

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: 29 April 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**

**ORDER TO PROSECUTION TO DISCLOSE DOCUMENTS RELATING TO
WITNESS PRH707 TO THE DEFENCE**

Office of the Prosecutor:

Mr Norman Farrell, Mr Graeme Cameron
& Mr Alexander Milne

Legal Representatives of Victims:

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:

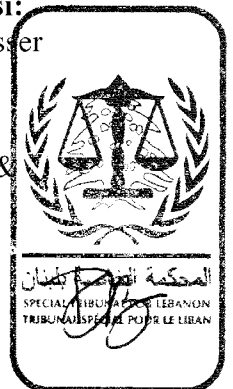
Mr Mohamed Aouini, Ms Dorothee Le Fraper
du Hellen & Mr Jad Khalil

Counsel for Mr Hussein Hassan Oneissi:

Mr Vincent Courcelle-Labrousse, Mr Yasser
Hassan & Ms Natalie von Wistinghausen

Counsel for Mr Assad Hassan Sabra:

Mr David Young, Mr Guénaël Mettraux &
Mr Geoffrey Roberts



1. Counsel for the Accused, Mr Mustafa Amine Badreddine, sought an order for disclosure from the Prosecution of the list of questions asked of Lebanese telecommunications witnesses, Witnesses PRH705 and PRH707 during their interviews with Prosecution officials.¹ The Prosecution responded that it had no such list.² Based upon this representation, the Trial Chamber declined to make the order sought.³

2. The Trial Chamber, however, on 13 April 2016 in this same decision, ordered the Prosecution ‘to immediately provide the Trial Chamber, on an *ex parte* basis, with any relevant emails and correspondence with Witnesses 705 and 707 and employees of the Lebanese telecommunications providers concerned.’⁴ The Prosecution, on 18 April 2016, provided the Trial Chamber with hundreds of pages of material. The Trial Chamber has reviewed these documents. Witness 707 is in cross-examination while Witness 705 is yet to testify.

3. In its decision, in applying the case-law of the International Criminal Tribunal for Rwanda (ICTR), the Trial Chamber held that ‘the questions put to witnesses—if they exist—may be disclosable. However, if these do not exist, there is nothing to disclose’.⁵ The ICTR decision holds that ‘a record of interview, ideally, is composed of all the questions that were put to witness and all of the answers given by the witness’.⁶

Witness 707

4. The three statements that Witness 707 prepared and signed in November and December 2015 and January 2016 are not in the form of a question and answer interview in which the questions and answers are recorded, in the manner of an interview with an accused which must, pursuant to Rule 85 (B) of the Special Tribunal’s Rules of Procedure and Evidence, be either video or audio-recorded. That form of interview would fall strictly within the parameters of the ICTR’s decision.

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F2445, Requête urgente de la Défense de Mustafa Amine Badreddine relative aux modalités du recueil et de la présentation des déclarations de témoins et aux fins de communication de matériel nécessaire à la préparation de la Défense, 9 February 2016.

² F2455, Prosecution Response to “Requête urgente de la Défense de Mustafa Amine Badreddine relative aux modalités du recueil et de la présentation des déclarations de témoins et aux fins de communication de matériel nécessaire à la préparation de la Défense”, 15 February 2016.

³ F2548, Decision on Motion by the Badreddine Defence for the Disclosure of Investigators’ Notes, 13 April 2016, para.11.

⁴ Decision of 13 April 2016, disposition.

⁵ Decision of 13 April 2016, para. 11.

⁶ ICTR-96-14-A, *Prosecutor v. Niyitegeka*, Appeals Chamber Judgement, 9 July 2004, para. 31

5. However, the email correspondence the Trial Chamber has reviewed reveals the Prosecution asking numerous questions to which the witness responded. While not strictly a list of questions and answers, the substance of some of these answers—based on the questions—appear in the witness’s statements. For this reason, the Trial Chamber is of the view that these emails are disclosable to the Defence under Rule 110 (B) as material to Defence preparations.⁷

Witness 705

6. The Trial Chamber has reviewed the relevant material provided and is satisfied that there is nothing disclosable to the Defence under Rule 110 (B).

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

ORDERS the Prosecution to immediately disclose to Defence counsel the following emails and their attachments:

- 22/12/2015 at 17:33
- Both emails sent on 23/06/2015 at 16:22
- 23/06/2015 at 16:21
- 30/06/2015 at 10:25
- 30/06/2015 at 13:34
- 01/07/2015 at 17:57
- 24/08/2015 at 13:16
- 26/08/2015 at 16:15
- 01/09/2015 at 13:36
- 01/09/2015 at 13:35
- 02/09/2015 at 18:26
- 07/09/2015 at 13:37
- 17/09/2015 at 12:29
- 18/09/2015 at 15:49 (a version of this email also attaches PowerPoint documents. Both versions of this email exchange are to be disclosed).
- 18/09/2015 at 16:22

⁷ Rule 110 states: ‘Subject to the provisions of Rules 115, 116, 117 and 118: [...] (B) The Prosecutor shall, on request, permit the Defence to inspect any books, documents, photographs and tangible objects in the Prosecutor’s custody or control, which are material to the preparation of the defence, or are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused’.

- 21/09/2015 at 09:59
- 23/09/2015 at 09:21
- 06/10/2015 at 11:56
- 07/10/2015 at 18:08
- 07/10/2015 at 14:14
- 07/10/2015 at 14:35
- 07/10/2015 at 14:26
- 07/10/2015 at 13:03
- 07/10/2015 at 14:12
- 08/10/2015 at 12:26
- 08/10/2015 at 09:42
- 09/10/2015 at 16:17
- 30/11/2015 at 10:01
- 01/12/2015 at 17:43
- 22/12/2015 at 17:08
- 23/01/2016 at 16:48
- 24/01/2016 at 14:42
- 24/01/2016 at 20:56
- 24/01/2016 at 16:13
- 23/01/2016 at 17:01
- 24/01/2016 at 11:47
- 24/01/2016 at 12:10
- 24/01/2016 at 14:49

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

Leidschendam,
The Netherlands
29 April 2016

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

