

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: 15 February 2017

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 FOUR
FURTHER CIVIL DEFENCE RECORDS OF SALIM JAMIL AYYASH**

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 & 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 Geoffrey Robert



INTRODUCTION

1. On 22 September 2016, the Trial Chamber admitted into evidence, under Rule 154 of the Special Tribunal's Rules of Procedure and Evidence, nine documents contained in the personnel file of the Accused, Mr Salim Jamil Ayyash, from his employment with the Lebanese Civil Defence between 1986 and February 2005.¹

2. The Prosecution now seeks to tender, under the same Rule, four additional Civil Defence records pertaining to Mr Ayyash, submitting that, like the previously admitted records, they assist in demonstrating Mr Ayyash's activities, locations and the attribution of certain telephone numbers to him.² Counsel for Mr Ayyash take no position on admitting three of the documents, but request the Trial Chamber to defer the admission into evidence of one of them.³

THE EVIDENCE

3. The Prosecution requests the admission into evidence of the following four documents or sets of documents:

- a) documents related to Mr Ayyash's leave to attend the Hajj pilgrimage in 2004;
- b) a decision dated 19 June 2004, signed by the Lebanese Director General of the Civil Defence, penalizing Mr Ayyash for leaving work early;
- c) a decision dated 18 August 2004, signed by the Director General of the Civil Defence, penalizing Mr Ayyash for repeated absences; and
- d) a mission report relating to the activities of the Civil Defence station in Douair.⁴

4. Each document relates to the employment of Mr Ayyash in the Lebanese Civil Defence. For each one, the specific probative value and indicia of reliability are set out in confidential annex A to the Prosecution motion. The first three documents or sets of documents are contained in Mr Ayyash's personnel file. The documents concerning Mr Ayyash's leave to attend the Hajj pilgrimage, the decision dated 18 August 2004 and the mission report are referenced and relied upon in the attribution report concerning Mr Ayyash authored by

¹ Exhibits P1159 to P1167; STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2729, Decision on Prosecution Motion for the Admission of Civil Defence Records of Salim Jamil Ayyash, 22 September 2016 ('Decision of 22 September 2016'); transcript of 28 September 2016, pp 12-28.

² F2942, Prosecution Motion for the Admission of Further Civil Defence Records of Salim Jamil Ayyash, 17 January 2017 (public with confidential annex A) ('Prosecution motion'), paras 1-2, 6, 13.

³ F2964, Ayyash Defence Response to "Prosecution Motion for the Admission of Further Civil Defence Records of Salim Jamil Ayyash", 31 January 2017 (confidential) ('Ayyash response'), para. 9.

⁴ Prosecution motion, para. 4.

Mr Andrew Donaldson (Witness PRH230). The Prosecution submits that, via this motion, it seeks ‘to supplement the detail’ of the Civil Defence records it already tendered.⁵

5. As to reliability, the Prosecution submits that the documents were received in response to official requests for assistance to the Government of the Lebanese Republic and are records maintained in the ordinary course of business of the Civil Defence Directorate, which is part of the Ministry of Interior of the Lebanese Republic.⁶ In annex A, the Prosecution specifies that the documents related to Mr Ayyash’s leave and the decision of 19 June 2004 were provided through the Prosecutor General at the Court of Cassation by the General Directorate of Civil Defence, while the decision of 18 August 2004 and the mission report were provided through the Prosecutor General at the Court of Cassation by the Civil Defence in Douair and Haret-Hreik.

a) Records related to Mr Ayyash’s leave to attend the Hajj pilgrimage in 2004

6. These records consist of the following four documents: (i) a letter dated 17 January 2004 from the chief of the Nabatiyeh regional station to the Director General of Civil Defence. This document records that, on that day, Mr Ayyash—appointed as a chief of Markaba station—requested an administrative leave for fifteen days as of 25 January 2004 in order to perform the rituals of Hajj in the Kingdom of Saudi Arabia; (ii) a decision dated 19 January 2004, signed by the Director General of the Civil Defence, in which Mr Ayyash was granted a fifteen-day fully paid administrative leave, according to his request. In the same decision, Witness PRH437 was assigned as a substitute for Mr Ayyash during his absence; (iii) a letter dated 30 January 2004, in which the chief of the Nabatiyeh regional station informed the Director General of Civil Defence that Mr Ayyash had travelled to Saudi Arabia on 27 January 2004; and (iv) a letter dated 14 February 2004, in which the chief of the Nabatiyeh regional station informed the Director General of Civil Defence that Mr Ayyash had re-joined his work station on 10 February 2004, after benefiting from the leave to perform the pilgrimage duty.⁷

7. The Prosecution submits that these Civil Defence records demonstrate: Mr Ayyash’s activities and locations in January and February 2004; the administrative steps taken by Mr Ayyash to secure his leave for Hajj; the record keeping of the Civil Defence

⁵ Prosecution motion, paras 3-5, 10.

⁶ Prosecution motion, paras 9-10; annex A, items 1-4.

⁷ Prosecution motion, paras 9 (1)-(3), 11 (a)-(b); annex A, item 1.

administration as to when a staff member formally leaves his work station and returns to it; and the practice to appoint a substitute for a staff member who is on leave.⁸

b) Decision dated 19 June 2004 signed by the Director General of the Civil Defence

8. This document consists of decision number 109/2 C.D., by which the Director General of the Civil Defence imposed a four-day wage deduction penalty as a disciplinary measure on Mr Ayyash—working as chief of the Markaba Civil Defence station—for attending a mandatory training for chiefs of stations in civilian clothes and for leaving one hour into the first session.⁹

9. According to the Prosecution, this document supports its assertion that Mr Ayyash did not always remain at work for the duration of his scheduled working hours and allows the inference that he would have applied the same lax attitude towards his shifts at the Civil Defence station.¹⁰

c) Decision dated 18 August 2004 signed by the Director General of the Civil Defence

10. This document consists of decision number 155/2 C.D., by which the Director General of the Civil Defence imposed on Mr Ayyash—as chief of the Markaba Civil Defence station—a sanction for being ‘absent from work most of the time’. The sanction consisted of a three-day wage deduction.¹¹

11. According to the Prosecution, this document shows that Mr Ayyash was often absent from work and demonstrates, like the previous document, his lack of commitment and lax attitude towards his service for the Civil Defence.¹²

d) Mission report relating to the activities of the Civil Defence station in Douair

12. This document is a ‘dispatch’ bearing a number and a code. The subject of the dispatch is ‘missions completed on 20 November 2004’. It is submitted that it is a mission report from the Douair Civil Defence station. In the line for the sender and the addressee no details have been entered. The signatures at the bottom are illegible. It records that Mr Ayyash completed two missions on 20 November 2004 (from 15:05 to 16:00, and from 17:10 to 18:00), consisting in attending a road accident and transporting injured persons.¹³ The document was

⁸ Prosecution motion, para. 11 (c); annex A, item 1.

⁹ Prosecution motion, para. 11 (d); annex A, item 2.

¹⁰ Prosecution motion, para. 11 (f); annex A, item 2.

¹¹ Prosecution motion, para. 11 (e); annex A item 3.

¹² Prosecution motion, para. 11 (f); annex A, item 3.

¹³ Prosecution motion, para. 11 (h); annex A, item 4.

contained in a response to a request for assistance as part of the records ‘of the 2004-2005 duty period of the Civil Defence staff at El-Doueir Centre’.¹⁴

13. According to the Prosecution, this demonstrates that, on 20 November 2004, Mr Ayyash attended those missions at the Douair Civil Defence station and that the villages where the accidents occurred were covered by that station.¹⁵

14. The Prosecution submits that, as a Civil Defence member, Mr Ayyash was expected to work 48 hours on followed by 96 hours off and that, based on evidence previously admitted, in the evening on 20 November 2004, he was involved in a motor vehicle accident while operating his personal BMW. According to the Prosecution, this incident provides an example of Mr Ayyash absenting himself from his work station despite being expected to be at work. When read together with the two decisions penalizing Mr Ayyash, it shows that he benefitted from a fair amount of flexibility and independence and could therefore undertake other activities at times when scheduled to be at work.¹⁶

15. The Prosecution finally requests, in the event that the Trial Chamber considers it necessary, that the documents be added to its exhibit list. The Prosecution, however, notes that the records proposed for admission are extracts of documents already included in the Prosecution’s exhibit list, which have been duly disclosed to the Defence.¹⁷

Defence submissions

16. Counsel for Mr Ayyash take no position on the admissibility of the records related to Mr Ayyash’s leave for the 2004 Hajj pilgrimage, and the decisions of 19 June and 18 August 2004 of the Director General of the Civil Service. With regard to these documents, however, the Ayyash Defence reiterates its prior submission with respect to previously tendered Civil Defence records, namely that the Prosecution has presented no evidence explaining ‘the ordinary course of business of the Civil Defence’, and the structure and practices of the Civil Defence in Lebanon. This prejudices a contextual assessment of these practices and any meaningful assessment of the appropriate weight to be given to the documents.¹⁸

17. The Ayyash Defence further submits that ‘the Prosecution’s own approach to this part of the case has been selective, inconsistent and contradictory’, as the Prosecution qualifies the

¹⁴ ERN 60169988-60171254; annex A, item 4.

¹⁵ Prosecution motion, para. 11 (h); annex A, item 4.

¹⁶ Prosecution motion, para. 11 (g), (i), (j); annex A, item 4.

¹⁷ Prosecution motion, para. 12.

¹⁸ Ayyash response, paras 3 and 9.

Civil Defence documents as ‘truthful and reliable’ when it suits its case theory, and as ‘not entirely accurate’ when it does not. Counsel for Mr Ayyash submit that this cannot be ignored when assessing the Prosecution’s interpretation of the documents.¹⁹

18. In relation to the mission report, counsel for Mr Ayyash request the deferral of its admission until evidence is presented which allows for understanding this document in context and assessing its reliability, relevance and probative value. Absent this contextual evidence, no weight can be given to this document. They also claim that the inferences the Prosecution requests the Trial Chamber to draw are far-reaching and speculative.²⁰

19. The Defence does not require the extracts of exhibits already on the Prosecution’s exhibit list to be separately added to this list, provided that the record clearly shows the relevant pages of the exhibits and that their translations are duly admitted.²¹

DISCUSSION

20. The Trial Chamber has previously set out the standards for admitting evidence ‘from the bar table’ under Rule 154 without requiring a witness to produce or to identify a document. Those principles apply to this decision.²²

21. The Trial Chamber has carefully examined the documents. It is satisfied that they are all relevant to the Prosecution’s case, notably in relation to Mr Ayyash’s activities, locations and the attribution of telephone numbers, including the mission report relating to the activities of the Civil Defence station in Douair on 20 November 2004. With regard to the attribution of telephone numbers to the Accused, the Trial Chamber has repeatedly stated that it is a key part of the Prosecution’s case, and has found documents which may assist in attributing telephone numbers to the Accused relevant to the Prosecution’s case.²³ The Trial Chamber does not agree with the Ayyash Defence that, in the absence of specified contextual evidence,

¹⁹ Ayyash response, para. 4.

²⁰ Ayyash response, paras 5-6, 9.

²¹ Ayyash response, para. 7.

²² See F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015, para. 33; F1350, Decision on Prosecution’s Motion to Admit into Evidence Photographs, Questionnaires and Records of Victims, 28 January 2014, para. 7; F1308, Decision on Prosecution’s Motion to Admit into Evidence Photographs, Videos, Maps, and 3-D Models, 13 January 2014, paras 4-6.

²³ 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; F2871, Decision on the Prosecution Motion for the Admission of Hajj Applications, 5 December 2016, paras 1, 15; F2955, Decision on Prosecution Motion for the Admission of Seven Documents relating to the Attribution of Telephone Numbers to the Accused Assad Hassan Sabra, 26 January 2017, paras 2, 22.

no assessment can be conducted on the relevance of the document—which has been established.

22. The Trial Chamber has held, with regard to previously tendered Civil Defence records, that their provenance and *prima facie* reliability were established as they were issued and maintained by the Lebanese Civil Defence Directorate and, in turn, provided to the Special Tribunal's Prosecution in response to requests for assistance.²⁴ The same reasoning applies here with regard to the documents which were contained in Mr Ayyash's personnel file. They were either issued, or signed and stamped, by the Director General of the Civil Defence, and or were in turn provided by the Civil Defence General Directorate.

23. The mission report does not originate from the General Directorate, nor has it been signed or stamped by the Director General in any acknowledgement of receipt. The document, however, originates from and was provided by the Civil Defence in Douair. It was apparently maintained in the ordinary course of business of that Civil Defence centre, and the source is uncontested. Nevertheless, the Trial Chamber, in the specific circumstances, as the Defence has requested, will defer a decision on the admissibility of the mission report until explicatory contextual evidence is presented by the Prosecution.

24. While the Trial Chamber defers any further assessment with regard to the mission report, it concludes that the Prosecution has nonetheless demonstrated the *prima facie* reliability and hence the probative value of the other documents in relation to Mr Ayyash's activities, locations, and the attribution of telephone numbers. At a later stage, the Trial Chamber will consider any Defence submissions with regard to the weight to be given to these documents, as well as to any double standard allegedly emerging in the Prosecution's submissions on the accuracy of the Civil Defence records.

25. Finally, and consistently with previous decisions,²⁵ it is not necessary to order the Prosecution to amend its exhibit list, given that the extracts proposed for admission already form part of larger exhibits on that list.²⁶

²⁴ Decision of 22 September 2016, para. 11.

²⁵ Decision of 22 September 2016, para. 12; F2899, Decision on the Prosecution Motion for the Admission of Records Received from the Traffic, Truck, and Vehicle Management Authority, 9 December 2016, para. 28; F2965, Decision on the Prosecution Motion for the Admission of 36 Documentary Exhibits and Four Witness Statements, 31 January 2017, para. 27.

²⁶ R91-801115 and R91-801140.

CONFIDENTIALITY

26. The Trial Chamber reiterates the public nature of the proceedings and orders counsel for Mr Ayyash—who have already expressed their willingness to do so—to file a public redacted version of their response.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

DECIDES that it will defer a decision on the admissibility of the document listed in annex A as item 4;

DECLARES admissible under Rule 154 the documents listed in annex A as items 1, 2 and 3, and decides that it will, at a suitable stage in the proceedings, formally admit them into evidence and allocate exhibit numbers; and

ORDERS counsel for Mr Ayyash to file a public redacted version of their response.

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

Leidschendam,
The Netherlands
15 February 2017

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

