

**THE TRIAL CHAMBER**

Case No: STL-11-01/T/TC

Before: Judge David Re, Presiding
Judge Janet Nosworthy
Judge Micheline Braïdy
Judge Walid Akoum, Alternate Judge
Judge Nicola Lettieri, Alternate Judge

Registrar: Mr Daryl Mundis

Date: 6 May 2016

Original language: English

Classification: Public

**DECISION ON BADREDDINE DEFENCE'S ORAL REQUEST FOR
RECONSIDERATION OF THE TRIAL CHAMBER'S 13 APRIL 2016 DECISION**

(Extract from Official Public Transcript of Hearing on 6 May 2016, page 55, line 14 to page 59, line 11)

It's a decision on the Badreddine Defence's oral request for reconsideration of the Trial Chamber's decision of 13th of April on the disclosure of investigators' notes. The decision is the following.

In a motion entitled “Urgent request from the Defence for Mustafa Amine Badreddine relating to modalities for obtaining and presenting witness statements and to disclosure of material required for Defence preparations,” it's filing F2445, counsel for the accused Mr. Badreddine requested the Trial Chamber to order the Prosecution, relevantly, to disclose any notes taken during its interviews with Witnesses PRH705 and PRH707, and the list of questions asked to those witnesses.

On the 13th of April, 2016, the Trial Chamber ruled on the motion in its “Decision on motion by the Badreddine Defence for the disclosure of investigators' notes,” filing F2548. It

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rejected the Badreddine Defence request on the basis of the Prosecution's representations to the Trial Chamber that investigators' notes or a list of questions did not exist.

Following a further request from the Badreddine Defence in a reply to the Prosecution's response, the Trial Chamber, however, ordered the Prosecution to disclose to the Trial Chamber on an ex parte basis any relevant e-mails and correspondence the Prosecution had with those two witnesses and other employees of the Lebanese telecommunications companies concerned, Alfa and Touch.

Upon reviewing the disclosed e-mails, the Trial Chamber ordered on 29th of April, 2016, filing 2576, in “Order to Prosecution to disclose documents relating to Witness PRH707 to the Defence,” the Prosecution to disclose 39 e-mails to the Defence relating to Witness 707 and other employees of Alfa under Rule 110(B) of the Special Tribunal's Rules of Procedure and Evidence as being material to Defence preparations.

These e-mails, in the Trial Chamber's view, fell within the scope of its decision finding that questions of witnesses and the answers given in the preparation of witness statements were disclosable documents.

The Trial Chamber, however, did not consider any of the e-mail correspondence between Witness 705 and [...] the Prosecution and with any other employees of Touch to be disclosable.

On the 3rd of May, 2016, counsel for Mr. Badreddine made an oral motion in court requesting, under Rule 140, the Trial Chamber to reconsider its decision of the 13th of April. Counsel submitted that Witness 707's testimony and the e-mails disclosed revealed that the Prosecution did possess investigators' notes and questions that the Badreddine Defence had initially requested. This, it was submitted, accordingly qualified as a “new fact or change in circumstance” warranting reconsideration. Defence counsel also argued that “investigators notes” should be broadly construed to include the draft statements of any Prosecution witnesses. The Prosecution counsel disagreed. However, they did agree to disclose to Defence counsel, but without prejudice to their submission that this issue did not form part of the original Defence motion and the Trial Chamber's decision, 28 draft versions of Witness 707's statement.

Upon the Trial Chamber's request, counsel for Mr. Badreddine then prepared a proposed draft order of reconsideration in which they set out: One, ordering the Prosecution to carry out a full review of the material in its possession relating to Witnesses 705 and 707;

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two, ordering the Prosecution to disclose all investigator notes taken during interviews with the two witnesses; and three, ordering the disclosure of all questions asked of the witnesses and all information provided by the witnesses, whether in response to a question or not.

Order one does not strictly fall within a request for reconsideration of a decision on a motion that did not seek that relief.

Having considered the parties' submissions, the Trial Chamber accepts that the standard for reconsideration, in the circumstances, is met. The relevant legal test is whether based on the existence of new facts, or a material change in circumstances, the Defence has demonstrated on specific grounds that leaving the decision standing would show an injustice involving prejudice. Here, the Trial Chamber may have decided the issue differently had it had the information that the Badreddine Defence qualifies as "new fact or change of circumstance" and most specifically the e-mail communications between the witness and the Prosecution concerning questions and answers during the preparation of his statements.

Defence counsel, however, now have the material requested in their original motion.

Moreover, today, the 6th of May, 2016, in relation to Witness 705, the Prosecution stated that it would be providing to the Defence: Requests for assistance sent to Touch; draft witness statements of Witness 705; and notes taken by the Prosecution during Skype teleconferences with the witness.

These further disclosures, combined with the Prosecution's agreement to provide further material to Defence, effectively amounts, in the result achieved, to a de facto reconsideration of the Trial Chamber's decision of the 13th of April. This means that a retrospective order by the Trial Chamber for disclosure of material that the Defence now has in its possession would be pointless.

The Defence's oral request for reconsideration is therefore dismissed on this technical basis alone.

In the interests of justice, however, the Trial Chamber is prepared to grant the first order sought by the Badreddine Defence in its motion and hereby orders the Prosecution to conduct a further comprehensive review of the material in its possession relating to Witnesses 705 and 707 and to verify whether it has anything further in the form of questions and answers, or disclosable investigators' notes, as defined in the Trial Chamber's decision of the 13th of April, 2016.

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Finally, the issue of whether a draft witness statement is an investigator's note was not properly, much less comprehensively, argued in the Defence motion and was not part of the relief sought and formed no part of the reasoning or disposition to the Trial Chamber's decision of the 13th of April. This issue is therefore not part of this decision on reconsideration.

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