, the Prosecution has not satisfied the Trial Chamber that Mr Platt possesses the required level of knowledge and expertise under Rule 161 with respect to the interpretation of call data records to provide expert opinion evidence. Indeed, Mr Platt acknowledged during the *voir dire* that in investigating some of the cases outlined in his *curriculum vitae*, he undertook initial analysis that identified certain telephone calls, their location or individuals and then other persons, who were later called as experts during trial and were responsible for core portions of the evidence presented, undertook more detailed analysis.<sup>13</sup> Mr Platt’s experience suggests his involvement in interpreting call data records, but without more, the Trial Chamber could not find that he has the necessary specialized expertise to provide expert opinion evidence beyond determining the existence and organization of covert telephone networks and their involvement in surveillance.

## **II. Discretionary factors**

12. In addition to challenging Mr Platt’s qualifications, counsel for all five Accused submitted that Mr Platt was not, or did not appear to be, sufficiently independent of the Office of the Prosecutor. This was based on Mr Platt’s employment and his role in that office and that, in accordance with international criminal law case law, his involvement in preparing the Prosecution’s case created a risk that his report and opinion might be influenced by a desire to

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<sup>13</sup> Transcript, 5 April 2016, p. 91, line 17 to p. 99, line 20.

assist the Prosecution in making its case. He lacked the neutrality, impartiality and scientific objectivity required of expert witnesses.<sup>14</sup>

13. The Prosecution submitted that the legal authorities cited by the Defence departed from the case law on bias or apprehended bias in the qualification of expert witnesses, and were isolated, unusual and extreme cases.<sup>15</sup> Rather, apprehended bias had been previously relevant to the weight to attach to an expert's testimony and not their qualification as an expert.<sup>16</sup> Mr Platt was not biased in his analysis as he did not seek to conform to an existing Prosecution theory, but instead provided independent results based on the evidence.<sup>17</sup>

14. Counsel for the Accused submit, however, that Mr Platt's situation is one of more than mere employment. Relying on decisions of the International Criminal Tribunal for the former Yugoslavia (ICTY), particularly in *Milutinović* and *Dorđević*,<sup>18</sup> the Defence submits that a person who may otherwise qualify as an expert but is or was sufficiently close to and involved with the Prosecution's case, can be barred from being qualified on the basis that this link may influence their views with respect to their field of expertise or create a perception of impartiality.<sup>19</sup>

15. It is well established in international criminal law that the mere employment of an expert by a Party in a case, is not, in of itself, grounds to exclude their appearance as experts.<sup>20</sup> In addition, as *Dorđević* itself notes, 'concerns relating to an expert witness' independence are usually considered as matters of weight rather than admissibility'.<sup>21</sup> This position has been consistently repeated in international criminal law case law and the Trial

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<sup>14</sup> Oneissi Response, paras 13-14, 16-21; Ayyash Response, paras 14-19; Sabra Response, paras 19-26; Merhi Response, para. 2; Transcript, 5 April 2016, p. 114, line 3 to p. 119, line 7.

<sup>15</sup> Transcript, 5 April 2016, p. 110, line 20 to p. 111, line 6; p. 112, lines 3-14.

<sup>16</sup> Transcript, 5 April 2016, p. 110, lines 15-19; p. 112, line 15-24.

<sup>17</sup> Transcript, 5 April 2016, p. 111, lines 14-25.

<sup>18</sup> ICTY, *Prosecutor v. Milutinović*, IT-05-87-T, Transcript, 13 July 2006, p. 840, lines 9-17; ICTY, *Prosecutor v. Dorđević*, IT-05-87/1-T, Decision on Defence Notice Under Rule 94bis, 5 March 2009, paras 19-20.

<sup>19</sup> Oneissi Response, paras 17-21; Badreddine Response, paras 14-19; Sabra Response, paras 19-26; Transcript, 5 April 2016, p. 113, line 16 to p. 116, line 10; p. 117, line 6 to p. 119, line 18.

<sup>20</sup> ICTY, *Prosecutor v. Galić*, IT-98-29-T, Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Philipps, 3 July 2002, p. 3; ICTY, *Prosecutor v. Brđanin*, IT-99-36-T, Decision on Prosecution's Submission of Statement of Expert Witness Ewan Brown, 3 June 2003, p. 4; ICTY, *Prosecutor v. Popović*, IT-05-88-T, Decision on Defence Rule 94 bis Notice Regarding Prosecution Expert Witness Richard Butler, 19 September 2007, para. 27; ICTY, *Prosecutor v. Šešelj*, IT-03-67-T, Decision on Expert Status of Reynaud Theunens, 12 February 2008, para. 29.

<sup>21</sup> ICTY, *Prosecutor v. Dorđević*, IT-05-87/1-T, Decision on Defence Notice Under Rule 94bis, 5 March 2009, para. 19.

Chamber adopts it here.<sup>22</sup> Moreover, both the *Dorđević* and *Milutinović* decisions differ from the facts in this case. In both cases, the same proposed expert witness had not only been involved in formulating the Prosecution's case but had been actively involved in interviewing witnesses, including members of the joint criminal enterprise alleged in the indictment, and even the accused themselves.<sup>23</sup> Mr Platt, by contrast, was only present at an informal meeting with someone who is not a Prosecution witness and at the beginning and towards the end of one witness interview during which the investigator who interviewed the witness was informed by Mr Platt of the data he was seeking.<sup>24</sup>

16. Further, the Prosecution openly acknowledged Mr Platt's involvement in a clear and transparent manner. The Defence may raise these issues in cross-examination<sup>25</sup> or may call their own experts to testify on the same material analyzed by Mr Platt.<sup>26</sup> Expert witnesses are generally called by the Parties themselves to bolster their case and theory; they are called to support and assist the Parties and therefore 'are often connected, to a varying degree, with the party [...] seek[ing] to call them to testify'.<sup>27</sup> The Defence may challenge Mr Platt's independence and impartiality in cross-examination. And contrary to some Defence submissions referring to the practice, in particular, in the United Kingdom,<sup>28</sup> impartiality and independence, while important considerations, are not prerequisites for a witness to be qualified as an expert in international criminal law proceedings.<sup>29</sup> This factor, and that Mr Platt has been involved in the Prosecution's case, may affect the reliability of his evidence.

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<sup>22</sup> See e.g. ICTY, *Prosecutor v. Brđanin*, IT-99-36-T, Decision on Prosecution's Submission of Statement of Expert Witness Ewan Brown, 3 June 2003, p. 4; ICTY, *Prosecutor v. Martić*, IT-95-11-T, Decision on Defence's Motion to Exclude the Evidence of Reynaud Theunens and to Call an Independent Military Expert, 28 November 2006, p. 5; ICTY, *Prosecutor v. Šešelj*, IT-03-67-T, Decision on Expert Status of Reynaud Theunens, 12 February 2008, para. 29; ICTY, *Prosecutor v. Stanišić and Simatović*, IT-03-69-PT, Decision on Prosecution's Submission of the Expert Report of Nena Tromp and Christian Nielsen Pursuant to Rule 94 bis, 18 March 2008, para. 10.

<sup>23</sup> ICTY, *Prosecutor v. Milutinović*, IT-05-87-T, Transcript, 7 July 2006, p. 311, lines 2-7; ICTY, *Prosecutor v. Dorđević*, IT-05-87/1-T, Decision on Defence Notice Under Rule 94bis, 5 March 2009, para 18-19.

<sup>24</sup> Transcript, 5 April 2016, p. 27, line 1 to p. 34, line 11.

<sup>25</sup> ICTY, *Prosecutor v. Brđanin*, IT-99-36-T, Decision on Prosecution's Submission of Statement of Expert Witness Ewan Brown, 3 June 2003, p. 4; ICTY, *Boškoski and Tarčulovski*, IT-04-84-T, Decision on Motion to Exclude the Prosecution's Proposed Evidence of Expert Bezruchenko and his Report, 17 May 2007, para. 12; ICTY, *Prosecutor v. Popović*, IT-05-88-AR73.2, Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, 30 January 2008, para. 31.

<sup>26</sup> ICTR, *Nahimana v. The Prosecutor*, ICTR-99-52-A, Appeal Judgment, 28 November 2007, para. 199; ICTY, *Prosecutor v. Šešelj*, IT-03-67-T, Decision on Expert Status of Reynaud Theunens, 12 February 2008, para. 29.

<sup>27</sup> ICTY, *Boškoski and Tarčulovski*, IT-04-84-T, Decision on Motion to Exclude the Prosecution's Proposed Evidence of Expert Bezruchenko and his Report, 17 May 2007, para. 12.

<sup>28</sup> See Transcript, 5 April 2016, p. 77, line 5 to p. 79, line 24; p. 84, line 5 to p. 85, line 24.

<sup>29</sup> ICTY, *Prosecutor v. Popović*, IT-05-88-T, Decision on Defence Rule 94 bis Notice Regarding Prosecution Expert Witness Richard Butler, 19 September 2007, para. 26; ICTY, *Prosecutor v. Popović*, IT-05-88-T, Second Decision Regarding the Evidence of General Rupert Smith, 11 October 2007, p. 4.

Ultimately, however, it is a question of the weight the Trial Chamber should give to the evidence.<sup>30</sup>

### DISPOSITION

The Trial Chamber:

**PROVIDES** its written reasons for its decision delivered in court on 6 April 2016 that Mr Gary Platt (Witness PRH147) is qualified under Rule 161 to provide expert opinion evidence with respect to matters connected with (1) the surveillance of criminal networks; and (2) the identification and organization of covert communications networks.

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

Leidschendam,  
The Netherlands  
13 April 2016

*David Re*

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Judge David Re, Presiding

*Janet Nosworthy*

\_\_\_\_\_  
Judge Janet Nosworthy

*Micheline Braidy*

\_\_\_\_\_  
Judge Micheline Braidy



<sup>30</sup> See above footnotes 21-22.