

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 October 2017

Original language: English

Classification: Public

THE PROSECUTOR
v.
SALIM JAMIL AYYASH
HASSAN HABIB MERHI
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA

**ORDER TO THE PROSECUTION TO PROVIDE PUBLIC REDACTED VERSIONS
OF THE INITIAL AND UPDATED SUMMARY STATEMENTS OF EVIDENCE IN
RELATION TO PARAGRAPH 49 OF THE AMENDED CONSOLIDATED
INDICTMENT**

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:

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Counsel for Mr Hassan Habib Merhi:

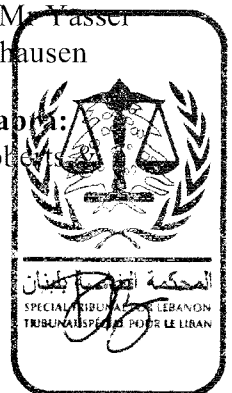
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Mr David Young, Mr Geoffrey Rolfe
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INTRODUCTION AND BACKGROUND

1. The Prosecution pleads in paragraph 49 of the amended consolidated indictment that the four Accused, Mr Salim Jamil Ayyash, Mr Hassan Habib Merhi, Mr Hussein Hassan Oneissi, and Mr Assad Hassan Sabra—as was the former Accused and named co-conspirator, Mr Mustafa Amine Badreddine¹—are ‘supporters of Hezbollah, which is a political and military organisation in Lebanon’. This mirrors the pleading in paragraph 59 of the 10 June 2011 indictment concerning the then four Accused, Mr Badreddine, Mr Ayyash, Mr Oneissi and Mr Sabra,² and in paragraph 49 of the initial indictment against Mr Merhi³ before the joinder of the proceedings.⁴

2. On 7 September 2016, the Trial Chamber ordered the Prosecution to file a summary statement of any evidence it wishes to lead in relation to this pleaded material fact.⁵ The Prosecution confidentially filed its summary statement of evidence in relation to paragraph 49 of the amended consolidated indictment, followed by an updated version, which it also filed confidentially.⁶

3. Counsel for Mr Oneissi and Mr Sabra, subsequently joined by counsel for Mr Merhi, filed several applications requesting that the summary statements be reclassified as public.⁷

¹ The proceedings against Mr Badreddine were terminated on 11 July 2016 pursuant to an Appeals Chamber’s order. See STL-11-01/T/AC/AR126.11, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F0019, Decision on Badreddine Defence Interlocutory Appeal of the “Interim Decision on the Death of Mr Mustafa Amine Badreddine and Possible Termination of Proceedings”, 11 July 2016 (by majority, Judges Baragwanath and Nsereko dissenting); STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F2633, Order Terminating Proceedings against Mustafa Amine Badreddine without Prejudice and Ordering the Filing of an Amended Consolidated Indictment, 11 July 2016; STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2720, Amended Consolidated Indictment, 12 July 2016 (confidential) (‘Amended consolidated indictment’), paras 3, 19, 48, 50-51 referring to Mr Badreddine as a co-conspirator. The Redacted Amended Consolidated Indictment was filed on 15 September 2016.

² STL-11-01/I/PTJ, *Prosecutor v. Badreddine, Ayyash, Oneissi and Sabra*, F0007, Indictment, 10 June 2011 (confidential).

³ STL-13-04/I/PTJ, *Prosecutor v. Merhi*, F0001, Indictment, 5 June 2013 (confidential and *ex parte*).

⁴ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F1424, Decision on Trial Management and Reasons for Decision on Joinder, 25 February 2014.

⁵ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2713, Decision Amending the Consolidated Indictment, 7 September 2016, para. 58, disposition.

⁶ F2948, Notice Concerning an Updated Prosecution Summary Statement of Evidence in relation to paragraph 49 of the Amended Consolidated Indictment, 20 January 2017 (confidential, with confidential annex); F2948, Annex A, Updated Prosecution Summary Statement of Evidence in relation to paragraph 49 of the Amended Consolidated Indictment, 20 January 2017 (confidential) (‘Prosecution updated summary statement of evidence’); F2735, Prosecution Summary Statement of Evidence in relation to paragraph 49 of the Amended Consolidated Indictment, 23 September 2016 (confidential) (‘Prosecution summary statement of evidence’).

⁷ F3258, Third Request for Reclassification of the Prosecution’s Updated Summary Statement of Evidence in Relation to Paragraph 49 of the Amended Consolidated Indictment, 31 July 2017 (confidential) (‘Third reclassification request’); F2954, Request for Reclassification of the Prosecution’s Updated Summary

4. The Prosecution opposed the Defence applications,⁸ arguing that the Trial Chamber is yet to determine the admissibility of evidence described in the summary statements; therefore the public disclosure of these filings was premature. The summary statements contain confidential information regarding, in particular, the contents of the 16 and 17 June 2012 Prosecution interview of the late Mr Wissam Al-Hassan (Witness PRH680),⁹ a former Lebanese Internal Security Forces (ISF) official, and the head of security for the former Prime Minister, Mr Rafik Hariri, at the time when Mr Hariri was killed in an attack in Beirut on 14 February 2005.¹⁰

5. Counsel for Mr Oneissi and Mr Sabra filed replies to the Prosecution responses.¹¹

SUBMISSIONS

Defence submissions

6. The Defence argues that paragraph 49 of the amended consolidated indictment and the decision ordering the Prosecution to file a summary statement of the evidence it wishes to lead in relation to this pleading are public. The evidence discussed in the summaries is essentially ‘open source’, *i.e.* publicly available material or not of a confidential nature.

Statement of Evidence in Relation to Paragraph 49 of the Amended Consolidated Indictment, 25 January 2017 (confidential) (‘Second reclassification request’); F2756, Request for Reclassification of the Prosecution’s Summary Statement of Evidence in Relation to Paragraph 49 of the Amended Consolidated Indictment, 3 October 2016 (confidential) (‘First reclassification request’).

⁸ F3272, Prosecution Response to “Third Request for Reclassification of the Prosecution’s Updated Summary Statement of Evidence in Relation to Paragraph 49 of the Amended Consolidated Indictment”, 14 August 2017 (confidential) (‘Prosecution response of 14 August 2017’); F2970, Prosecution Response to the Oneissi, Merhi, Sabra Defence Request for Reclassification of the Prosecution’s Updated Summary Statement of Evidence in Relation to Paragraph 49 of the Amended Consolidated Indictment, 2 February 2017 (confidential) (‘Prosecution response of 2 February 2017’); F2772, Prosecution Response to the Oneissi and Sabra Defence Request for Reclassification of the Prosecution Summary Statement of Evidence in relation to paragraph 49 of the Amended Consolidated Indictment, 12 October 2016 (confidential) (‘Prosecution response of 12 October 2016’).

⁹ Prosecution updated summary statement of evidence, para. 23; Prosecution response of 12 October 2016, para. 4; Prosecution summary statement of evidence, para. 23.

¹⁰ Twenty-one others were also killed in the attack and 226 were injured—*see* Amended consolidated indictment, para. 4; F1492, Second Decision on Agreed Facts under Rule 122, 11 April 2014, disposition, recording these as facts that the Trial Chamber may accept as being proved at trial. *See also* F3371, Decision Admitting into Evidence the Audio Recordings and Transcripts of the Prosecution Interview of Mr Wissam Al-Hassan (Witness PRH680) under Rule 158 and Three Related Documents under Rule 154, 20 October 2017 (‘Decision of 20 October 2017’), paras 1-2, noting, among other things, that Mr Al-Hassan was killed in a car bombing in Beirut on 19 October 2012.

¹¹ F3280, Reply to Prosecution Response to Third Request for Reclassification of the Prosecution’s Updated Summary Statement of Evidence in Relation to Paragraph 49 of the Amended Consolidated Indictment, 18 August 2017 (confidential) (‘Defence reply of 18 August 2017’); F2785, Reply to the Prosecution Response to the Request for the Reclassification of the “Prosecution Summary Statement of Evidence in Relation to Paragraph 49 of the Amended Consolidated Indictment”, 17 October 2016 (confidential) (‘Defence reply of 17 October 2016’).

If the information sought to be kept confidential concerns the identity of Mr Al-Hassan, this witness is deceased. Subsequently some of the evidence referred to in the summary statements has been admitted and only one of the 23 paragraphs of the summary statements, namely paragraph 4, refers to Mr Al-Hassan's interview. Therefore, the Prosecution has not provided any factual or legal basis for the chosen classification. Maintaining the confidentiality of the summary statements is prejudicial to the Accused's fair trial rights.¹²

Prosecution submissions

7. The Prosecution submits that certain footnotes and paragraphs of the summary statements relate to confidential and sensitive evidence. Until the Trial Chamber determines the admissibility of the evidence described in the summary statements, including Mr Al-Hassan's evidence, and whether any protective measures apply, the summary statements should remain confidential. The issue is not if but when the summary statements should be made publicly available and the extent of any redactions. The Prosecution no longer relies on the initial summary statement, as the updated version has replaced it. The initial summary statement should remain confidential as it contains information which is either outdated or the Prosecution no longer relies upon. Publicly disclosing it would disseminate an incorrect position of the Prosecution.¹³

DISCUSSION

8. The Trial Chamber finds that the reasons to maintain the confidential character of the summary statements are no longer present. Since the filing of the Prosecution summary statements of evidence in relation to paragraph 49 of the amended consolidated indictment, the Trial Chamber has admitted the evidence, to which the summary statements refer, including the audio recordings and transcripts of Mr Al-Hassan's Prosecution interview. The Trial Chamber issued public decisions, in which it discussed the several pieces of evidence the Prosecution tendered in relation to the material fact pleaded in paragraph 49 of the amended consolidated indictment.¹⁴

¹² Defence reply of 18 August 2017, paras 3-5; Third reclassification request, paras 12, 14-21; Second reclassification request, paras 9-10; Defence reply of 17 October 2016, paras 4, 7; First reclassification request, paras 9-12.

¹³ Prosecution response of 14 August 2017, paras 2-3, 12; Prosecution response of 2 February 2017, paras 1-2, 4; Prosecution response of 12 October 2016, paras 3-7.

¹⁴ Decision of 20 October 2017; F3196, Decision Admitting 10 Documents Related to the Death of Mustafa Amine Badreddine, 23 June 2017; F3104, Decision Admitting 12 Documents and a Witness' Statements

9. The Trial Chamber reiterates the public nature of the trial proceedings and finds that the initial and updated summary statements should be made available to the public. The Trial Chamber notes that redacting identifying information may be necessary in paragraph 16 of both summary statements and footnote 24 of the initial summary statement. The Prosecution should provide public redacted versions of both summary statements. The redactions however should be strictly in line with the Prosecution response of 12 October 2016.¹⁵ Outdated information contained in the initial summary statement is minimal and does not justify maintaining the confidentiality of the entire document. The updated summary statement specifies which information the Prosecution does not rely upon and makes the Prosecution's position clear.

10. To ensure publicity and transparency, the Trial Chamber orders the Prosecution and Defence counsel to file public redacted versions of all related submissions which require redactions, as instructed in paragraph 9, and to have reclassified as public the submissions which do not necessitate redactions.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

ORDERS the Prosecution to provide, by 3 November 2017, public redacted versions of:

F2948, Annex A, Updated Prosecution Summary Statement of Evidence in relation to paragraph 49 of the Amended Consolidated Indictment, 20 January 2017 (confidential); and

F2735, Prosecution Summary Statement of Evidence in relation to paragraph 49 of the Amended Consolidated Indictment, 23 September 2016 (confidential); and

ORDERS the Prosecution and Defence counsel to file public redacted versions of all related submissions which require redactions or to have their respective filings reclassified as public.

Related to Hezbollah, its Officials and Telephone Numbers, 26 April 2017; F2831, Decision under Rule 155 Admitting Statements of Witnesses PRH338, PRH369, PRH423, PRH470 and PRH605 Identifying Sami Issa, 11 November 2016; F2829, Decision on Rule 155 Statements of Witnesses PRH264, PRH306 and PRH416 Identifying Sami Issa as Mustafa Amine Badreddine, 11 November 2016; F2798, Decision on the Admission of Call Sequence Tables Related to the Movements of Mr Rafik Hariri and Related Events, and Four Witness Statements, 31 October 2016. *See also* Exhibit P1673.

¹⁵ Prosecution response of 12 October 2016, para. 4, last sentence, and para. 6.

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

Leidschendam,
The Netherlands
26 October 2017

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

