

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: 22 September 2016

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

**DECISION ON PROSECUTION MOTION FOR THE ADMISSION OF CIVIL
DEFENCE RECORDS OF SALIM JAMIL AYYASH**

Office of the Prosecutor:

Mr Norman Farrell and Mr Alexander 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



INTRODUCTION

1. The Prosecution seeks the admission into evidence, under Rule 154 of the Special Tribunal's Rules of Procedure and Evidence, of nine documents relevant to demonstrating the activities, locations and attribution of telephone numbers to the Accused, Mr Salim Jamil Ayyash.¹ Counsel for Mr Ayyash oppose the motion.²

SUBMISSIONS

A. Prosecution submissions

2. Between 1986 and February 2005, Mr Ayyash was employed at the Lebanese Civil Defence, first at the Markaba and subsequently at the Douair stations in Lebanon.³ The Prosecution requests the admission from the 'bar table' of Civil Defence records pertaining to Mr Ayyash, comprised of nine documents from Mr Ayyash's personnel file that were received in response to requests for assistance the Prosecution sent to the Lebanese authorities. The nine documents are detailed in confidential Annex A to the motion.⁴

3. The Prosecution submits that the documents are relevant in assisting with the attribution of telephone numbers to Mr Ayyash, in addition to supporting the Prosecution's theory as it relates to Mr Ayyash's decision to remain in Lebanon in January 2005.⁵ It also argues that that the proposed documents provide evidence that assists in demonstrating that Mr Ayyash had communicated with former Accused, Mr Mustafa Amine Badreddine, before cancelling a planned Hajj pilgrimage to take part in preparations for the attack on the former Prime Minister of Lebanon, Mr Rafik Hariri, on 14 February 2005, in Beirut, Lebanon.⁶ In addition, seven of the nine documents are referenced and relied upon in the report of Prosecution analyst, Mr Andrew Donaldson (Witness PRH230).⁷

4. In respect of the probative value and indicia of reliability of the proposed documents, the Prosecution states that each document bears sufficient indicia of reliability and that their

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2695, Corrected Version of Prosecution Motion for the Admission of Civil Defence Records of Salim Jamil Ayyash, Public with Confidential Annex, 19 August 2016, paras 1, 3.

² F2709, Ayyash Defence Response to "Prosecution Motion for the Admission of Civil Defence Records of Salim Jamil Ayyash", Confidential, 2 September 2016, para. 1.

³ Prosecution motion, paras 7-11.

⁴ Prosecution motion, paras 1-2.

⁵ Prosecution motion, para. 5.

⁶ Prosecution motion, paras 18-19.

⁷ Prosecution motion, para. 4.

admission will not prejudice the fair trial rights of the Accused.⁸ The tendered documents are all records maintained in the ordinary course of business at the Civil Defence Directorate and were obtained from the Lebanese authorities.⁹

5. The Prosecution further notes that eight of the nine proposed documents are extracts of exhibits already included in the Prosecution's exhibit list, all of which have been duly disclosed to the Defence. In the event that the Trial Chamber considers it necessary, the Prosecution requests that the eight extract exhibits be added to its exhibit list.¹⁰

B. Defence submissions

6. Counsel for Mr Ayyash oppose the admission of the proposed documents and request that their admission be deferred until an available witness can testify to their contents.¹¹ The Defence argues that the Prosecution has presented no evidence on the structure of the Lebanese Civil Defence during the relevant period and accordingly, the Trial Chamber cannot meaningfully assess the relevance or probative value of the proposed documents.¹² Rather, counsel for Mr Ayyash argue that the three Prosecution witnesses who are scheduled to testify in court—Witnesses PRH055, PRH588 and PRH391—are well placed to testify in relation to the structure and procedures in the Lebanese Civil Defence.¹³

7. The Defence also takes issue with the inferences that the Prosecution invites the Trial Chamber to draw from the proposed documents, submitting that they go far beyond what can reasonably be inferred from the documents, particularly absent further contextualisation. It would be in the interests of justice for the Trial Chamber to exercise its discretion and decide that a live witness must testify in regards to the content of the proposed documents before they are admitted into evidence.¹⁴

8. The Defence does not require that the extracts of exhibits already on the Prosecution's exhibit list be separately added to that list, provided that the record clearly indicates the relevant pages of the exhibits and that the translations are duly admitted.¹⁵

⁸ Prosecution motion, para. 25; Confidential Annex A to the motion.

⁹ Prosecution motion, para. 24.

¹⁰ Prosecution motion, para. 26.

¹¹ Ayyash response, para. 1.

¹² Ayyash response, para. 2.

¹³ Ayyash response, para. 3.

¹⁴ Ayyash response, paras 7-8.

¹⁵ Ayyash response, para. 9.

DISCUSSION

9. The Trial Chamber has previously acknowledged that admitting evidence ‘from the bar table’, under Rule 154, without requiring a witness to produce or to identify it, is a well-established practice before international courts and tribunals.¹⁶ Material tendered in this manner—like any other evidentiary material—must meet the basic requirements for the admission of evidence under Rule 149 (C) and (D), in that it must be relevant and probative, and its probative value must not be outweighed by its prejudicial effect.¹⁷ Only *prima facie* reliability and probative value is required at this stage.¹⁸ Probative value in this sense is distinct from the weight that the Trial Chamber may ultimately give to a document or record. The tendering party must also demonstrate, with clarity and specificity, where and how each document or record fits into its case.¹⁹

10. The Trial Chamber is satisfied that the nine documents proposed for admission are relevant to the Prosecution’s case. The motion and its annex provide sufficient information to establish the relevance of each document, notably in relation to Mr Ayyash’s activities, locations and the attribution of telephone numbers to him during the period of time leading up to 14 February 2005.

11. The documents were maintained and issued by the Lebanese Civil Defence Directorate which, in turn, provided the records to the Prosecution in response to requests for assistance.²⁰ For these reasons, the Trial Chamber is satisfied of the provenance and the *prima facie* reliability of the proposed documents. They have probative value. Whether they can be used in the manner suggested by the Prosecution is for the Trial Chamber’s later evaluation. It is at this later stage, not the admissibility stage where only the *prima facie* reliability and probative value of the evidence is determined, that the Trial Chamber will consider the Defence’s submissions with respect to the inferences to be drawn from such documents. This Defence argument rather relates to the use and weight that the Trial Chamber may ultimately give

¹⁶ F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015, para. 33; F1802, 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, 30 December 2014, para. 29; F1350, Decision on Prosecution’s Motion to Admit into Evidence Photographs, Questionnaires and Records of Victims, 28 January 2014 (Decision of 28 January 2014), paras 5-7; F1308, Decision on Prosecution’s Motion to Admit into Evidence Photographs, Videos, Maps, and 3-D Models, 13 January 2014 (Decision of 13 January 2014), para. 4.

¹⁷ F1781, Corrected version of ‘Decision on Prosecution Motion to Admit into Evidence Geographic Documents’ of 8 December 2014, 10 December 2014, para. 4.

¹⁸ Decision of 28 January 2014, para. 7; Decision of 13 January 2014, para. 8.

¹⁹ Decision of 28 January 2014, para. 7; Decision of 13 January 2014, paras 4-6.

²⁰ Prosecution motion, para. 24.

these documents. The Trial Chamber may admit the evidence and thereafter, after hearing from the Parties, determine the weight, if any, to give to it.

12. As the proposed documents have long been disclosed to the Defence as part of the Prosecution's exhibit list, the Accused will not suffer prejudice as a result of their admission into evidence. The Trial Chamber also finds it unnecessary to order the Prosecution to amend its exhibit list given that the extracts proposed for admission already form part of exhibits on the exhibit list. Therefore, the proposed documents detailed in Annex A to the motion are admissible under Rule 154.

CONFIDENTIALITY

13. The motion's Annex A and the Defence response were filed confidentially. The Prosecution did not explain the reasons why the annex must maintain its confidential status, while counsel for Mr Ayyash has filed a public redacted version of their response. The Trial Chamber reiterates the public nature of these proceedings and therefore orders the Prosecution to file a public redacted version of Annex A.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

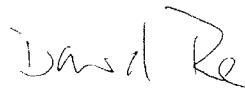
DECLARES admissible, under Rule 154, the nine documents listed in Annex A to the Prosecution's motion;

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

ORDERS the Prosecution to file a public redacted version of Annex A to its motion.

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

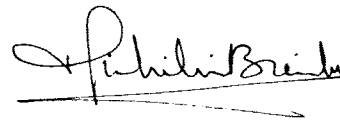
Leidschendam,
The Netherlands
22 September 2016



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

