

**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: 1 November 2016

Original language: English

Classification: Public

**TRIAL CHAMBER'S OBSERVATIONS WITH RESPECT TO ASSISTANCE TO
DEFENCE COUNSEL AND THE TRIAL CHAMBER REGARDING THE PLEADED
ROLE OF MR BADREDDINE AS A CO-CONSPIRATOR**

(Extract from Official Public Transcript of Hearing on 1 November 2016, page 15, line 3 to
page 18, line 15)

On the 11th of July, 2016, the Trial Chamber terminated the proceedings on the then-consolidated indictment against Mustafa Amine Badreddine, in filing F2633. The following day the Prosecutor filed an amended consolidated indictment for the Trial Chamber's approval.

In their response to the proposed Prosecution amendments, Defence counsel cited challenges presented to the adequate representation of the accused. Importantly, they complained of a threat to the guaranteed rights of the accused, most notably the right to adequate facilities for the preparation of their defence and the right to trial without undue delay under Articles 16(4) (b) and (c) of the Statute of the Special Tribunal as components of a fair trial. And that related to the continued pleading of the role of Mr. Badreddine in the new indictment.

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On the 7th of September, 2016, the Trial Chamber declared the amended consolidated indictment operative, that's filing 2713, and no application was made for certification to appeal that decision.

In the decision at paragraphs 51 and 52, and in the context of the right to a fair and expeditious trial, the Trial Chamber addressed Defence arguments concerning difficulties that Defence counsel may have in meeting evidence relating to the role of Mr. Badreddine in the pleaded conspiracy. The Trial Chamber stated that it would “consider any Defence application to adjust the witness schedule, or adjourn cross-examination, based on the need for adequate preparation time to cross-examine witnesses,” and further, “if necessary, the Trial Chamber could give consideration to an application under Rule 131, for the appointment of Amicus Curiae to assist the Trial Chamber in hearing evidence relating to Mr. Badreddine's role.”

The Trial Chamber also noted the familiarity with the evidence of the counsel who had acted for Mr. Badreddine and noted the duty of the Head of Defence Office under Rule 57(E) (ii) to provide “adequate facilities to Defence counsel” in the preparation of their case.

The Trial Chamber also acknowledged the possibility of exercising its powers under Rule 130(A) to give directions “on the conduct of the proceedings as necessary and desirable to ensure a fair, impartial and expeditious trial.”

On 22nd of September, 2016, the Trial Chamber, acting under Rule 130(A) , ordered counsel for the accused Salim Jamil Ayyash, Hussein Hassan Oneissi, Assad Hassan Sabra, and Hassan Habib Merhi, and invited the Prosecution, the Participating Victims, and the Head of Defence Office to file submissions and observations on options to be employed to aid the Trial Chamber by assisting the Defence in challenging evidence specific to Mr. Badreddine's role, as alleged by the Prosecution in the case against the four remaining accused.

These directions were issued against the background of concerns of the Chamber and counsel for the accused as to the inability of the Defence to respond effectively to this evidence which forms an integral and inextricable part of the case against the four accused.

The parties, Legal Representative of Victims and the Head of Defence Office filed submissions and observations. Defence counsel neither sought nor opposed the appointment of Amicus. The Head of the Defence Office did, and the Prosecution submitted that it was “unnecessary.”

The Trial Chamber was informed by the lead Prosecution counsel at a case management meeting on Monday, the 31st of October, 2016, that the Prosecution does not

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intend to call any live in-court testimony relating to Mr. Badreddine's role (apart from the general evidence relating to the conspiracy charged in the amended consolidated indictment) . This, however, will depend upon the Trial Chamber's decisions in relation to pending motions concerning evidence linking Mr. Badreddine to his alleged alter ego, Mr. Sami Issa, and other pending motions under Rule 155 (to accept witness statements in lieu of live in-courtroom testimony) .

The Trial Chamber will shortly determine these motions relating to the alleged identification of Mr. Issa as Mr. Badreddine or vice versa. The Trial Chamber takes special note that the Head of Defence Office informed the Trial Chamber on the 19th of October, 2016 that he has temporarily assigned, as consultants, two counsel formerly assigned to represent Mr. Badreddine to momentarily assist counsel for three of the accused in relation to any evidence connected with Mr. Badreddine's pleaded role. That is the extent of the Trial Chamber's information about that consultancy.

The Trial Chamber has an overriding inherent duty to ensure that accused persons are effectively represented. It is not of the view that any further action is presently required. However, in the circumstances just described, the Trial Chamber will continue to consult the parties and the Head of Defence Office, where necessary, to better serve this purpose.

It follows from that that counsel acting for the four accused will have to file responses to the following two filings: F2723, "Prosecution Motion to Admit Statements of PRH264, PRH306, and PRH416, Pursuant to Rule 155," filed on the 16th of September, 2016. And filing 2783, "Prosecution" -- I correct that: Filing F2755, "Prosecution Motion to Admit Statements of Five Witnesses Pursuant to Rule 155 in Relation to the Identification of Sami Issa as Mustafa Amine Badreddine," filed on the 3rd of October, 2016.

The Trial Chamber has previously said it would give -- allow Defence counsel three days from a decision or notification in relation to the possible appointment of Amicus to file their responses.

The counsel for the four accused are accordingly ordered to file any responses to those two motions by Friday, the 4th of November, 2016.

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