

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: 28 July 2016

Original language: English

Classification: Public

THE PROSECUTOR

v.

**SALIM JAMIL AYYASH
HASSAN HABIB MERHI
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA**

**DECISION DISMISSING APPLICATION FOR CERTIFICATION TO APPEAL THE
TRIAL CHAMBER'S 'DECISION ON THE ADMISSION OF MR GARY PLATT
(WITNESS PRH147) AS AN EXPERT WITNESS'**

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 Emile Aoun, Mr Thomas Hannis & Mr Chad
Mair

Counsel for Mr Hassan Habib Merhi:

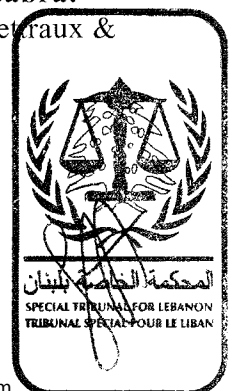
Mr Mohamed Aouini, Ms Dorothee Le Fraper
du Hellen & Mr Jad Khalil

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. The Trial Chamber allowed Mr Gary Platt (Witness PRH147), a Prosecution witness and investigator, to provide expert opinion evidence on two areas: (1) the surveillance of criminal networks, and (2) the identification and organization of covert communications networks.¹ Counsel for the then Accused, Mr Mustafa Amine Badreddine, joined by counsel for Mr Hussein Hassan Oneissi, requested certification to appeal the decision.² The Prosecution filed an opposing response.³

SUBMISSIONS

2. The motion seeks certification for appeal of two issues:

- (i) Did the Trial Chamber err in law in recognising Mr Platt as an expert in the matters of (1) surveillance of criminal networks; and (2) identification and organization of covert communications networks whose evidence could assist the Trial Chamber? and
- (ii) Did the Trial Chamber abuse its discretion by concluding that Mr Platt's involvement with the Prosecution and his potential lack of impartiality, independence, neutrality and scientific objectivity do not bar his admission as an expert in the particular circumstances of this case?⁴

3. Defence counsel submitted that the Trial Chamber does not require the assistance of an expert witness, as the areas of Mr Platt's expertise were matters the Trial Chamber's judges could assess themselves, were generally the subject of submission and comment by the calling party, and fell within the realm of non-expert triers of fact.⁵ And, relying on International Criminal Tribunal for the former Yugoslavia (ICTY) case law, Mr Platt lacks the neutrality, impartiality and scientific objectivity of an expert witness as a result of his closeness to and involvement with the Prosecution. The Trial Chamber abused its discretion in finding that impartiality and independence considerations were only limited to the weight

¹ Transcript, 6 April 2016, pp 1-2; *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, STL-11-01/T/TC, F2549, Decision Allowing Mr Gary Platt (Witness PRH147) to Give Expert Opinion Evidence, 13 April 2016.

² F2559, Badreddine Defence Motion for Certification to Appeal the "Decision Allowing Mr Gary Platt (Witness PRH147) to Give Expert Opinion Evidence", 20 April 2016; F2568, Jonction de la Defense de M. Oneissi a la requete de la Defense de M. Badreddine aux fins de « Certification to Appeal the Decision Allowing M. Gary Platt (Witness PRH147) to Give Expert Opinion Evidence », 22 April 2016.

³ F2578, Prosecution Response to "Badreddine Defence Motion for Certification to Appeal the Decision Allowing Mr Gary Platt (Witness PRH147) to Give Expert Opinion Evidence", 29 April 2016.

⁴ Badreddine motion, paras 2, 20.

⁵ Badreddine motion, paras 11-12.

to be attached to the evidence.⁶ Mr Platt's evidence is of capital importance to the Prosecution's case and permitting him to testify as an expert will result in the Trial Chamber receiving inadmissible and irrelevant evidence. This will impact the fair and expeditious conduct of the proceedings, or the outcome of the trial.

4. An interlocutory appeal is necessary as it would be 'near-impossible' for the Appeals Chamber to decide on the appropriate weight to give to Mr Platt's testimony if the decision is reversed on appeal. The immediate resolution of this matter would obviate the need to cross-examine Mr Platt and call expert evidence in rebuttal, and may materially advance the proceedings.⁷

5. The Prosecution responded that the alleged error in allowing Mr Platt to give expert testimony does not affect the fairness of the trial process and that certifying for appeal decisions relating to the admissibility of evidence is an 'absolute exception'. The Defence inconsistently asserts that Mr Platt's evidence is of 'capital importance' but also does not require expert assistance to be understood.⁸ The first limb of Rule 126 (C) has not been met. Mr Platt could give opinions as an experienced investigator and the Defence's concerns could therefore be addressed during cross examination and by the Trial Chamber when assessing the weight to be given to it.⁹

APPLICABLE LAW

6. The Trial Chamber, under Rule 126 (C), may certify a decision for interlocutory appeal if:

⁶ Badreddine motion, para. 14.

⁷ Badreddine motion, para. 18. The Trial Chamber notes that since the filing of the motion, the Appeals Chamber has found that sufficient evidence has been presented to convince it that the death of Mr Badreddine has been proven to the requisite standard: STL-11-01/T/AC/AR126.11, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F0019-AR126.11, Decision on Badreddine Defence Interlocutory Appeal of the "Interim Decision on the Death of Mr Mustafa Amine Badreddine and Possible Termination of Proceedings", 11 July 2016. Accordingly, the Trial Chamber terminated, without prejudice, the proceedings against Mr Badreddine and the Head of the Defence Office has terminated the assignment of counsel: F2633, Order Terminating Proceedings Against Mustafa Amine Badreddine Without Prejudice and Ordering the Filing of an Amended Consolidated Indictment, 11 July 2016; F2655, Version Corrigée de la « Notification de la fin de la commission d'office de Mes Antoine Korkmaz, Iain Edwards et Mylène Dimitri, respectivement conseil principal et co-conseils de l'équipe de Défense de M. Mustafa Amine Badreddine » en date du 15 juillet 2016, 18 July 2016. However, in this case, counsel for Mr Oneissi has joined the motion: Oneissi joinder, para. 1. The Trial Chamber will therefore consider its merits.

⁸ Prosecution response, para. 7.

⁹ Prosecution response, para. 8.

the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which an immediate resolution by the Appeals Chamber may materially advance the proceedings.¹⁰

7. The Trial Chamber must ensure that the issue meets the rule's strict requirements; leave to appeal is exceptional; the issue must be precise and have an adequate legal or factual basis; certification is concerned not with whether a decision was correctly reasoned but solely on whether the rule is satisfied; once the requirements of Rule 126 (C) have been met, the Trial Chamber does not have the discretion to refuse certification.¹¹

DISCUSSION

Question 1

8. The first question is expressed as a question of law. The motion, however, does not argue that the Trial Chamber applied an incorrect legal standard in determining the appropriate matters for expert testimony. Instead, it simply disagrees with the Trial Chamber's decision. The correctness of the decision has little if no bearing on certification. What matters is whether the requirements of Rule 126 (C) have been met.

9. Apart from expressing mere disagreement with the decision, the motion points only to the importance of Mr Platt's evidence for the Prosecution and makes the unsubstantiated assertion that, in violation of Rule 149 (C),¹² it is inadmissible and irrelevant. However, Mr Platt is an experienced investigator and the Prosecution could call him to testify as a non-expert should the decision be reversed. The Trial Chamber's acceptance of his expert status does not of itself determine whether his evidence is inadmissible or irrelevant. Further, as the

¹⁰ Rule 126 (C).

¹¹ STL-11-01/PT/AC/AR126.2, F0008, Decision on Appeal Against Pre-Trial Judge's Decision on Motion by Counsel for Mr Badreddine Alleging the Absence of Authority of the Prosecutor, 13 November 2012, paras 11-15; STL-11-01/PT/AC/AR126.5, F0003, Decision on Appeal by Counsel for Mr Sabra Against Pre-Trial Judge's "Decision on Sabra's Tenth and Eleventh Motions for Disclosure", 6 November 2013, paras 7-8; F1841, Decision on 'The Defence for Hussein Hasan Oneissi Request for Certification of the "Decision on Prosecution's Motion for Admission into Evidence of 485 Documents, Photographs and Witness Statements Relevant to Rafik Hariri's Movements and to Political Events" of 30 December 2014', 3 February 2015, para. 6; STL-11-01/PT/AC/AR126.1, F0012, Decision on Defence Appeals Against Trial Chamber's Decision on Reconsideration of the Trial *In Absentia* Decision, 1 November 2012, para. 8; F2069, Decision Denying Certification to Appeal the Trial Chamber's Decision on Issuing a Summons to Witness 012, 10 July 2015, para. 5; STL-11-01/PT/AC/AR126.5, F0003, Decision on Appeal by Counsel for Mr Sabra Against Pre-Trial Judge's "Decision on Sabra's Tenth and Eleventh Motions for Disclosure", 6 November 2013, paras 7-8; F1798, Decision on Application for Certification of Decision Regarding the Scope of Marwan Hamade's Evidence, 18 December 2014, para. 13.

¹² Rule 149 (C) permits the Chamber to 'admit any relevant evidence which it deems to have probative value.'

Prosecution points out, the Defence may cross-examine Mr Platt on these matters. The Trial Chamber, when it assesses Mr Platt’s evidence, will give it appropriate weight. The resolution of this issue would not significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial.

Question 2

10. The second question similarly does not pass the first limb of Rule 126 (C). The motion argues that the Trial Chamber erred by distinguishing ICTY case law, but ultimately submits that the Trial Chamber abused its discretion in finding that the independence and impartiality of an expert witness goes to the weight to be attached to the evidence and not its admissibility. It points only to the importance of Mr Platt’s testimony and its supposed inadmissibility and irrelevance.

11. The Trial Chamber is therefore not satisfied that the resolution of this issue would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial and dismisses the motion.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

DISMISSES the motion.

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

Leidschendam,
The Netherlands
28 July 2016

David Re

Judge David Re, Presiding

Janet M. Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

