

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE TRIAL CHAMBER**SPECIAL TRIBUNAL FOR LEBANON**

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: 8 September 2016

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

**DECISION ADMITTING STUDENT RECORDS FROM LEBANESE AMERICAN
UNIVERSITY AND AMERICAN UNIVERSITY OF BEIRUT RELATING TO
MUSTAFA AMINE BADREDDINE**

Office of the Prosecutor:

Mr Norman Farrell & Mr Alexander Hugh Milne

**Legal Representatives of
Participating Victims:**

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



1. The Prosecution requests the admission into evidence, under Rule 154 of the Special Tribunal's Rules of Procedure and Evidence, of 13 exhibits relating to the university records of the former Accused, Mr Mustafa Amine Badreddine and his university contemporaries.¹ It also seeks leave to add two of the documents to its exhibit list. The motion is unopposed; no counsel—for any of the four Accused, or for the former Accused, Mr Badreddine²—responded to the motion.

Prosecution's submissions

2. The 13 exhibits are from the Lebanese American University (LAU) in Beirut and the American University of Beirut (AUB). They comprise original student files attributed to Mr Badreddine composed of 25 separate sets of documents, a photograph, three letters, and six sets of photocopied documents from the student records of other students linked to Mr Badreddine.

3. The evidence is listed in indexes to five confidential annexes that detail the contents of these records and explain the purported probative value for each record and its reliability, including a list of other evidence and documents supporting its reliability. The Prosecution argues that the records: demonstrate Mr Badreddine's use of several aliases, Sami Issa, Safi Badr and Safi Badruddin; help to identify his university contemporaries; and, ultimately assist in attributing certain telephone numbers to him that were used in the attack in Beirut on 14 February 2005 against the former Lebanese Prime Minister, Mr Rafik Hariri.

4. Annex A relates to Mr Badreddine and contains his original student file from the LAU and the AUB—showing his attendance at those universities—and three university letters relating to him and a photograph of him. The three letters contain information relating to the student Mustafa Amine Badreddine and state that no students named Sami Issa or Safi Badr were ever enrolled at those universities.

¹ STL, STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F2566, Prosecution Rule 154 Motion for the Admission of Documentary Student Records from LAU and AUB relating to Mustafa Amine BADREDDINE and his University Contemporaries, 22 April 2016 (public with confidential Annexes A-E).

² The Trial Chamber terminated the proceedings against Mr Badreddine on 11 July 2016, pursuant to a decision of the Appeals Chamber. *See* F2633, Order Terminating Proceedings Against Mustafa Amine Badreddine Without Prejudice and Ordering the Filing of an Amended Consolidated Indictment, 11 July 2016; 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.

5. Annex B contains university records of six student contemporaries of Mr Badreddine, which the Prosecution argues, also assist in attributing of certain telephone numbers to him.

6. Annex C lists the documents supporting the reliability and chain of custody of the exhibits in Annexes A and B, namely six responses from the Lebanese authorities to requests for assistance of the Special Tribunal's Prosecutor, and the statements of two Prosecution investigators. Annex D specifies two exhibits that the Prosecution seeks to add to its exhibit list, noting that both were inadvertently removed from this list in 2013. Annex E provides call sequences tables for the two telephone numbers referred to in Annexes A and B.

7. The Prosecution submits that the probative value of the proposed exhibits is not outweighed by any prejudicial effect. Moreover, most documents in Annexes A and B are relied upon by Mr Andrew Donaldson (Witness PRH230) in his report attributing to Mr Badreddine the use of certain mobile telephones used in the attack on 14 February 2005. The documents have been disclosed to Defence counsel who can cross-examine Mr Donaldson about his reliance on them. Finally, admitting these documents would make efficient use of the Trial Chamber's time, serving the interests of justice and contribute to a fair and expeditious trial.

Amending the Prosecution's exhibit list

8. The application to amend the exhibit list to add the two documents is unopposed. The Trial Chamber is of the view that it is in the interests of justice to allow the application. Adding these documents to the exhibit list will cause no prejudice to the Defence as the documents have long been disclosed. Moreover, the documents are relevant and probative. The request to add the documents to the Prosecution's exhibit list is allowed.

Admitting 13 exhibits into evidence under Rule 154

9. The Trial Chamber has previously set out the standards for admitting evidence 'from the bar table' under Rule 154 without requiring a witness to produce or to identify a document.³ These principles apply to this decision.

³ F2636, Corrected Version of 'Decision on Prosecution Motion for the Admission of Civil Records' Dated 12 July 2016, 12 July 2016, para. 9; *see also* F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015, para. 33; F1781, Corrected Version of "Decision on Prosecution Motion to Admit into Evidence Geographic Documents" of 8 December 2014, 10 December 2014, para. 4; F1350, Decision on Prosecution's Motion to Admit into Evidence Photographs, Questionnaires and Records of Victims, 28 January 2014, paras 5-7.

10. The Trial Chamber has carefully examined the records. The Trial Chamber is satisfied that the university records are relevant to the Prosecution's case, and specifically, are probative of the attribution to and use of mobile telephones by Mr Badreddine, who is named in the amended consolidated indictment as a deceased co-conspirator.⁴

11. The proposed exhibits also bear sufficient indicia of reliability and their provenance has been sufficiently explained. The Prosecution received the documents from the LAU and the AUB and they are the documentary or business records of those universities, retained in the ordinary course of their record keeping for administrative purposes. The Prosecution received the AUB records in 2011 and the LAU records in 2012 (Annex A), while the remaining exhibits in Annexes A and B were received in response to requests for assistance sent to the Government of the Lebanese Republic.

Confidentiality of the five annexes

12. The Prosecution seeks to maintain the confidentiality of its annexes until otherwise ordered and only after allowing the Prosecution to be heard on the issue of lifting their confidentiality.

13. The Trial Chamber reiterates the public nature of the proceedings. Much of the information in the annexes should be public. But some should not. For example, Annex B contains information about people unconnected with the proceedings. There is a public interest in revealing relevant information in that annex, but not in making public their identities. The Prosecution should therefore file redacted versions of the five annexes.

FOR THESE REASONS, the Trial Chamber,

GRANTS leave to add the exhibits listed in confidential Annex D to the Prosecution's Rule 91 Exhibit List;

DECLARES ADMISSIBLE under Rule 154 of the Special Tribunal's Rules of Procedure and Evidence the 13 exhibits listed in confidential Annex A and confidential Annex B;

DECIDES that it will formally admit the documents into evidence at a suitable stage in the proceedings;

ORDERS Annexes A and B to the motion to remain confidential; and

⁴ For example, para. 3, Amended consolidated indictment, 12 July 2016.

ORDERS the Prosecution to file public redacted versions of the annexes to the motion.

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

Leidschendam,
The Netherlands
8 September 2016

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

