

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:** 9 December 2016

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

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

---

**DECISION ON THE PROSECUTION MOTION FOR THE ADMISSION OF  
RECORDS RECEIVED FROM THE TRAFFIC, TRUCK, AND VEHICLE  
MANAGEMENT AUTHORITY**

---

**Office of the Prosecutor:**  
Mr Norman Farrell & Mr Alexander Hugh  
Milne

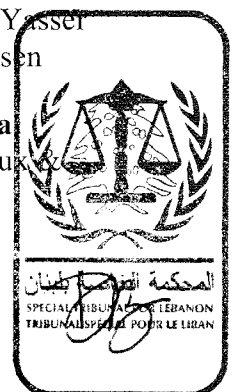
**Counsel for Mr Salim Jamil Ayyash:**  
Mr Emile Aoun, Mr Thomas Hannis &  
Mr Chad Mair

**Legal Representatives of  
Participating Victims:**  
Mr Peter Haynes, Mr Mohammad F. Mattar  
& Ms Nada Abdelsater-Abusamra

**Counsel for Mr Hassan Habib Merhi:**  
Mr Mohamed Aouini, Ms Dorothée 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 of 37 vehicle registration records from the Traffic, Truck, and Vehicle Management Authority of the Ministry of Interior and Municipalities of the Lebanese Republic (Traffic Authority). According to the Prosecution, these documents are relevant to the identification and attribution of the Accused's telephone numbers or third party numbers that were in contact with the Accused. The Prosecution also requests the addition of two extracts from a larger exhibit (R91-805575) to its Rule 91 exhibit list.<sup>1</sup> Counsel for the Accused, Mr Assad Hassan Sabra, oppose three of the vehicle registration records;<sup>2</sup> counsel for the Accused, Mr Hassan Habib Merhi, oppose eight, or, in the alternative, ask the Trial Chamber to defer its decision until a representative from the Traffic Authority, and a Prosecution investigator, Mr Adrian Kirwan (Witness PRH431) testify;<sup>3</sup> counsel for the Accused, Mr Salim Jamil Ayyash, do not oppose the documents.<sup>4</sup> The Prosecution replied to the response of counsel for Mr Mehri.<sup>5</sup>

## SUBMISSIONS

### *Prosecution*

2. The 37 vehicle registration records comprise of 31 vehicle registration documents relating to the registration, sale or importation of vehicles and six database extracts from the vehicle registration database of the Traffic Authority. These documents include personal information, such as telephone numbers and addresses, about the individual who registered, bought, sold or imported the relevant vehicle. They document the fact that the telephone

---

<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi, and Sabra*, F2788, Prosecution Rule 154 Motion for the Admission of Records received from the Traffic, Truck and Vehicle Management Authority, 19 October 2016 ('Prosecution motion'), paras 1-2, 5, 19.

<sup>2</sup> F2804, Response to the Prosecution Rule 154 Motion for the Admission of Records received from the Traffic, Truck and Vehicle Management Authority, 2 November 2016 ('Sabra response'), para. 16 (confidential). The Trial Chamber notes that paragraph 16 should state paragraph (e) instead of paragraph (d).

<sup>3</sup> F2808, Merhi Defence Response to the "Prosecution Rule 154 Motion for the Admission of Records received from the Traffic, Truck and Vehicle Management Authority", 2 November 2016 (confidential); F2808, Corrigendum à la Réponse de la Défense de Merhi à la « Prosecution Rule 154 Motion for the Admission of Records received from the Traffic, Truck and Vehicle, Management Authority », 7 novembre 2016 (confidential); F2808, Version Corrigée de la Réponse de la Défense de Merhi à la « Prosecution Rule 154 Motion for the Admission of Records Received from the Traffic, Truck and Vehicle Management Authority », 7 novembre 2016 ('Merhi response'), disposition (confidential). The corrected version of the Merhi response is cited throughout this decision.

<sup>4</sup> F2807, Ayyash Defence Response to the "Prosecution Rule 154 Motion for the Admission of Records received from the Traffic, Truck, and Vehicle Management Authority", 2 November 2016 ('Ayyash response'), paras 1-2.

<sup>5</sup> F2821, Prosecution Reply to « Réponse de la Défense de Merhi à la 'Prosecution Rule 154 Motion for the Admission of Records received from the Traffic, Truck, and Vehicle, Management Authority », 7 November 2016 ('Prosecution reply').

numbers and an address attributed to the Accused by the Prosecution were registered to or recorded by the Traffic Authority. They also assist in identifying third parties, including family members, connected to or in contact with the Accused, and enable the attribution of telephone numbers to these third parties and to the Accused. This information, corroborated by the call sequence tables of the telephone numbers attributed to the Accused, demonstrates that these third party contact numbers were in communication with the Accused. They are relevant on this basis.<sup>6</sup>

3. Annexes A to D of the Prosecution's motion contain vehicle registration records relating to the Accused and an explanation of the relevance and probative value of each proposed exhibit. The proposed exhibits in annex A consist of 17 records which document telephone numbers as being used by Mr Ayyash or third party contact numbers that communicated with the eleven telephone numbers attributed to Mr Ayyash, and some to Mr Merhi and the former Accused, Mr Mustafa Amine Badreddine.

4. Annex B consists of seven records proposed as exhibits, including one record that includes an address registered in the name of someone described as Mr Merhi's wife, and six records which document third party telephone numbers that communicated with the three telephone numbers attributed to Mr Merhi, and one to Mr Sabra.

5. The proposed exhibits in Annex C consist of nine records that document either the telephone numbers attributed to Mr Oneissi, or third party contact numbers which were in contact with a telephone number attributed to Mr Oneissi. Annex D consists of four records which document third party contact telephone numbers which were in contact with three telephone numbers attributed to Mr Sabra.<sup>7</sup>

6. The 31 vehicle registration records are reliable because they were received in response to requests for assistance which were sent to the Lebanese authorities. They were included together with cover letters signed and stamped by either the Minister of the Interior and Municipalities or the Chairman and Director General of the Traffic, Truck and Vehicle Management Authority, and received by the Public Prosecutor of the Court of Cassation of

---

<sup>6</sup> Prosecution motion, paras 1-3, 7.

<sup>7</sup> Prosecution motion, paras 8 (a)-(d) and 9. The Trial Chamber notes that para. 8 (c) should refer to annex D (rather than annex C) of the motion, while para. 8 (d) should refer to annex C (rather than annex D) of the motion.

Lebanon who then addressed them to the Office of the Prosecutor of the Special Tribunal for its consideration and attention.<sup>8</sup>

7. The remaining six records are extracted from the vehicle registration database provided to the Office of the Prosecutor in response to a request for assistance. The information in this database was given to the Traffic Authority by individuals when registering, buying, selling or importing a vehicle. To produce the extracts, as detailed in a statement by Mr Kirwan, an analyst in the Office of the Prosecutor queried a relevant number in the database and then extracted the information for that specific number and entered it into a Microsoft Word document. An analyst then verified that the content was extracted correctly from the original source database.<sup>9</sup>

8. The evidence's probative value is not outweighed by any prejudicial effect. The exhibits have been disclosed and their relevance is known as Mr Andrew Donaldson (Witness PRH230) relies on them in his attribution reports, and the Defence will have the opportunity to cross-examine him.<sup>10</sup>

9. The Prosecution also requests, should the Trial Chamber deem it necessary, the addition of two extracts from a larger exhibit,<sup>11</sup> to its exhibit list. The Prosecution submits that the creation of these exhibits streamlines the proceedings as they allow only the correct and relevant portions of exhibits to be tendered. It is with good cause, does not prejudice the Defence or cause undue delay.<sup>12</sup>

### *Defence*

10. Counsel for Mr Sabra do not oppose the admission of the majority of the exhibits, subject to their usual caveats. In particular, they submit that with respect to two documents, the absence of formal opposition is premised on the Defence having the opportunity to cross-examine the Prosecution's witnesses in order to verify the credibility and reliability of the evidence. Should the Prosecution not call these witnesses (specifically, Witnesses PRH024, PRH079, and PRH392) to testify and the Defence cannot cross-examine them, this would reflect negatively on the reliability of the attribution of the numbers to Mr Sabra. Additionally, they oppose three proposed exhibits concerning numbers that the Prosecution

---

<sup>8</sup> Prosecution motion, paras 11, 13 (a)-(d).

<sup>9</sup> Prosecution motion, paras 14-15.

<sup>10</sup> Prosecution motion, para. 18.

<sup>11</sup> Specifically, R91-805575. This contains vehicle importation documents for an individual, dated 2004.

<sup>12</sup> Prosecution motion, para. 19.

attributes to Mr Sabra, for lack of relevance. According to counsel, the dates of the evidence do not align with the time period in which relevant telephone numbers were allegedly used in the attack of 14 February 2005 and that further information concerning the relevance of a third party contact for the attribution of a phone number to Mr Sabra is required.<sup>13</sup>

11. Counsel for Mr Merhi oppose eight of the Prosecution's proposed exhibits referring to Mr Merhi. They submit that the Prosecution's motion relies on six documents to show the probative value of the exhibits, despite the documents not being admitted to the '*dossier de l'affaire*' (translated as 'case file'). These six documents contain details on the registered subscribers of particular numbers, the familial link between one of these subscribers (alleged to be Mr Merhi's wife) and Mr Merhi, and the number and workplace listed for a medical practitioner. According to the Merhi Defence, material that does not have any status in the proceedings cannot serve as a basis to admit documents into evidence. As a result, the Prosecution fails to establish the probative value and *prima facie* relevance of the exhibits.<sup>14</sup>

12. After inspecting the original Traffic Authority database, counsel for Mr Mehri contend that extracts in item 4 of annex B to the Prosecution's motion (vehicle registration details) contains unreliable or incorrect information which is not alleviated by Mr Kirwan's statement.<sup>15</sup> This casts doubt on how the information was compiled and processed from its source. Counsel for Mr Mehri further argue that item 1 of annex B to the Prosecution's motion does not prove what the Prosecution claims it demonstrates and that since the Prosecution intends to rely on other evidence, it is neither essential, nor relevant.<sup>16</sup>

13. The admission of the records is also prejudicial because the premature admission of the exhibits, when the documents establishing their relevance and probative value are not included in the '*dossier de l'affaire*' ('case file'), forces the Defence to expend unnecessary time and resources. The prejudicial value outweighs their probative value. Furthermore, the registration details in item 4 of annex B are inaccurate and therefore unreliable, so admitting it into evidence is prejudicial. The Defence suggest that the Trial Chamber should require, at the very least, the Prosecution to call a representative witness from the Traffic Authority with personal knowledge of the original database to testify about its creation and content. Mr

---

<sup>13</sup> Sabra response, paras 3-14.

<sup>14</sup> Merhi response, paras 1, 3-5

<sup>15</sup> Item 4 of annex B of the Prosecution's motion relates to the registration of ownership of a vehicle registered to a company with a telephone number that contacted 'Purple 231' allegedly used by Mr Merhi.

<sup>16</sup> Merhi response, paras 6-10. Item 1 of annex B contains documents relating to the vehicle registration of someone described as Mr Merhi's wife.

Kirwan should also testify on the content of his statement so that the Defence can cross-examine him on its inaccuracies. Cross-examining Mr Donaldson will not undo the prejudice because he does not have knowledge of the original database from which item 4, annex B originates nor did he make the mistake in Mr Kirwan's statement. Admitting the eight contested exhibits into evidence would be prejudicial because their veracity has not been established under Rule 149.<sup>17</sup>

14. Counsel for Mr Ayyash do not oppose the admission of the records, but generally dispute the attribution of all telephone numbers to Mr Ayyash and inferences drawn from such attribution.<sup>18</sup>

*Prosecution reply*

15. The Prosecution replied to counsel for Mr Merhi's response. It acknowledges an error in the title of an exhibit in Mr Kirwan's statement, and notes that a further relevant witness statement was disclosed to the Defence. This error does not affect the reliability of the extract tendered for admission. The Prosecution also notes typographical errors in its motion and annexes.<sup>19</sup>

## **DISCUSSION**

16. The Trial Chamber has held that the admission of evidence 'from the bar table' without requiring a witness to produce or to identify it, as per Rule 154, is a well-established practice before international courts and tribunals. As with any other evidentiary material, evidence tendered under Rule 154 must meet the basic requirements for the admission of evidence. It must be relevant and probative, and its probative value must not be outweighed by its prejudicial effect as stipulated by Rule 149 (C) and (D). Definite reliability is not required at this stage—*prima facie* reliability suffices. The weight that the Trial Chamber may ultimately give to a document or record is distinct from its probative value in this sense. The tendering party must also demonstrate, with clarity and specificity, where and how each document or record fits into its case.<sup>20</sup>

---

<sup>17</sup> Merhi response, paras 11-15.

<sup>18</sup> Ayyash response, para. 2.

<sup>19</sup> Prosecution reply, paras 2-3.

<sup>20</sup> See F1308, Decision on Prosecution's Motion to Admit into Evidence Photographs, Videos, Maps, and 3-D Models, 13 January 2014, paras 6, 8; F1350, Decision on Prosecution's Motion to Admit into Evidence Photographs, Questionnaires and Records of Victims, 28 January 2014, para. 7; F1937, Decision on Five Prosecution Motions on Call Sequence Tables and Eight Witness Statements and on the Legality of the Transfer

17. The Prosecution alleges that five interconnected groups of mobile telephones were responsible for, and involved in, the killing of the former Lebanese Prime Minister, Mr Rafik Hariri, and others on 14 February 2005 in Beirut.<sup>21</sup> In the Trial Chamber's view, the 37 vehicle registration records are relevant as the attribution of telephone numbers to specific individuals is a key component of the Prosecution's case and assists the Prosecution in proving this.

18. The Trial Chamber has considered the challenges of the Sabra and Merhi Defence to specific exhibits and the Prosecution's reply. The error concerning item 4, annex B to the Prosecution's motion, regarding the relevant number and acquisition date, has since been addressed by the Prosecution's reply. The Prosecution has not, however, filed corrected versions of its filings, and is ordered to do so.

19. Aside from this, the Defence does not argue that the numbers identified by the Prosecution—as either having been used by the Accused or which belonged to third party contacts which communicated with numbers used by the Accused—do not appear in the records sought for admission. Given this fact, and that the attribution of numbers feature heavily in the Prosecution's case, the Trial Chamber finds the records relevant. There is no need to call witnesses to testify on these matters; the request of counsel for Mr Merhi is therefore denied.

20. The Trial Chamber emphasizes that this is separate and distinct from the weight to be given to the exhibits. Matters concerning the dates of the records and the dates of the alleged use of numbers in the attack of 14 February 2005, the relationship between identified third parties and the Accused, and other anomalies and alleged indicia of irrelevance identified by the Defence may be pertinent to the issue of weight.

21. The Merhi Defence's submissions concerning the proposed exhibit in item 1 of annex B of the Prosecution's motion also relates to its weight and not its admissibility. The relationship between the named individual (someone described as Mr Merhi's wife) and Mr Merhi is not explicitly disputed by the Merhi Defence; it is relevant. How the Trial Chamber

---

of Call Data Records to UNIIC and STL's Prosecution, 6 May 2015, para. 111; F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015 ('Decision of 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.

<sup>21</sup> See generally F2720, Amended consolidated indictment, 12 July 2016, para. 14.

uses this exhibit, and whether it proves what the Prosecutions submits it does, is not to be determined at this stage.

22. The Trial Chamber has previously ruled on the admissibility of official Lebanese records. For example:

Lebanese Ministry of the Interior, as the authority responsible for issuing national identifications cards, driving licenses, passports [...] provides the best evidence of these documents' authenticity (or lack of), and hence the reliability of the contents of their responses to the Prosecutor's requests for assistance.<sup>22</sup>

23. Although this finding related, strictly speaking, to the admission of official communications from the Government of the Lebanese Republic attesting to the reliability of identification documents, its underlying rationale has also been applied to the admission of visa applications obtained from the Lebanese Ministry of the Interior and Municipalities and to letters from the same Ministry attesting to that fact.<sup>23</sup> The Trial Chamber finds that it also applies here as it concerns other official government records—in this case from the Traffic Authority and to letters from that Authority and the Lebanese Ministry of the Interior attesting to that fact. Indeed, that the source for the Prosecution's exhibits is an official Lebanese governmental authority is uncontested. This is sufficient in so far as *prima facie* reliability is concerned. The Trial Chamber is therefore satisfied that the documents are *prima facie* reliable and hence have the necessary probative value for admission into evidence.

24. Concerning the Merhi Defence's challenge to the Prosecution using documents that are not part of the '*dossier de l'affaire*' ('case file') as a basis to admit evidence (here, to show the probative value of the proposed exhibits), the Trial Chamber notes that the concept of a '*dossier de l'affaire*'—in the sense of a case file of evidence presented to a Chamber at the commencement of a case—does not exist at the Special Tribunal. The Rules contain no reference to a 'case file', although it is defined in a Practice Direction in another context.<sup>24</sup> This submission is therefore not relevant to this case.

25. However, to the extent that Defence counsel argue that material supporting the admission of evidence must also be in evidence—or at least moved to be admitted into

---

<sup>22</sup> Decision of 6 March 2015, para. 44.

<sup>23</sup> See F2857, Decision on Prosecution Motion to Admit Passport Applications, 25 November 2016, paras 10-12.

<sup>24</sup> STL/PD/2010/01/Rev.1, Practice Direction on filing of documents before the Special Tribunal for Lebanon, in definitions as 'File containing all documents pertaining to a specific Case which have been filed by the Registry'.



evidence—this should be determined on a case-by-case basis. The Trial Chamber has previously admitted evidence—without requiring supporting material to be admitted into evidence—without complaint from the Defence, including the Merhi Defence.<sup>25</sup> Indeed, only counsel for Mr Merhi make this submission, but at the same time they do not formally seek the reception of these documents into evidence.

26. The Trial Chamber has reviewed the six identified documents<sup>26</sup> and is satisfied that the Prosecution need not move for their admission into evidence. In determining the admission of evidence, the Trial Chamber may examine supporting documents that are neither in evidence nor moved for admission into evidence. Whether it is necessary to admit such documents is to be decided on a case by case basis. There is no fixed rule governing this. Rather, it is sufficient that the court record sufficiently identifies the documents the Trial Chamber has examined in support of the Prosecution motion. Here, the ‘probative value’ column of annexes A and B of the Prosecution’s motion identifies the documents and what they purport to show. These descriptions and references to the documents are thus on the court record. But the documents are not of such significance to justify their admission into evidence. They are properly identified on the court record and may, if necessary, be retrieved. Further, summaries of documents supporting the reliability of the exhibits were provided in annex E to the motion and also form part of the official court record.

27. Finally, examining material supporting the admission of documents into evidence, but without admitting the supporting material into evidence, is conceptually and procedurally no different from this practice in taking other decisions, such as deciding applications relating to provisional release, or amending indictments. It is a standard practice in international criminal law proceedings. Of importance is that the material considered by a Chamber is identified on the court record, not that it is necessarily formally admitted into evidence.

28. Concerning the potential additions to the Prosecution’s exhibit list of two extracts from a larger exhibit, the Trial Chamber has, as noted by the Prosecution, previously rejected the amendment of its exhibit list on the basis that the proposed exhibit is already contained

---

<sup>25</sup> See e.g. F2857, Decision on Prosecution Motion to Admit Passport Applications, 25 November 2016. In this instance, the Prosecution presented various documents supporting the reliability of the proposed exhibits, including a witness statement, without requesting that they be admitted into evidence: see F2499, Corrected Version of Prosecution Rule 154 Motion for the Admission of Passport Applications, para. 13 (referring to documents contained in corrected annex B). Counsel for Mr Merhi did not file any response to this Prosecution motion, despite the evidence’s relevance to Mr Merhi.

<sup>26</sup> See Merhi response, para. 5 (namely, R91-300708 (ERN 60237982); R91-800225; R91-800223; R91-804455; R91-804463; and R91-805172).

within an existing exhibit on the exhibit list.<sup>27</sup> This also applies here. There is no need to add further exhibits to an already lengthy exhibit list. The extracts may be tendered into evidence without amending the exhibit list.

### **CONFIDENTIALITY**

29. The Prosecution requests the Trial Chamber to maintain the confidential status of the annexes to its motion as they contain information regarding the identity and personal details of third party individuals until it decides otherwise either pursuant to a Prosecution motion or after hearing from the Prosecution.<sup>28</sup> The Ayyash, Sabra and Merhi Defence submit that their responses are confidential as they make reference to a confidential Prosecution filing and annexes, to the substance of the testimony of Prosecution witnesses and the attribution of numbers to individuals. The Sabra and Ayyash Defence inform the Trial Chamber that a public redacted version of their respective filings will be forthcoming.<sup>29</sup>

30. The Trial Chamber reiterates that, in these proceedings, confidentiality is the exception, not the rule. The proceedings are public and transparent. As such, filings are to be public whenever possible. For the reasons given by the Prosecution, and since the Defence has not objected, the Trial Chamber grants Prosecution's confidentiality request.

### **DISPOSITION**

**FOR THESE REASONS**, the Trial Chamber:

**ORDERS** the Prosecution to file corrected versions of their submissions and annexes;

**DECLARES** the 37 vehicle registration records listed in annexes A to D of the Prosecution's motion admissible under Rule 154;

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

**ORDERS** that the annexes to the Prosecution's motion remain confidential until the Trial Chamber decides otherwise; and

---

<sup>27</sup> F2729, Decision on Prosecution Motion for the Admission of Civil Records of Salim Jamil Ayyash, 22 September 2016, para. 12: 'it [is] 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.'

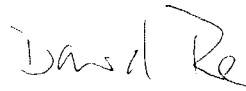
<sup>28</sup> Prosecution motion, para. 20.

<sup>29</sup> Sabra response, para. 15; Ayyash response, para. 3; Merhi response, para. 16.

**ORDERS** the Defence to file public redacted versions of their responses.

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

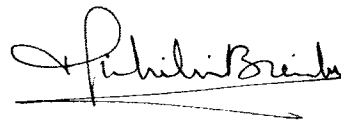
Leidschendam,  
The Netherlands  
9 December 2016



\_\_\_\_\_  
Judge David Re, Presiding



\_\_\_\_\_  
Judge Janet Nosworthy



\_\_\_\_\_  
Judge Micheline Braidy

