

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: 30 November 2016

Original language: English

Classification: Public

The PROSECUTOR

v.

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

**DECISION DENYING CERTIFICATION FOR INTERLOCUTORY APPEAL OF
DECISION ON TELEPHONE SUBSCRIBER AND USER INFORMATION**

Office of the Prosecutor:

Mr Norman Farrell & 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 & 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

The decision of 4 November 2016

1. The Trial Chamber, on 4 November 2016, issued its ‘Decision on the admission of documents related to telephone subscriber and user information’. In that decision, it admitted into evidence telephone subscriber records identifying the numbers of certain figures connected with Hezbollah, including its Secretary-General, an extract from the list of applicants for the 2005 Hajj pilgrimage including a number for Mr Khalil Farhat, a document from the Special Syrian Judicial Commission identifying numbers including of the Presidential Palace in Damascus, and extracts of the telephone notebooks of Mr Jamil El-Sayyed, which included specified telephone numbers.¹ It found each piece of evidence to be relevant and probative and explained why.

Defence motion

2. Counsel for the Accused, Mr Hussein Hassan Oneissi, did not respond to the Prosecution motion seeking the admission into evidence of those documents,² but now seek to have the decision certified for interlocutory appeal under Rule 126 (C) of the Special Tribunal’s Rules of Procedure and Evidence,³ posing the following question for certification:

Whether the Trial Chamber erred in ruling that the Prosecution had demonstrated with clarity and specificity, where and how each of the following tendered documents and records fit into its case:

- i. Subscriber notes identifying the telephone numbers of Mr Nasrallah, of members of Parliament Nasser Kandil, Bassem Yamout and Adnan Arakji and of the landline of the Syrian forces in Anjar;
- ii. Extract from the 2005 Hajj pilgrimage list including an application attributing a telephone number to Khalil Farhat;
- iii. A document from the Special Syrian Judicial Commission providing subscriber details for specified Syrian landline and mobile numbers including two for the Republican Palace in Damascus, Syria;

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2815, Decision on the Admission of Documents related to Telephone Subscriber and User Information, 4 November 2016. Admitted onto court record on 8 November 2016 as exhibits P1369 until P1395.

² F2086, Prosecution Rule 154 Motion for the Admission of Documents relating to Telephone Subscriber and User Information, 21 July 2015 (public with confidential annexes A, B, C and D).

³ F2832, Request for Certification to Appeal the “Decision on the Admission of Documents related to Telephone Subscriber and User Information”, 11 November 2016 (‘Oneissi motion’).

- iv. Extract of Jamil El Sayyed's phone book including the telephone number of Bachar El Assad, Raymond Azar, Ali Ammar and a senior Hezbollah official.

3. In support of this, they argue that the 'Trial Chamber erred in considering that the Prosecution successfully demonstrated with the required clarity and specificity how it intends to use this information to explain the wider circumstances leading to Mr Hariri's assassination', and that the Defence does not yet have all the material necessary to understand the case against Mr Oneissi.⁴ Further, they seek clarification of the difference between evidence and material facts in relation to the Prosecution's pleading at paragraph 49 of the amended consolidated indictment averring that the four Accused and the former Accused, Mr Mustafa Amine Badreddine, were supporters of Hezbollah.⁵ The Appeals Chamber may therefore clarify the applicable procedure and provide future guidelines as to the appropriate standard in relation to facts versus evidence.⁶

Rule 126 (C)

4. Rule 126 (C) permits certification for interlocutory appeal where the requesting party identifies an issue arising from the decision which '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'.

5. The Trial Chamber must be satisfied that an issue for certification meets the Rule's strict requirements.⁷ To meet this high threshold, a request for certification should not be concerned with whether the Trial Chamber provided correct reasoning, but rather whether the challenged decision involves a precise issue, with an adequate legal or factual basis in the decision, that meets the standard in Rule 126 (C).⁸ Appeals that do not meet this threshold are heard once the Trial Chamber has rendered its judgment on the merits.⁹

⁴ Oneissi motion, paras 13, 16.

⁵ Oneissi motion, paras 11, 17.

⁶ Oneissi motion, para. 18.

⁷ F2069, Decision Denying Certification to Appeal the Trial Chamber's Decision on Issuing a Summons to Witness 012, 10 July 2015, para. 5 ('Decision of 10 July 2015'); STL-11-01/PT/AC/AR90.2, F0007, Decision on Defence Appeals against Trial Chamber's "Decision on Alleged Defects in the Form of the Amended Indictment", 5 August 2013, para. 7.

⁸ Decision of 10 July 2015, para. 5; 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, 13, 15.

⁹ STL-11-01/PT/AC/AR126.1, F0012, Corrected Version of Decision on Defence Appeals against Trial Chamber's Decision on Reconsideration of the Trial *in Absentia* Decision, 1 November 2012, para. 11.

Prosecution's submissions

6. The Prosecution opposed the motion, arguing that the issue does not arise from the decision and is too broad to be certified for appeal.¹⁰ It submitted that whether a tendered document fits into the Prosecution's case 'is a general condition for the admission of evidence that could therefore arise from any decision on the admissibility of evidence. Furthermore, the other raised issues related to the expansion of the scope of the indictment through motions, to the definition of a material fact, and to the procedures applicable to new facts are abstract questions also not related to the Impugned Decision. They concern legal matters that have already been addressed and decided by the Trial Chamber'.¹¹

Decision

7. Counsel for Mr Oneissi have not identified how *their* query as to how the evidence fits into the case affects the fair and expeditious conduct of the proceedings, and then how it could affect the outcome of the trial. This question posed is a general one rather than a specific legal issue arising from the decision. Consequently, it cannot be certified for appeal.

FOR THESE REASONS, the Trial Chamber dismisses the motion.

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

Leidschendam,
The Netherlands
30 November 2016

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

¹⁰ F2859, Prosecution Response to Oneissi "Request for Certification to Appeal the Decision on the Admission of Documents related to Telephone Subscriber and User Information", 28 November 2016, paras 3, 6.

¹¹ Prosecution response, para. 6 (footnotes omitted).

