



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:** 10 November 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 THREE DEFENCE APPLICATIONS FOR DISCLOSURE OF  
 ANDREW DONALDSON'S FINAL REPORTS**

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**Office of the Prosecutor:**

Mr Norman Farrell & Mr Alexander Hugh  
 Milne

**Counsel for Mr Salim Jamil Ayyash:**

Mr Emile Aoun, Mr Thomas Hannis &  
 Mr Chad Mair

**Legal Representatives of  
 Participating Victims:**

Mr Peter Haynes, Mr Mohammad F. Mattar  
 & Ms Nada Abdelsater-Abusamra

**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 Roberts  
 Ms Sarah Bafadhel



1. On 12 June 2017, counsel for the Accused, Mr Salim Jamil Ayyash, requested the Trial Chamber to order the Prosecution to produce and disclose—as soon as possible and at the latest before Mr Andrew Donaldson (Witness PRH230) gave analytical evidence concerning Mr Ayyash during his examination-in-chief—the final version of Mr Donaldson’s attribution report related to Mr Ayyash.<sup>1</sup> Counsel for Mr Hassan Habib Merhi and Mr Assad Hassan Sabra joined the application, and requested, respectively, the disclosure of the final attribution report regarding Mr Merhi before Mr Donaldson’s examination-in-chief with respect to Mr Merhi, and the production of the final report related to Mr Sabra as expeditiously as possible.<sup>2</sup>

2. In a decision delivered in court on 27 June 2017, denying a Defence application to adjourn the trial to allow Mr Donaldson to complete his reports, the Trial Chamber emphasised that the reports had to be finalised before he was cross-examined by counsel for any of the Accused.<sup>3</sup> The Trial Chamber then clarified that the Prosecution was required to respond to the applications made by counsel for Mr Ayyash, Mr Merhi and Mr Sabra, and specified that it would then revisit the matter, because its ‘decision isn’t necessarily mutually exclusive with the relief sought by [counsel for Mr Ayyash]’.<sup>4</sup> The Prosecution filed a consolidated response on 27 June 2017.<sup>5</sup> On 30 June 2017, in court, the Ayyash Defence replied to a Prosecution application to continue working with Mr Donaldson while he was in mid-testimony, to which the Prosecution sur-replied.<sup>6</sup>

3. On 30 October 2017, the Merhi Defence withdrew its application, as the Prosecution had already disclosed an updated, almost final version of Mr Donaldson’s report regarding Mr Merhi.<sup>7</sup> The following day, the Sabra Defence also withdrew its application, in view of the

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F3178, Ayyash Defence Motion for an Order to the Prosecution to Produce a Final Report for PRH230, 12 June 2017 (public with confidential annexes A-1).

<sup>2</sup> F3181, Merhi Defence Joinder to the “Ayyash Defence Motion for an Order to the Prosecution to Produce a Final Report for PRH230”, 14 June 2017; F3184, Sabra Joinder to “Ayyash Defence Motion for an Order to the Prosecution to Produce a Final Report for PRH230”, 19 June 2017.

<sup>3</sup> Transcript of 27 June 2017, p. 41.

<sup>4</sup> Transcript of 27 June 2017, p. 43.

<sup>5</sup> F3199, Prosecution Consolidated Response to (i) Ayyash Defence Motion for an Order to the Prosecution to Produce a Final Report for PRH230, (ii) Merhi Defence Joinder and (iii) Sabra Defence Joinder, 27 June 2017.

<sup>6</sup> Transcript of 30 June 2017, pp 3-6, 12-17.

<sup>7</sup> F3390, Merhi Defence Notice of Withdrawal of Its Filing F3181, 30 October 2017. Mr Donaldson’s attribution report regarding Mr Merhi, ‘Evidence of Telephone Attribution, Hassan Habib Merhi, dated 13 November 2015, version 4’, was marked for identification as exhibit P1962 MFI. On 13 September 2017, the Prosecution provided via email a courtesy copy of the updated report, version 5, to the Defence. The cover page of the courtesy copy of version 5 of the report lists nine footnotes of the report requiring updates in relation to the status of evidence which Mr Donaldson relied on. The Prosecution also provided a document entitled ‘log of

completion of Mr Donaldson's testimony and that it had received an updated version of his report regarding Mr Sabra.<sup>8</sup> The Ayyash Defence maintains its application.<sup>9</sup>

4. Mr Donaldson's examination-in-chief with respect to Mr Ayyash commenced on 18 July 2017.<sup>10</sup> His attribution report relating to Mr Ayyash, dated 1 December 2016, version 4, was marked for identification as exhibit P2026 MFI.<sup>11</sup> The Prosecution provided to the Defence a courtesy copy of the latest version of the attribution report, version 5, on 31 August 2017, and a document entitled 'log of changes' on 4 September 2017.<sup>12</sup> Its cover page lists seven footnotes of the report requiring updates in relation to the status of evidence which Mr Donaldson relied on. The log of changes catalogues the amendments made to the report's text and footnotes, in particular in the course of finalising the report. The Ayyash Defence cross-examined the witness between 3 and 18 October 2017. On 5 October 2017, version 5 of the report was marked for identification.<sup>13</sup>

5. The Trial Chamber considers that the Ayyash Defence application is now moot. A nearly final version of Mr Donaldson's attribution report regarding Mr Ayyash was disclosed to the Ayyash Defence before counsel cross-examined him. Seven footnotes of the report require updating by replacing Prosecution Rule 91 exhibit list reference numbers or evidence reference numbers (ERN) with exhibit numbers following the formal admission of the evidence which Mr Donaldson relied on in his attribution analysis. Four of these footnotes refer to five documents, now exhibits P2112 to P2116,<sup>14</sup> and three footnotes reference

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changes' to the Defence, cataloguing any changes made to the footnotes or text of the report, compared to its previous versions.

<sup>8</sup> F3393, Notice of Withdrawal of Defence Filing of 19 June 2017 (F3184), 31 October 2017. Mr Donaldson's attribution report regarding Mr Sabra was admitted into evidence on 19 September 2017 as exhibit P1953, Evidence of Telephone Attribution, Assad Hassan Sabra, dated 18 August 2017, version 4.

<sup>9</sup> Email of 12 October 2017 from counsel for Mr Ayyash to Trial Chamber senior legal officer.

<sup>10</sup> Transcript of 18 July 2017, p. 12.

<sup>11</sup> On 17 July 2017, the Prosecution provided the Ayyash Defence with a list of footnotes referring to material in the attribution report related to Mr Ayyash that the Prosecution decided not to rely on. This list was the subject of discussions between the Prosecution and the Ayyash Defence as Mr Donaldson's testimony continued in court. *See* transcript of 18 July 2017, pp 2, 8-9, 24-25; transcript of 19 July 2017, p. 2.

<sup>12</sup> Emails of 31 August and 4 September 2017, respectively, from Prosecution case manager and Prosecution counsel to Defence counsel, Legal Representatives of Victims and Trial Chamber senior legal officer.

<sup>13</sup> Exhibit P2026.1 MFI, Evidence of Telephone Attribution, Salim Jamil Ayyash, dated 31 August 2017, version 5; *see* transcript of 5 October 2017, p. 41.

<sup>14</sup> *See* F3302, Decision Admitting Seven Documents Relating to Mr Salim Jamil Ayyash and Mr Hassan Habib Merhi, 20 August 2017. *See also* transcript of 22 September 2017, pp 82-87.

Witness PRH028's statement.<sup>15</sup> Defence counsel are fully aware of this evidence as it had been disclosed to them and described in Mr Donaldson's report.

6. The Trial Chamber, therefore, **dismisses** as moot the Ayyash Defence application, and **notes** the withdrawal of the applications of the Merhi Defence and the Sabra Defence.

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

Leidschendam,  
The Netherlands  
10 November 2017

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braïdy

Judge Micheline Braïdy



<sup>15</sup> On 5 May 2017, the Prosecution, under Rule 158, sought the admission of Witness PRH028's statement and related documents. In the months since the Prosecution's application, the Trial Chamber has taken additional steps aimed at securing the witness's evidence under Rule 156, in accordance with its Decision on the Prosecution Motion to Admit Ten Witness Statements relating to Salim Jamil Ayyash and Hassan Habib Merhi and to Admit One Exhibit, filing F2963, dated 31 January 2017. The matter remains before the Trial Chamber.