

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: 4 July 2017

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

**DECISION ON PROSECUTION MOTION TO ADMIT 33 DOCUMENTARY
EXHIBITS PURSUANT TO RULE 154 RELATING TO THE ATTRIBUTION OF
TELEPHONE NUMBERS TO THE NAMED CO-CONSPIRATOR,
MUSTAFA AMINE BADREDDINE**

Office of the Prosecutor:Mr Norman Farrell & Mr Alexander Hugh
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 Youssef 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
Ms Sarah Bafadhel

INTRODUCTION

1. The Prosecution's case concerns five interconnected mobile telephone groups—colour-coded as 'red', 'green', 'blue' and 'yellow', operating in four closed networks, and one group of 'purple' mobiles. These phones were involved in planning, preparing and executing the attack that resulted in former Prime Minister of Lebanon, Mr Rafik Hariri's death, and the death and injury of many others in Beirut on 14 February 2005. A key part of the Prosecution's case is the attribution of mobile telephone numbers to the named co-conspirator Mr Mustafa Amine Badreddine.¹

2. The Prosecution, unopposed by the Defence, seeks the admission, under Rule 154 of the Special Tribunal's Rules of Procedure and Evidence, of 33 documents to assist in the attribution of specific mobile telephone numbers to Mr Badreddine. The documents relate to the identification of the users of telephone numbers that were in contact with one or more of the telephone numbers attributed by the Prosecution to Mr Badreddine.²

3. Further, as a prerequisite to their admission, the Prosecution requests the Trial Chamber's leave to add two subscriber notes to its exhibit list filed under Rule 91; these are subscriber records which contain information provided by individual subscribers when applying for a telephone number.³ The Prosecution motion is unopposed by the Defence.

EVIDENCE AND SUBMISSIONS

Request to admit 33 documents under Rule 154

4. The Prosecution requests the admission of 33 documents, listed in annex A to the motion, in the following three categories. Annex B contains supporting information as to their reliability, including witness statements:

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2720, Amended Consolidated Indictment, 12 July 2016, paras 3, 14-51; F2819, Decision on Prosecution Motion to Admit Documents relating to Telephone Subscriber Records from the Touch Company, 7 November 2016 (Decision of 7 November 2016), para. 14; *see also* F0019-AR126.11, Decision on Badreddine Defence Interlocutory Appeal of the "Interim decision on the Death of Mr Mustafa Amine Badreddine and Possible Termination of the Proceedings", 11 July 2016; F2633, Order Terminating Proceedings Against Mustafa Amine Badreddine Without Prejudice and Ordering the Filing of an Amended Consolidated Indictment, 11 July 2016.

² F3119, Prosecution Motion to Admit 33 Documentary Exhibits pursuant to Rule 154 Relating to the Attribution of Telephone Numbers to the named co-conspirator, Mustafa Amine Badreddine, 4 May 2017 (Prosecution motion), para. 1.

³ Prosecution motion, para. 4.

- i) 15 vehicle registration records from Traffic Authority;⁴
- ii) 12 customer records from four Lebanese private companies;⁵ and
- iii) six subscriber records from three Lebanese telecommunications companies Alfa, Touch and OGERO.⁶

5. Each document contains an individual's name and at least one contact telephone number. The Prosecution submits that they are all relevant and probative as they assist in identifying various 'third party contacts'. These are users of telephone numbers that were allegedly in contact with those attributed to Mr Badreddine.⁷ Further, Prosecution analyst, Mr Andrew Donaldson (Witness PRH230), relies on these documents in his attribution report for Mr Badreddine.⁸

i) 15 vehicle registration records from Traffic Authority

6. The first set of documents consists of 15 vehicle registration records comprising vehicle registration documents and extracts from the vehicle registration database of the Traffic, Truck and Vehicle Management Authority of the Ministry of Interior and Municipalities of the Lebanese Republic (Traffic Authority). The Prosecution obtained these records in a response to a request for assistance sent to the Government of the Lebanese Republic.⁹ These records are relevant because they provide names, telephone numbers and personal details of Mr Badreddine's relatives and associates.¹⁰ As to reliability, Prosecution analyst, Mr Lachlan Christie (Witness PRH313), described in his statement the provenance and accuracy of the vehicle registration records.¹¹ The Trial Chamber has previously admitted into evidence, under Rule 154, extracts from the same vehicle registration database together with other vehicle registration documents obtained through the same request for assistance.¹²

⁴ Prosecution motion, annex A, items 1-15.

⁵ Prosecution motion, annex A, items 16-25 and 32-33.

⁶ Prosecution motion, annex A, items 26-31

⁷ Prosecution motion, paras 6-8, 10, 12, 14, 16, 18, 20 and 22; The call sequence tables for each number the Prosecution seeks to attribute to Mr Badreddine are detailed in annex D to the motion.

⁸ Prosecution motion, para 24 and footnote 40, explaining that the second column of confidential annex A refers to the Attribution Report and the specific footnotes where the documents are referred to.

⁹ Prosecution motion, para. 8, referring to annex B, item 1.

¹⁰ Prosecution motion, para. 8.

¹¹ Prosecution motion, para. 9, referring to annex B, item 11.

¹² F2899, Decision on the Prosecution Motion for the Admission of Records Received from the Traffic, Truck, and Vehicle Management Authority, 9 December 2016 (Decision of 9 December 2016). Exhibits P1736-P1772.

ii) 12 customer records from four Lebanese private companies

7. The second set of documents is comprised of seven records extracted from the customer database of a sales company, three from the customer database of a telemarketing company and one from a tow-truck company.¹³ With respect to reliability, Prosecution analysts, Mr Christie, Mr Jonathan Elford (Witness PRH694) and Mr Amrajdeep Virk (Witness PRH693), explained in their statements how they produced the extracts from the customer databases and verified the provenance and accuracy of the 11 documents.¹⁴ The Trial Chamber has, in an earlier decision, admitted into evidence, under Rule 154, similar extracts from the customer databases of these three companies.¹⁵

8. The remaining customer record is a computer print-out form from a company selling home appliances. The company representative (Witness PRH330), who handed the record to the Prosecution, provided a statement in relation to the chain of custody.¹⁶ The Trial Chamber, in a previous decision, admitted into evidence a similar record from the database of the same company and found the statement of the same witness to support the *prima facie* reliability of the document.¹⁷

iii) Six subscriber records from Lebanese telecommunications companies

9. The third set of documents consists of two subscriber records from each of the three Lebanese communication companies: Alfa, Touch and OGERO. The Prosecution obtained the Touch and OGERO records in a response to a request for assistance sent to the Government of the Lebanese Republic.¹⁸

10. In addition, the first subscriber record from Alfa was extracted from an Alfa subscriber database,¹⁹ while the second was collected by Prosecution investigator, Mr

¹³ Prosecution motion, paras 10, 12 and 20.

¹⁴ Prosecution motion, para. 11, referring to witness statement of Mr Jonathan Elford (Witness PRH694), annex B, item 13; Prosecution motion, para. 13, referring to witness statement of Mr Lachlan Christie, (Witness PRH313), annex B, item 12; Prosecution motion, para. 21, referring to witness statement of Mr Amrajdeep Virk, (Witness PRH693), annex B, item 14.

¹⁵ F2965, Decision on the Prosecution Motion for the Admission of 36 Documentary Exhibits and Four Witness Statements, 31 January 2017 (Decision of 31 January 2017). Exhibits P1824, P1826; P1844; P1825; P1828; P1831; P1837; P1846; P1858.

¹⁶ Prosecution motion, para. 22, referring to witness statement of Witness PRH330, annex B, item 10.

¹⁷ Decision of 31 January 2017. Exhibit P1834.

¹⁸ Prosecution motion, para. 16, referring to annex B, items 7 and 8; Prosecution motion, para. 18, referring to annex B, item 6.

¹⁹ Prosecution motion, para. 14, referring to annex B, item 4.

Timothy Reardon (Witness PRH484), as he described in his statement.²⁰ The Trial Chamber held, in a previous decision, that the statement of this witness supported the *prima facie* reliability of a similar record from Alfa's subscriber database.²¹

11. Prosecution analyst, Mr Christie, explained in his statement the provenance and accuracy of the remaining subscriber records received from Alfa, Touch and OGERO.²² The Trial Chamber has previously admitted into evidence, under Rule 154, subscriber records extracted from the subscriber databases of the three telecommunication companies.²³

Request to amend the exhibit list under Rule 91

12. As a precondition to the admission into evidence of two of the documents tendered, the Prosecution seeks leave to amend its exhibit list to add two subscriber records from Alfa and Touch, as listed in annex C to the motion.²⁴ Both documents are extracts from Alfa and Touch subscriber databases and have been disclosed to the Defence. The Prosecution submits that the addition of the extracts to the exhibit list will streamline the proceedings by facilitating the tendering into evidence of only the relevant portions of the documents. The addition of the records to the exhibit list will not cause undue delay and does not prejudice the Defence.²⁵

13. The Prosecution requests the Trial Chamber to maintain the confidential status of the annexes to the motion as they contain confidential information regarding the identity and personal details of third party individuals.²⁶

DISCUSSION

Amendment of the Prosecution's exhibit list under Rule 91

14. As a prerequisite to the admission into evidence of two of the documents tendered, the Prosecution seeks the Trial Chamber's leave to add them to its exhibit list. The documents are

²⁰ Prosecution motion, para. 14, referring to witness statement of Mr Timothy Reardon, (Witness PRH484), annex B, item 5.

²¹ F2584, Decision on Prosecution Rule 154 Motion for the Admission of Documents relating to Telephone Subscriber Records from the Alfa Company, 3 May 2016 (Decision of 3 May 2016).

²² Prosecution motion, paras 15, 17 and 19, referring to witness statement of Mr Lachlan Christie, (Witness PRH313), annex B, item 11.

²³ Decision of 3 May 2016; F2818, Decision on Prosecution Rule 154 Motion for the Admission of Documents relating to Telephone Subscriber Records from the OGERO Company, 7 November 2016; Decision of 7 November 2016. Exhibits P1416 to P1508; P1616; P1617; P1619.

²⁴ Annex A, item 29 and annex C, item 1; annex A, item 30 and annex C, item 2.

²⁵ Prosecution motion, paras 25-26.

²⁶ Prosecution motion, para. 27.

two subscriber records from Alfa and Touch, as listed in annex C to the motion, extracted from Alfa and Touch subscriber databases.²⁷ In support of its request, the Prosecution submits that the admission of the extracts will streamline the proceedings by facilitating the tendering into evidence only the relevant portions of the documents. The Prosecution adds that the amendments will not cause undue delay and does not prejudice the Defence.²⁸ The Defence does not oppose the addition of the documents.

15. The Trial Chamber may, in the interests of justice, allow a party to amend its witness and exhibit lists. In doing so, it must balance the Prosecution's interest in presenting any available evidence against the rights of an accused person to adequate time and facilities to prepare for trial. This balance is reached when the evidence is *prima facie* relevant and probative, and when the following factors may be considered: i) whether the Prosecution has shown good cause for not seeking the amendments at an earlier stage; ii) the stage of the proceedings; and iii) whether granting the amendment would result in undue delay.²⁹

16. As explained below, the Trial Chamber finds that the documents are relevant and have probative value. Adding these documents to the exhibit list will not unduly impact Defence trial preparations nor cause significant delay. They have been already disclosed to the Defence. The Trial Chamber is satisfied that the interests of justice allow the Prosecution to amend its exhibit list.

Admission of the 33 documents into evidence under Rule 154

17. 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 where *prima facie* reliability suffices. Also, the weight that the Trial

²⁷ Annex A, item 29 and annex C, item 1; annex A, item 30 and annex C, item 2.

²⁸ Prosecution motion, paras 25-26.

²⁹ F2544, Decision on Prosecution Motion to Add Inventory and Supporting Documents relating to the Searches of the Residence of Ahmed Abu Adass, 11 April 2016, para. 4; F2270, Decision Authorising the Prosecution to Amend its Exhibit List, 15 October 2015, para. 4; F2263, Corrected Version of 'Decision on Prosecution Request to Amend its Witness and Exhibit Lists' dated 13 October 2015, 19 October 2015, para. 28; F2149, Decision on Prosecution Motion to Admit 62 Photographs, 28 August 2015, para. 3; F1901, Decision on Prosecution Motion to Amend its Exhibit List and Oneissi Defence Request to Stay the Proceedings, 13 April 2015, para. 34.

Chamber may ultimately give to a document or record is distinct from its probative value at this early stage of the proceedings. The tendering party must also demonstrate, with clarity and specificity, where and how each document or record fits into its case.³⁰

18. 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.³¹ The Trial Chamber has carefully examined the 33 documents and is of the view that they are reliable and relevant to the attribution of telephone numbers to Mr Badreddine, which is a key component of the Prosecution's case and assists the Prosecution in proving this. It has also examined the supporting material—in annex B—and is satisfied that it proves the *prima facie* reliability of the 33 documents and that it is not necessary to receive the supporting documents into evidence.³²

i) 15 vehicle registration records from Traffic Authority

19. The Trial Chamber has previously ruled on the admissibility of official Lebanese records, including the Traffic Authority. It held that the issuance of official records by the official Lebanese government authorities provides the best evidence of their authenticity and hence reliability.³³ The Trial Chamber applied this underlying rationale to the admission of the official records obtained, as in the present case, from the Traffic Authority.³⁴ In addition, Prosecution analyst, Mr Christie, described in his statement the provenance and accuracy of the documents.³⁵ This is sufficient for *prima facie* reliability. The Trial Chamber is therefore satisfied that the documents are relevant, *prima facie* reliable and hence have the necessary probative value for their admission into evidence.

³⁰ 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 of Call Data Records to UNIIIC 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.

³¹ See generally F2720, Amended Consolidated Indictment, 12 July 2016, para. 14.

³² Witness statements, investigator notes from the United Nations International Independent Investigation Commission, responses to requests for assistance to the Government of the Lebanese Republic, including court documents from the State of Qatar.

³³ Decision of 6 March 2015, para. 44; F2857, Decision on Prosecution Motion to Admit Passport Applications, 25 November 2016, paras 10-12.

³⁴ Decision of 9 December 2016, paras 22-23.

³⁵ Prosecution motion, para. 9, referring to annex B, item 11.

ii) 12 customer records from four Lebanese private companies

20. Seven records were extracted from the customer database of a sales company; three from the customer database of a telemarketing company; and one from a tow-truck company. The remaining customer record is a computer print-out form from a company selling home appliances.³⁶

21. The Trial Chamber has already admitted into evidence similar extracts from the customer databases of each of the four private companies.³⁷ The documents proposed in this motion are no different. The Prosecution received them from—or extracted them from documents provided by—private companies in response to requests for assistance. The documents, or the sources from which most of them have been extracted, are business or documentary records retained by private companies in the normal course of their business. Further, having examined the supporting documents—witness statements of Mr Christie, Mr Elford and Mr Virk in relation to the creation of 11 of the documents and the statement of Witness 330 in relation to the chain of custody of the twelfth document—the Trial Chamber is satisfied that they demonstrate the required *prima facie* reliability and probative value of the 12 customer records.

iii) Six subscriber records from Lebanese telecommunications companies

22. The last set of documents consists of six subscriber records from Alfa, Touch and OGERO, namely two records from each.³⁸ With the exception of one record obtained by a Prosecution investigator directly from Alfa, the records constitute extracts originating from the same Alfa, Touch and OGERO databases from which similar records have already been extracted and admitted into evidence.³⁹ The six subscriber records constitute business records produced in the ordinary course of business and possess all the indicia of being company documents, and their accuracy has been individually verified. They are *prima facie* reliable on this basis. Finally, the Prosecution sufficiently explained how the proposed records have been extracted from databases or collected directly from the telecommunication companies.

³⁶ Prosecution motion, paras 10, 12 and 20.

³⁷ Decision of 31 January 2017, paras 21 and 26. Exhibits P1824, P1826; P1844; P1825; P1828; P1831; P1837; P1846; P1858.

³⁸ Prosecution motion, paras 14-19.

³⁹ With respect to subscriber records from Touch, *see* Decision of 7 November 2016; with respect to subscriber records from Alfa, *see* Decision of 3 May 2016; with respect to subscriber records from OGERO, *see* F2818, Decision on Prosecution Rule 154 Motion for the Admission of Documents Relating to Telephone Subscriber Records from the OGERO Company, 7 November 2016.

Conclusion

23. In conclusion, the Prosecution, unopposed by the Defence, has demonstrated the *prima facie* reliability of all the documents proposed for admission. They also have probative value, as they assist in identifying various ‘third party contacts’ of telephone numbers attributed to Mr Badreddine. Furthermore, the Prosecution has satisfactorily demonstrated how the evidence fits into its case, as these are individual pieces of evidence to be considered in the totality of the evidence on telephone attribution. More specifically, Prosecution analyst, Mr Andrew Donaldson, relies on all 33 documents in his attribution report for Mr Badreddine.

CONFIDENTIALITY

24. The Prosecution stated that it will file a public redaction version of its confidential motion and requested the Trial Chamber to maintain the confidential status of the annexes as they contain confidential information regarding the identity and personal details of third party individuals.⁴⁰ However, the Trial Chamber finds, in the circumstances, that in order to facilitate the public nature of these proceedings, the Prosecution must file public redacted versions of the motion and the annexes.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

GRANTS the Prosecution leave to amend its exhibit list by adding the exhibits listed in annex C to the motion;

DECLARES admissible, under Rule 154, the 33 documents listed in annex A to the motion;

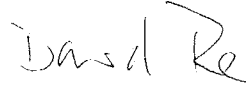
DECIDES that it will, at the suitable stage in the proceedings, formally admit the documents into evidence and assign them exhibit numbers; and

ORDERS the Prosecution to file public redacted versions of its motion and annexes.

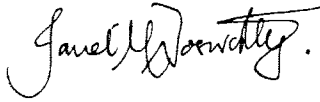
⁴⁰ Prosecution motion, para. 27.

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

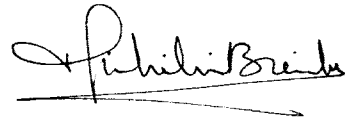
Leidschendam,
The Netherlands
4 July 2017



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

