

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: 17 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 SEVEN DOCUMENTARY EXHIBITS PURSUANT TO RULE 154 RELATING TO THE ATTRIBUTION OF TELEPHONE NUMBERS TO THE ACCUSED SALIM JAMIL AYYASH, HASSAN HABIB MERHI AND ASSAD HASSAN SABRA

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 Robertson & 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 mobiles 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 four Accused and the named co-conspirator Mr Mustafa Amine Badreddine.¹

2. The Prosecution alleges that Mr Sabra is the user of one of the three 'purple mobile phones', 3419018 ('Purple 018'), two 'personal mobile phones' (or PMP) ending in 546 and 657, and that a mobile number ending in 214 was used by Mr Sabra's family member.² The Prosecution also pleads that PMP 165 is attributable to Mr Ayyash during periods relevant to the attack of 14 February 2005.³

3. The Prosecution seeks the admission, under Rule 154 of the Special Tribunal's Rules of Procedure and Evidence, of seven documents to assist in the attribution of specific mobile telephone numbers to the Accused, Mr Salim Jamil Ayyash, Mr Hassan Habib Merhi, and Mr Assad Hassan Sabra and their 'third party contacts'.⁴ Some of the proposed documents relate to the identification of the users of telephone numbers that were in contact with one or more of the numbers attributed by the Prosecution to the three Accused.⁵ Counsel for Mr

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 F2720, Amended Consolidated Indictment, 12 July 2016, paras 18, 19 (d); F1077, Redacted Version of the Prosecution's Updated Pre-Trial Brief, dated 23 August 2013 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; F3206, Prosecution Motion to Admit Seven Documentary Exhibits pursuant to Rule 154 relating to the Attribution of Telephone Numbers to the Accused Salim Jamil Ayyash, Hassan Habib Merhi and Assad Hassan Sabra, 30 June 2017 (confidential with confidential annexes A and B) ('Prosecution motion'), para. 13.

³ F2720, Amended Consolidated Indictment, 12 July 2016, paras 17-19.

⁴ A 'third party contact', according to the Prosecution, is an alleged user of a number that was in contact with one or more numbers which the Prosecution attributes to an Accused.

⁵ Prosecution motion, paras 1-2.

Ayyash and Mr Sabra responded to the motion and the Prosecution replied to the Sabra Defence's response.⁶

EVIDENCE AND SUBMISSIONS

Request to admit seven documents under Rule 154

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

- i) two Lebanese passport applications;
- ii) a customer record from a Lebanese company;
- iii) a Touch subscriber note;
- iv) a letter from the Lebanese American University;
- v) official Lebanese entry and exit records; and
- vi) Audi Bank records.⁷

5. The Prosecution submits that the admission of these documents is in the interest of justice as they are relevant to the attribution of mobile numbers to Mr Ayyash, Mr Merhi, and Mr Sabra and their third party contacts. The documents have already been disclosed to the Defence and were previously used in the attribution reports of Prosecution analyst Mr Andrew Donaldson (Witness PRH230). The admission of these documents does not prejudice the Defence's right to a fair trial because the Defence may cross-examine Mr Donaldson.⁸

(i) Two Lebanese passport applications

6. The first set of documents includes two passport applications of Mr Sabra and of a member of Mr Merhi's family. Mr Sabra's passport application lists his address, which taken in conjunction with other communications evidence, demonstrates that his address in Haret Hreik, South Beirut, lies within the predicted best coverage of cell sectors HARA2 and Haret_Hreik_B. The cell sector HARA 2 is the third ranked cell sector for number 'Purple

⁶ F3217, Sabra Defence Response to "Prosecution Motion to Admit Seven Documentary Exhibits Pursuant to Rule 154 Relating to the Attribution of Telephone Numbers to the Accused Salim Jamil Ayyash, Hassan Habib Merhi and Assad Hassan Sabra, 7 July 2017 ('Sabra response'); F3219, Ayyash Defence Response to the Prosecution Motion to Admit Seven Documentary Exhibits Pursuant to Rule 154, 7 July 2017 ('Ayyash response'); F3224, Prosecution Reply to Sabra Defence Response to Prosecution Motion to Admit Seven Documentary Exhibits, 12 July 2017 ('Prosecution reply').

⁷ Prosecution motion, paras 1-2.

⁸ Prosecution motion, paras 1-2, 4.

018'. Cell sector Haret_Hreik_B is the first ranked cell sector for PMP ending in 546 and the second ranked cell sector for PMP ending in 657. In addition, the landline number listed in the passport application is subscribed to a member of Mr Sabra's family and is the nineteenth ranked contact for 'Purple 018'; the twelfth ranked contact of PMP ending in 546; and the twentieth ranked contact of the mobile number ending in 657. This evidence assists in attributing 'Purple 018' and mobile number ending in 546 to Mr Sabra and the mobile telephone number ending in 657 to Mr Sabra and a member of his family.⁹

7. On the second proposed passport application, a close family member of Mr Merhi's member provided her mobile number. She used this mobile number to contact 'Purple 231' and it was the seventh contact of the mobile number ending in 091. This supports the attribution of 'Purple 231' to Mr Merhi and of the mobile number ending in 091 to his family.¹⁰

8. Both passport applications are reliable because they were received by the Prosecution from the Lebanese Directorate of General Security located within the Ministry of the Interior in response to a request for assistance sent by the Prosecution to the Government of the Lebanese Republic. The Trial Chamber, in its decision of 25 November 2016, has already admitted into evidence similar passport applications.¹¹

(ii) One customer record from a Lebanese company

9. The customer record for the mobile number ending in 592 is an extract from the customer database of a Lebanese sales company. The Prosecution attributes, in combination with other evidence, this mobile number to a relative of Mr Sabra. This telephone number was the fourth ranked contact for 'Purple 018' during the attribution period. This supports the attribution of 'Purple 018' to Mr Sabra. In its previous decisions, the Trial Chamber has already admitted into evidence extracts from the customer database of the same company.¹²

⁹ Prosecution motion, paras 5-7.

¹⁰ Prosecution motion, paras 8-9.

¹¹ Prosecution motion, para. 10; annex A, items 1, 4; *see also*, F2857, Decision on Prosecution Motion to Admit Passport Applications, 25 November 2016; Exhibits P1559 to P1570.

¹² F3209, 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, 4 July 2017, paras 20-21; F2965, Decision on the Prosecution Motion for the Admission of 36 Documentary Exhibits and Four Witness Statements, 31 January 2017. These are exhibits P673; P682; P1825; P1828; P1830; P1831; P1836; P1839; P1840; P1841; P1842; P1843; P1848; P1850; P1851; P1853 and P1856.

Finally, the statement of Witness PRH464 explains the provenance of the customer database.¹³

(iii) One Touch subscriber record

10. The Touch subscriber note for the mobile number ending in 214 is an extract from its subscriber database.¹⁴ According to the Prosecution, while this number is recorded as an anonymous prepaid subscription, the SMS messages between mobile numbers ending in 657 and 214 suggest that the number ending in 214 was actually used by a family member of Mr Sabra. Number 214 is the seventh ranked contact of the number ending in 657 which assists in attributing the number ending in 657 to Mr Sabra and a close relative. As for reliability, this extract from the subscriber database was provided to the Prosecution in response to a request for assistance sent to the Government of the Lebanese Republic. Moreover, Prosecution analyst, Mr Amrajdeep Virk (Witness PRH693), explained in his statement how he verified the provenance and accuracy of the document.¹⁵ Further, the Trial Chamber has already admitted into evidence extracts from Touch's subscriber database.¹⁶

(iv) Letter from the Lebanese American University

11. A letter from the Lebanese American University records that Mr Ayyash and two of his close family members were registered at a medical clinic between 2004 and 2006. The letter also provides the clinic's telephone number which had four contacts with PMP 165. This supports the attribution of PMP 165 to Mr Ayyash. The Prosecution received this document from the Lebanese American University Medical Center in response to a request for assistance sent to the Government of the Lebanese Republic. It is attached to a cover letter signed and confirmed by the President of the Lebanese American University. The Trial

¹³ Prosecution motion, pars 11-12; annex A, item 2.

¹⁴ MTC Touch is a Lebanese telecommunications provider.

¹⁵ Prosecution motion, para. 12, referring to witness statement of Mr Amrajdeep Virk, (Witness PRH693), annex A, item 3.

¹⁶ Prosecution motion, paras 13-14; annex A, item 3; *see also*, F2819, Decision on Prosecution Motion to Admit Documents relating to Telephone Subscriber Records from the Touch Company, 7 November 2016. The documents are exhibits P1382 to P1388; P1416 to P1418; P1422 to P1428; P1436; P1437; P1439; P1442; P1444; P1447; P1448; P1450 to P1453; P1457 to P1459; P1463; P1466 to P1468; P1470; P1472; P1474; P1476; P1477; P1479; P1480; P1485; P1486; P1493 to P1496; P1499; P1502; and P2008.

Chamber has also found similar evidence from the same source to be reliable in its decision of 12 July 2016.¹⁷

(v) Official Lebanese entry and exit records

12. The entry and exit records from 2004 in relation to Mr Ayyash show that he left Lebanon and travelled to Saudi Arabia using a Hajj travel document on 28 January 2004. The document also shows that he returned from Saudi Arabia to Lebanon on 8 February 2004, using a Hajj travel document. The records are relevant because they corroborate the Lebanese Civil Defence records relating to Mr Ayyash's employment from 2004 which the Trial Chamber has already admitted into evidence.¹⁸ As to reliability, the Prosecution obtained these records from the Ministry of Interior and Municipalities in response to a request for assistance sent by the Prosecution to the Government of the Lebanese Republic. Furthermore, the Trial Chamber has found similar evidence from the same source to be reliable in its decision of 12 July 2016.¹⁹

(vi) Audi Bank records

13. The bank records for Mr Ayyash's landline ending in 696, dated 14 April 2003, are relevant in showing that on that date Mr Ayyash was responsible for paying the bills associated with this landline. 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. In its decision of 12 July 2016, the Trial Chamber admitted similar documents into evidence.²⁰

Confidentiality

14. The Prosecution requests that its motion and the accompanying annexes remain confidential until the Trial Chamber decides otherwise as they contain confidential information regarding the identity and personal details of third party individuals. The

¹⁷ Prosecution motion, paras 15-16; annex A, item 5; *see also*, F2639, Decision on Admission under Rule 154 of Entry-Exit, Banking and Medical Documents relating to Salim Jamil Ayyash, 12 July 2016 ('Decision of 12 July 2016'). This is exhibit P1030.

¹⁸ *See* exhibit P1890.

¹⁹ Prosecution motion, paras 17-18; annex A, item 6; *see also*, Decision of 12 July 2016. Exhibits P1023 to P1025

²⁰ Prosecution motion, paras 19-20; annex A, item 7; *see also*, Decision of 12 July 2016. Exhibits P1027 to P1029.

Prosecution will file a public redacted version of this motion in due course.²¹ The Prosecution reply to the Sabra Defence response was also filed confidentially.

Defence response and Prosecution reply

15. The Ayyash Defence takes no position in response to the *prima facie* relevance and probative value of the proposed documents and disputes the attribution of any and all numbers to Mr Ayyash.²² The Sabra Defence does not formally oppose the admission of the proposed documents, but advances the following arguments.²³ First, the passport application on which the Prosecution seeks to rely to demonstrate that the address listed in the application lies within the best predicted coverage for the third ranked cell sector for ‘Purple 018’ and mobile numbers ending in 546 and 657 is dated 22 February 2007 which is outside of the period which the Prosecution alleges that these numbers were attributed to Mr Sabra.²⁴ Second, the customer record from the company which may assist in attributing ‘Purple 018’ to Mr Sabra is undated and the Prosecution does not explain how this record demonstrates that the person to which it attributed the number ending in 592 was its user during the period in which the Prosecution attributes ‘Purple 018’ to Mr Sabra. Third, the Touch subscriber note is irrelevant to attribution of the mobile number ending in 214 to any user because the note is anonymous and does not show that the person to whom the Prosecution attributed this number was its user.²⁵

16. In its reply, the Prosecution submitted that the Sabra Defence arguments in relation to the three proposed documents relate to the use and weight that the Trial Chamber may later give these documents rather than their admissibility under Rule 154.²⁶ In particular, the inconsistency between the dates on (i) Mr Sabra’s passport application, and (ii) the customer record from a company and the attribution periods for numbers attributed to Mr Sabra is pertinent to the issue of the weight to be given to the evidence.²⁷ With respect to the anonymous Touch subscriber note, the Trial Chamber has already admitted into evidence similar extracts from the customer databases of this company.²⁸

²¹ Prosecution motion, para. 21.

²² Ayyash response, para. 2.

²³ Sabra response, paras 3-6.

²⁴ Sabra response, para. 7.

²⁵ Sabra response, paras 8-9.

²⁶ Prosecution reply, paras 2-3.

²⁷ Prosecution reply, para. 5.

²⁸ Prosecution reply, para. 5, referring to Decision of 7 November 2016. *See also* Exhibits P1495; P1496; and P1499.

DISCUSSION

Admission of the seven 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 Chamber may ultimately give to a document or record is distinct from its probative value at this 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.²⁹

18. The Prosecution alleges that five interconnected groups of mobiles 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.³⁰ The Trial Chamber has carefully examined the seven documents and is of the view that they are *prima facie* reliable and relevant to the attribution of telephone numbers to Mr Ayyash, Mr Merhi and Mr Sabra; this 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 seven documents and that it is not necessary to receive the supporting documents into evidence.³¹

(i) Two Lebanese passport applications

19. Mr Sabra’s passport application lists his address, which taken in conjunction with other communications evidence, demonstrates that his address is in Haret Hreik, South Beirut. It also assists in attributing ‘Purple 018’ and mobile number ending in 546 to Mr Sabra and

²⁹ 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 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.

³⁰ See generally F2720, Amended Consolidated Indictment, 12 July 2016, para. 14.

³¹ Annex B to the Prosecution motion contains witness statements, MTC subscriber notes, Lebanese official passport applications, medical records, official entry and exit records and bank records.

the mobile number ending in 657 to Mr Sabra and a member of his family.³² The second passport application is relevant as it may assist in attributing ‘Purple 231’ to Mr Merhi and in the attribution of the telephone number ending in 091 to Mr Merhi’s family.³³ The Trial Chamber has already admitted into evidence similar passport applications.³⁴

20. The Sabra Defence argued, in relation to the relevance of Mr Sabra’s passport applications, that their dates either fall outside of the purported attributable period of the relevant numbers attributed to Mr Sabra. The Trial Chamber already held that the alignment between dates of documents relevant to identifying the users of a number and the attributable period of a number to an Accused may be pertinent to the issue of the weight to be given to the evidence, but not to their relevance or *prima facie* probative value, which is established.³⁵

21. As to the reliability of these documents, the Trial Chamber has previously held that the ‘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’.³⁶

(ii) One customer record from a Lebanese company

22. The record which is relevant to the attribution of ‘Purple 018’ to Mr Sabra was extracted from the customer database of a Lebanese sales company.³⁷ The Trial Chamber has already admitted into evidence similar extracts from the customer databases of this company.³⁸ The document proposed in this motion is no different. The Prosecution received the company’s customer database—from which it extracted the proposed document—in response to requests for assistance. The document, or the source from which the document has been extracted, is a business or documentary record retained by the company in the normal course of its business. Also, with regard to the Sabra Defence argument that the proposed customer record is undated, the Trial Chamber will apply the same underlying rationale to admitting this document into evidence as with that for Mr Sabra’s passport application.

³² Prosecution motion, paras 5-7; annex A, item 1.

³³ Prosecution motion, paras 9-10; annex A, item 4.

³⁴ See F2857, Decision on Prosecution Motion to Admit Passport Applications, 25 November 2016 (‘Decision of 25 November 2016’); Exhibits P1559 to P1570.

³⁵ Decision of 31 January 2017, para. 19.

³⁶ Decision of 6 March 2015, para. 44. See also Decision of 25 November 2016, para. 10.

³⁷ Prosecution motion, paras 11-12.

³⁸ Decision of 31 January 2017, paras 21 and 26. Exhibits P673; P682; P1825; P1828; P1830; P1831; P1836; P1839; P1840; P1841; P1842; P1843; P1848; P1850; P1851; P1853 and P1856.

Having examined the supporting document—the statement of Witness 464 in relation to the provenance of the customer database—the Trial Chamber is satisfied that it demonstrates the required *prima facie* reliability and probative value of the customer record.

(iii) One Touch subscriber note

23. The Touch subscriber note for the mobile number ending in 214 is an extract from Touch’s subscriber database, from which similar records have already been extracted and admitted into evidence.³⁹ The Trial Chamber is satisfied that this document may assist in attributing the mobile number ending in 657 to Mr Sabra and to one of his close relatives. The subscriber note constitutes a business record produced in the ordinary course of business and possesses all the indicia of being a company document, and its accuracy has been verified. It is *prima facie* reliable on this basis. Further, the Prosecution sufficiently explained how the proposed record has been verified against the Touch’s database.

24. As to the Sabra Defence argument that the proposed Touch subscriber note is irrelevant to the attribution of any telephone number to Mr Sabra because the note is anonymous, the Trial Chamber, in its decision of 7 November 2016, admitted three Touch ‘anonymous’ subscriber notes allegedly related to mobile numbers the Prosecution attributes to Mr Sabra.⁴⁰ At the appropriate time, the Trial Chamber will carefully scrutinise this evidence in the context of the totality of the evidence received from both the Prosecution and, if relevant, the Defence.⁴¹

(iv) Letter from the Lebanese American University

25. The letter from the Lebanese American University shows the telephone number of a medical clinic where Mr Ayyash and his family members were registered and which had four contacts with PMP 165. The Trial Chamber is satisfied that the letter is relevant because it may assist in attributing PMP 165 to Mr Ayyash, as pleaded in the amended consolidated indictment. The Trial Chamber has already admitted into evidence similar medical records from the same source.⁴² The provenance and reliability of the records is unchallenged by the

³⁹ See, e.g., Decision of 7 November 2016. Exhibits P1382 to P1388; P1416 to P1418; P1422 to P1428; P1436; P1437; P1439; P1442; P1444; P1447; P1448; P1450 to P1453; P1457 to P1459; P1463; P1466 to P1468; P1470; P1472; P1474; P1476; P1477; P1479; P1480; P1485; P1486; P1493 to P1496; P1499; P1502; and P2008.

⁴⁰ Sabra response, para. 9. Decision of 7 November 2016. Exhibits P1495, P1496, P1499.

⁴¹ Decision of 10 December 2014, para. 10.

⁴² Prosecution motion, paras 15-16; annex A, item 5; see also, F2639, Decision on Admission under Rule 154 of Entry-Exit, Banking and Medical Documents relating to Salim Jamil Ayyash, 12 July 2016 (‘Decision of 12 July 2016’). Exhibit P1030.

Defence. In addition, the letter was signed and confirmed by the President of the Lebanese American University.

(v) Official Lebanese entry and exit records

26. The entry and exit records showing Mr Ayyash's movements in and out of Lebanon in 2004 corroborate the documents from Mr Ayyash's personnel file of his employment at the Lebanese Civil Defence, which the Trial Chamber has already admitted into evidence.⁴³ As they are intrinsically linked to other evidence, the documents are probative and relevant. The Trial Chamber has previously ruled on the admissibility of official Lebanese records, including those from the Ministry of Interior and Municipalities. It held that the issuance of official records by the Lebanese Government authorities provides the best evidence of their authenticity and hence reliability.⁴⁴ The Trial Chamber applied this underlying rationale to the admission of the official records obtained, as in the present case, from the Ministry of Interior and Municipalities.⁴⁵ In addition, the response to the Prosecution's request for assistance was signed and confirmed by the Minister of Interior and Municipalities. 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.

(vi) Audi Bank records

27. The Trial Chamber is satisfied that the proposed bank records are relevant because they may assist in proving that Mr Ayyash was responsible for the payment of bills for the landline ending in 696. The Trial Chamber has already admitted into evidence similar extracts from the Audi Bank records.⁴⁶ The Prosecution obtained these documents from the Special Investigation Commission Fighting Money Laundering of the Banque du Liban, in response to a request for assistance. This is sufficient for *prima facie* reliability. Whether the bank records can be used in the manner suggested by the Prosecution is for the Trial Chamber's later evaluation. They may be admitted into evidence under Rule 154.⁴⁷

⁴³ Decision of 12 July 2016. Exhibits P1023 to P1025. *See also* Exhibit P1890.

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

⁴⁵ Prosecution motion, para. 18; annex A, item 6; *see also*, Decision of 12 July 2016.

⁴⁶ Prosecution motion, paras 19-20 and footnote 35; *see also*, Decision of 12 July 2016, para. 4. Exhibits P1027 to P1029.

⁴⁷ The Trial Chamber is admitting into evidence two records bearing fax date 10 August 2010 and ERNs 60178340 and 60178341.

Conclusion

28. In conclusion, the Prosecution 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 Ayyash, Mr Merhi and Mr Sabra. 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 Donaldson relies on the seven documents in his attribution reports for Mr Ayyash, Mr Merhi and Mr Sabra.

CONFIDENTIALITY

29. 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.⁴⁸ The Sabra Defence response and the Prosecution reply were also filed confidentially. However, the Trial Chamber finds, in the circumstances, that in order to facilitate the public nature of these proceedings, the Prosecution and the Sabra Defence must file public redacted versions of their filings and annexes. The Ayyash Defence submitted its response confidentially on account of the confidentiality of the Prosecution’s motion, but states that its response could be reclassified on the Trial Chamber’s request.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

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

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

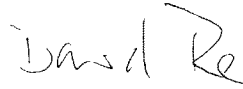
ORDERS the Prosecution and the Sabra Defence to file public redacted versions of their filings and annexes; and

⁴⁸ Prosecution motion, para. 27.

ORDERS the Registry to reclassify the Ayyash Defence's response from confidential to public.

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

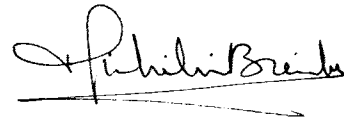
Leidschendam,
The Netherlands
17 July 2017



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

