

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:** 26 January 2017

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

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

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**DECISION ON PROSECUTION MOTION FOR THE ADMISSION OF  
SEVEN DOCUMENTS RELATING TO THE ATTRIBUTION OF  
TELEPHONE NUMBERS TO THE ACCUSED ASSAD HASSAN SABRA**

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**Office of the Prosecutor:**

Mr Norman Farrell &amp; 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 Mettraud &  
Mr Geoffrey Roberts

## INTRODUCTION

1. The Prosecution alleges that five interconnected mobile telephone groups—colour-coded as ‘red’, ‘green’, ‘blue’ and ‘yellow’, operating in four closed networks, and, additionally one group of ‘purple’ mobiles—were involved in planning, preparing and executing the attack that resulted in Mr Rafik Hariri’s death, and the death of and injury to many others in Beirut on 14 February 2005. The ‘purple phones’, a group of three mobiles, were used to coordinate a false claim of responsibility for the attack, made soon after the explosion. The Prosecution alleges that Mr Assad Hassan Sabra, under the coordination of Mr Hassan Habib Merhi, participated with Mr Hussein Hassan Oneissi in the preparatory acts and the dissemination of the statements falsely ascribing the responsibility for the attack.<sup>1</sup>

2. The attribution of mobiles to the Accused and Mr Mustafa Amine Badreddine,<sup>2</sup> is a key part of the Prosecution’s case.<sup>3</sup> The Prosecution alleges that Mr Sabra is the user of one of the three ‘purple mobile phones’, 3419018 (‘Purple 018’) and two personal mobile phones ending with 546 and or 657.<sup>4</sup>

3. The Prosecution seeks the admission into evidence of seven documents, under Rule 154 of the Special Tribunal’s Rules of Procedure and Evidence, to assist in attributing ‘Purple 018’ and the two personal mobile phones to the Accused, Mr Sabra.<sup>5</sup> Counsel for Mr Sabra take no position to the formal admission of the documents, but make observations on their relevance and reliability, disagree with the attribution of telephone numbers, and

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2720, Amended Consolidated Indictment, 12 July 2016, paras 3 (c), 14-15.

<sup>2</sup> Mr Badreddine is named in the amended consolidated indictment as a co-conspirator; see paras 3 and 48-51.

<sup>3</sup> Amended consolidated indictment, paras 14-47; F2819, Decision on Prosecution Motion to Admit Documents relating to Telephone Subscriber Records from the Touch Company, 7 November 2016, para. 14.

<sup>4</sup> Amended consolidated indictment, paras 18, 19 (d); F1077, Prosecution’s Submission of Updated Pre-Trial Brief pursuant to Rule 91 (G) (i) and the Pre-Trial Judge’s Order of 7 August 2013 and Decision of 16 August 2013, 23 August 2013 (public with confidential annexes A-B), annex A, para. 55; F2125, Public Redacted Version of Prosecution Motion for the Admission of CSTs and SMS CSTs Related to the Accused Assad Hassan Sabra, 7 October 2016, paras 2-3. See also, transcript of 2 November 2016, p. 25;

<sup>5</sup> F2863, Prosecution Rule 154 Motion for the Admission of Seven Documents Relating to the Attribution of Telephone Numbers to the Accused Assad Hassan Sabra, 30 November 2016 (confidential with confidential annexes A-C).

require the cross-examination of three witnesses in this regard.<sup>6</sup> The Prosecution replied regarding these witnesses.<sup>7</sup>

### EVIDENCE

4. The evidence and the Prosecution's submissions are dealt with simultaneously. The Prosecution requests the admission of the following seven documents:

- a) a personal recruitment statement from Mr Sabra to the Lebanese Army in 1996;
- b) three bank records;
- c) a pledge for restoration of a residential unit; and
- d) screenshots of two webpages.

a) *A personal recruitment statement from Mr Sabra*

5. The Prosecution submits that this document is a personal statement that Mr Sabra gave to the Lebanese Army Command, Directorate of Intelligence, when he joined the service on 6 December 1996. It is relevant to the Prosecution's case as it provides a photograph of Mr Sabra and the name of some of his family members including his father, mother and siblings. The document provides an address in Haret-Hreik for the residence of Mr Sabra and some of his close family members. The Prosecution argues that this address is located within the predicted best server coverage for HARA2, the second most frequently used cell sector by 'Purple 018' that the Prosecution attributes to Mr Sabra.

6. Regarding its reliability, the Prosecution explains that it received the document from the Intelligence Directorate of the Lebanese Ministry of National Defence in response to a request for assistance.<sup>8</sup>

b) *Three bank records*

7. The first set of documents relate to opening a joint account for Mr Sabra and his brother at the Credit Libanais Bank in June 2010. The documents contain a telephone number that the

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<sup>6</sup> F2905, Sabra Defence Response to "Prosecution Rule 154 Motion for the Admission of Seven Documents Relating to the Attribution of Telephone Numbers to the Accused Assad Hassan Sabra", 14 December 2016 (confidential).

<sup>7</sup> F2916, Prosecution Reply to the 'Sabra Defence Response to "Prosecution Rule 154 Motion for the Admission of Seven Documents Relating to the Attribution of Telephone Numbers to the Accused Assad Hassan Sabra"', 19 December 2016 (confidential).

<sup>8</sup> Prosecution motion, paras 1 (i), 4 (1); annex A, item 1; annex B, item 1.

Prosecution attributes to Mr Sabra's father. This telephone number appears in the call data records as one of the most frequently contacted number from the three mobile numbers the Prosecution attributes to the Accused, Mr Sabra. The documents also refer to Haret-Hreik as the residential address of the Sabra brothers.

8. The second set of documents record the personal mobile phone number ending with 657. The documents show the names of Mr Sabra's mother and wife, and Mr Sabra's address in Haret-Hreik. The Prosecution submits that the personal mobile phone shares the contacts of and activated cell towers in the same areas as 'Purple 018' and personal mobile phone 546. Therefore, this set of documents is relevant to the attribution of the personal mobile phone to Mr Sabra, which in turn assists the attribution of 'Purple 018' to him.

9. The third bank record is a document related to Mr Sabra's account at the Société Générale de Banque au Liban and assists in the attribution of the personal mobile phone 657 to Mr Sabra. The name of a person is also stamped on the document. Another document the Prosecution seeks to tender into evidence in its motion shows that this person was the manager of the Ghobeiry branch of the Société Générale de Banque au Liban.<sup>9</sup> Furthermore, exhibits P1080, P1081 and P1082 show that this person is a relative of Mr Sabra's wife.

10. The Prosecution received the bank records from the Special Investigation Commission Fighting Money Laundering of the Banque du Liban in response to a request for assistance.<sup>10</sup>

*c) Pledge for restoration of a residential unit*

11. This document is a pledge from Mr Sabra's father that he will use assistance of 2,375,000 LBP from the Higher Relief Commission in Lebanon for the purpose of restoring a residential unit in Haret-Hreik that was damaged in the war in July 2006. A handwritten telephone number appears on the document that the Prosecution attributes to Mr Sabra's father, and therefore it assists in the attribution of 'Purple 018' and the two personal mobile phones to the Accused, Mr Sabra.

12. The Prosecution obtained this document from the General Secretary of the Council of Ministers through a request for assistance.<sup>11</sup>

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<sup>9</sup> Prosecution motion, paras 1 (iv), 4 (5); annex A, item 7.

<sup>10</sup> Prosecution motion, paras 1 (ii), 4 (2); annex A, items 2-4; annex B, item 2.

<sup>11</sup> Prosecution motion, paras 1 (iii), 4 (3); annex A, item 5; annex B, item 3.

d) *Screenshots of two websites*

13. The first screenshot is from the internet site [www.autoshopleb.com](http://www.autoshopleb.com), listing contacts for garages and spare parts dealers in Ghobeiri. It provides the telephone number ending with 592 for 'Makki Auto Parts, Moucharrafieh, Main Road', specialised in BMW and Mercedes. The Prosecution attributes this telephone number to Mr Sabra's relative, who is the owner of 'Makki Auto Parts'. The telephone number is one of the highest ranked contact numbers with the three telephone numbers that the Prosecution attributes to Mr Sabra.

14. A former Prosecution staff member captured the screenshot on 3 July 2012 and entered it into the Prosecution's evidence holding on the same day. Mr Jonathan Elford (Witness PRH694), a Prosecution analyst, verified that the hyperlink existed on 1 May 2015, and the same information was still available on the website.<sup>12</sup>

15. The second screenshot is from [www.sogecapliban.com](http://www.sogecapliban.com) taken in 2012. It shows the name of the Ghobeiry branch manager of Société Générale de Banque au Liban, who is a relative of Mr Sabra's wife, and records two telephone numbers ending with 116 and 117, and a fax number ending with 431 for the branch. Exhibits P1643 and P1647, subscriber notes, show that the fax number and landline telephone 117 were subscribed for the Société Générale Bank Sal in Ghobeiri. Following its installation date on 11 May 1998, the fax number was in contact with the three telephone numbers that the Prosecution attributes to Mr Sabra. Telephone 117 was in contact in the relevant time with 'Purple 018' and personal mobile phone 657. This document therefore assists in the attribution of telephone numbers to Mr Sabra.

16. Regarding the provenance and chain of custody, the Prosecution submits that a former Prosecution staff member captured the screenshot of the website on 3 August 2012 and entered it into the Prosecution's evidence holding on 17 August 2012. Mr Elford made attempts to verify that the screenshot is a copy of the specific website three years later. He could only confirm, however, that the fax number was still available on the bank's webpage.<sup>13</sup>

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<sup>12</sup> Prosecution motion, paras 1 (iv), 4 (4); annex A, item 6; annex B, item 4; Mr Elford's statement, dated 20 May 2015, paras 17-18.

<sup>13</sup> Prosecution motion, paras 1 (iv), 4 (5); annex A, item 7; annex B, item 4; Mr Elford's statement, dated 20 May 2015, paras 19-20.

17. The Prosecution submits that the probative value of these documents is not outweighed by the Accused's right to a fair trial. The Prosecution disclosed the documents to the Defence. Defence counsel are aware of the relevance of these documents because Mr Andrew Donaldson (Witness PRH230) relies upon their content in his Attribution Report,<sup>14</sup> and they will have the opportunity to cross-examine him. Admitting these documents 'from the bar table' is in the interests of justice and serves a fair and expeditious trial.<sup>15</sup> In annex C the Prosecution lists the call sequence tables for the three telephone numbers it attributes to Mr Sabra.<sup>16</sup>

*Counsel for Mr Sabra*

18. Counsel for Mr Sabra do not oppose the admission of the seven documents into evidence but make several observations. Regarding relevance, counsel note that six of the seven documents seek to attribute telephone numbers to Mr Sabra and third party contacts between 2008 and 2012,<sup>17</sup> and that the personal recruitment statement does not provide any telephone number, only the address at which Mr Sabra allegedly resided in 1996-1997. Counsel add that the Trial Chamber should treat with caution the reliability of the material obtained from public sources.

19. Counsel do not accept the attribution of telephone numbers to Mr Sabra, nor that the admission of the seven documents could substitute the testimony of *viva voce* witnesses, who could provide direct evidence on the attribution of telephone numbers and addresses to the Accused. Counsel for Mr Sabra wish to cross-examine Witnesses PRH024, PRH079 and PRH540 regarding the attribution of telephone numbers to Mr Sabra and his family members, in order to effectively challenge the credibility and reliability of the seven exhibits. Should these witnesses not be available for cross-examination, this would serve as ground for reconsideration of any decision rendered on the present motion or for other relief.<sup>18</sup>

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<sup>14</sup> Evidence of Telephone Attribution, Assad Hassan Sabra, 13 November 2015, version 3.

<sup>15</sup> Prosecution motion, para. 6.

<sup>16</sup> Annex C, items 18-20.

<sup>17</sup> These are the three bank records, the pledge for restoration and the screenshots of two websites.

<sup>18</sup> Sabra response, paras 3-11.

*Prosecution reply*

20. The Prosecution replies that in a letter, dated 2 December 2016, it notified the Defence that it does not intend to call Witnesses 079 and 540. Counsel for Mr Sabra is also aware that the attendance of Witness 024 ‘is in the hands of the Trial Chamber’.<sup>19</sup>

**DISCUSSION**

21. The Trial Chamber has held that admitting evidence ‘from the bar table’ under Rule 154 without requiring a witness to produce or identify it, is a well-established practice before international courts and tribunals. However, like with any evidentiary material, the evidence must meet the basic requirements for admission of evidence under Rule 149 (C) and (D). The evidence must be relevant and probative, and its probative value must not be outweighed by its prejudicial effect. At this stage in the proceedings, only *prima facie* reliability and probative value is necessary. Probative value is distinct from the weight the Trial Chamber may ultimately give to the evidence. The tendering party must also demonstrate with clarity and specificity, where and how each piece of evidence fits into its case.<sup>20</sup>

22. The Trial Chamber has carefully reviewed each document, annexes A to C to the Prosecution motion and the submissions of the Parties. The Trial Chamber finds that the documents are relevant because they may assist in attributing telephone numbers to Mr Sabra or identifying users of telephone numbers—Mr Sabra’s father, a relative, a bank where his wife’s relative worked—which were in contact with one or more numbers allegedly attributed to Mr Sabra.<sup>21</sup> Three of the documents, Mr Sabra’s personal recruitment statement and two bank records show that the address of the Sabra family was in Haret-Hreik, which may assist in the analysis of the geographical profile of telephone numbers attributed to Mr Sabra.

23. The Trial Chamber emphasises that this is distinct from the weight to be given to the exhibits. Matters regarding the dates of the documents and the attribution period may be related to the issue of weight.

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<sup>19</sup> Prosecution reply, para. 3.

<sup>20</sup> F2815, Decision on the Admission of Documents Related to Telephone Subscriber and User Information, 4 November 2016, para. 6; F1937, Decision on Five Prosecution Motions on Call Sequence Tables and Eight Witness Statements and on the Legality of the Transfer of Call Data Records to UNIIC and STL’s Prosecution, 6 May 2015, para. 111.

<sup>21</sup> The Trial Chamber has admitted the call sequence tables for the telephone numbers ‘Purple 018’ and for the two personal mobile phones as exhibits P1221, P1271 and P1274 respectively.

24. The Prosecution obtained five sets of documents from different Lebanese authorities: the Ministry of Defence, the Special Investigation Commission Fighting Money Laundering of the Banque du Liban, and the Secretary General of the Council of Ministers, through requests for assistance. This provides sufficient evidence of the authenticity of these documents;<sup>22</sup> their reliability is also uncontested.

25. The Trial Chamber has carefully examined the reliability of the screenshots of the internet sites. In his statement, Mr Elford sufficiently verified the content of the screenshot taken from [www.autoshopleb.com](http://www.autoshopleb.com), which provides this document the necessary indicia of reliability.

26. Mr Elford was unable to relocate the internet site of the Société Générale Bank Sal in Ghobeiri with the same content as it was captured on 3 August 2012; he could confirm the fax number of the bank however. Notwithstanding this, there is no reason to believe and counsel for Mr Sabra do not argue that the content of this screenshot is inaccurate. Relevant pieces of information, such as the fact that a relative of Mr Sabra's wife works at the bank, one of the telephone numbers and the fax number, which are relevant to the attribution of phone numbers to Mr Sabra, are of cumulative nature, favouring the admission of the document. The Prosecution does not argue but the Trial Chamber noted that both bank records related to Mr Sabra's account at the Société Générale de Banque au Liban bears the stamp of the name of his wife's relative.<sup>23</sup> The identification of the Société Générale Bank as the user of landline 117 and fax number ending with 431 is consistent with, and corroborates exhibits P1647 and P1643, which are the subscriber notes for the same numbers. The Trial Chamber considers that 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 have the necessary probative value for their admission into evidence.

27. Before submitting their response, counsel for Mr Sabra had notice that the Prosecution no longer intends to call Witness 079,<sup>24</sup> and that Witness 540 is listed as a Rule 155 witness in the Prosecution's updated witness list.<sup>25</sup> Nevertheless, they chose not to oppose the admission

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<sup>22</sup> See F2857, Decision on Prosecution Motion to Admit Passport Applications, 25 November 2016, paras 10-12; F2899, Decision on the Prosecution Motion for the Admission of Records Received from the Traffic, Truck, and Vehicle Management Authority, 9 December 2016, paras 22-23.

<sup>23</sup> Annex A, items 3-4.

<sup>24</sup> Prosecution reply, para. 3.

<sup>25</sup> F2626, Prosecution Notice of Updated Revised Witness List, 20 June 2016 (public with confidential annex A), annex A, item 112.



of the documents ‘from the bar table’. The Trial Chamber has declared admissible the statement of Witness 024 under Rule 155, and required the Prosecution to make the witness available for cross-examination under Rule 156.<sup>26</sup> The documents subject to this decision were not produced by these witnesses; their relevance, reliability and probative value could be established without the witnesses’ oral testimony, therefore there is no need to call these witnesses to testify to these documents.

### **CONFIDENTIALITY**

28. The Prosecution requests the Trial Chamber to maintain the confidential status of the annexes as they contain confidential information regarding the identity of third party individuals. Counsel for Mr Sabra submit that their response as confidential. Both Parties intend to file a public redacted version of their respective filings. While in these proceedings confidentiality is the exception, not the rule, the Trial Chamber is satisfied that annexes A, B, and C to the Prosecution motion should remain confidential, until it decides otherwise.

### **DISPOSITION**

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

**DECLARES** that the documents listed in annex A are admissible under Rule 154;

**DECIDES** that it will, at a suitable stage in the proceedings, formally admit the documents into evidence, and assign them exhibit numbers;

**ORDERS** the Prosecution and Defence counsel to file public redacted versions of their respective filings; and

**MAINTAINS** the confidentiality of annexes A, B and C of the Prosecution motion until further order.

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<sup>26</sup> F2644, Decision on Prosecution Motion to Admit the Statements of Witnesses PRH024, PRH069, PRH106 and PRH051 pursuant to Rule 155, 12 July 2016.

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

Leidschendam,  
The Netherlands  
26 January 2017

*David Re*

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Judge David Re, Presiding

*Janet Nosworthy*

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

*Micheline Braidy*

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Judge Micheline Braidy

