



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:** 7 December 2017

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

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

**DECISION ADMITTING INTO EVIDENCE CALL SEQUENCE TABLES  
TENDERED BY THE AYYASH AND MERHI DEFENCE – EXHIBITS 1D453, 3D431,  
3D433, 3D436 AND 3D437 MARKED FOR IDENTIFICATION**

**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 Dorothée 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

## **BACKGROUND**

1. This decision admits into evidence five Defence call sequence tables. A call sequence table contains extracted information from telecommunications companies' call data records—such as the numbers, dates, call duration, type of call, the cell used, and mobile identifying number (IMEI)—which is entered into tables to make them accessible and capable of presentation and analysis without altering the data.<sup>1</sup>
2. During the cross-examination of Prosecution analyst Mr Andrew Donaldson, on 2 October 2017, counsel for the Accused, Mr Hassan Habib Merhi, tendered four call sequence tables into evidence. They were marked for identification as exhibits 3D431, 3D433, 3D436 and 3D437.<sup>2</sup> Counsel for the Accused, Mr Salim Jamil Ayyash, during Mr Donaldson's cross-examination on 6 October 2017, similarly tendered a call sequence table into evidence. It was marked for identification as exhibit 1D453.<sup>3</sup>
3. The Prosecution then objected to their admission, arguing that the Defence should set out in written submissions why the date ranges were chosen and fully explain how the call sequence tables had been created so as to allow the Prosecution to recreate and verify them. Specifically, the Prosecution argued that the Defence should be held to the same standards as the Prosecution in demonstrating the provenance of their call sequence tables. Finally, there were some conversion mistakes in exhibit 3D431 MFI. The mistakes were subsequently corrected through consultations between the Parties.<sup>4</sup>
4. On 19 October 2017, the Trial Chamber ordered written submissions from the Defence explaining the methodology used in preparing the call sequence tables, accompanied if necessary by statements from whoever prepared them. The Trial Chamber set a timetable for Defence submissions by 24 October 2017, a Prosecution response by 31 October 2017 and any reply by 3 November 2017. The Parties were also ordered to communicate between themselves in an attempt to resolve the issues.<sup>5</sup>

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi, and Sabra* 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 UNHCR and STL's Prosecution, 6 May 2015, para. 2.

<sup>2</sup> Transcript of 2 October 2017, pp 46-49, 61-62, 75, 77.

<sup>3</sup> Transcript of 6 October 2017, pp 71-74.

<sup>4</sup> Transcript of 19 October 2017, pp 5, 7-10, 13-17; transcript of 6 October 2017, pp 73-74; transcript of 2 October 2017, pp 47, 62.

<sup>5</sup> Transcript of 19 October 2017, pp 22-23.

5. Defence counsel duly filed their submissions,<sup>6</sup> and on 31 October 2017, the Prosecution informed the Trial Chamber that discussions were ongoing between the Parties in an attempt to resolve the issues, and seeking time to do so.<sup>7</sup> Defence counsel did not oppose the application and the Trial Chamber accordingly extended the deadline.<sup>8</sup>

6. On 2 November 2017, the Ayyash Defence filed further submissions, clarifying some issues the Prosecution had raised. Counsel for Mr Ayyash, however, considered it unnecessary to provide the Prosecution with a statement from the person who had prepared the call sequence table. They would only do so if the Trial Chamber ordered it.<sup>9</sup>

7. Counsel for Mr Merhi filed submissions on the same day explaining that, following communications with the Prosecution, they had corrected exhibits 3D431, 3D433, 3D436 and 3D437 MFI. They requested their admission into evidence under the same exhibit numbers. On the Prosecution's request a declaration on the methodology used to create the call sequence tables was attached; it was signed by a member of the Merhi Defence.<sup>10</sup>

8. The Prosecution then responded, consenting to receiving the Merhi Defence exhibits into evidence but continuing to oppose the Ayyash Defence exhibit. This call sequence table contained non-self-explanatory column headers and unjustified changes to the contents of the original call data records. Further, the Ayyash Defence had not provided a statement from the creator of the call sequence table explaining its methodology, thus allowing verification of its contents.<sup>11</sup>

9. The Trial Chamber consequently ordered, on 24 November 2017, the Ayyash Defence to modify the table by renaming the column headers 'A\_short' and 'B\_short' to 'outgoing'

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<sup>6</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi, and Sabra*, F3376, Ayyash Defence Supplementary Submissions on the Admissibility of Exhibit 1D00453 Marked for Identification, 24 October 2017; F3377, Supplementary Submissions from the Merhi Defence in Accordance with the Chamber's Order for the Formal Admission into Evidence of Four Call Sequence Tables, 24 October 2017 (public with public and confidential annexes).

<sup>7</sup> Email from Prosecution counsel to a Trial Chamber legal officer, 31 October 2017, requesting an extension to 3 November 2017 to file a response.

<sup>8</sup> Emails between counsel for Mr Ayyash and Mr Merhi and the Trial Chamber's legal officer and the Parties, 31 October 2017.

<sup>9</sup> F3398, Ayyash Defence Further Supplementary Submissions on the Admissibility of Exhibit 1D00453 Marked for Identification, 2 November 2017.

<sup>10</sup> F3377, *Addendum aux « Soumissions additionnelles de la défense de Merhi conformément à l'ordonnance de la chambre pour l'admission formelle de quatre tableaux séquentiels d'appels »*, 2 November 2017 (public with public and confidential annexes).

<sup>11</sup> F3400, Prosecution Response to 'Soumissions additionnelles de la défense de Merhi conformément à l'ordonnance de la chambre pour l'admission formelle de quatre tableaux séquentiels d'appels' and the Addendum Thereto, 3 November 2017; F3401, Prosecution Response to Ayyash Application to Admit Call Sequence Table Exhibit 1D00453 Marked for Identification, 3 November 2017.

and ‘incoming’ and to re-establish any original values that had been replaced with zero. The Defence was also to provide to the Prosecution, by 29 November 2017, a statement from the creator(s) of the modified call sequence table, to allow the Prosecution to recreate and verify it. The Prosecution was ordered to recreate and verify the call sequence table and notify the Trial Chamber, by 1 December 2017, whether it objected to the admission of the modified call sequence table. The Trial Chamber again urged the Parties to cooperate so as to reach agreement on its admissibility.<sup>12</sup>

10. The Prosecution notified the Trial Chamber on 1 December 2017 of one remaining point of dispute. Specifically, the Prosecution objected to the admission into evidence of the modified call sequence table, ‘absent a witness statement produced by the creator of the call sequence table in accordance with the Practice Directions’.<sup>13</sup>

11. On 5 December 2017, the Ayyash Defence filed a call sequence table revised in accordance with the Trial Chamber’s order, accompanied by an ‘internal memorandum’ written (and initialled) by a lawyer working on the case, dated 29 November 2017.<sup>14</sup>

### **DECISION**

12. The Trial Chamber has carefully reviewed the content and format of the Defence call sequence tables. In relation to the Merhi Defence exhibits marked for identification as 3D431, 3D433, 3D436 and 3D437, and noting the agreement of the Parties, the Trial Chamber is satisfied that they are relevant and have some probative value. They may be received into evidence.

13. Regarding the Ayyash Defence call sequence table, it is relevant to the attribution of mobile telephone numbers to Mr Ayyash. The Trial Chamber is also satisfied with the explanation in the internal memorandum of the methodology used to create the table, and hence of the document’s *prima facie* reliability. While the internal memorandum is not formally termed ‘statement’, it is in a form consistent with a statement. As such, it complies with the Trial Chamber’s order of 24 November 2017. The Prosecution had an opportunity to

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<sup>12</sup> F3424, Order to the Ayyash Defence and the Prosecution regarding Call Sequence Table Exhibit 1D453 Marked for Identification, 24 November 2017.

<sup>13</sup> F3450, Prosecution Notification to the Trial Chamber pursuant to the “Order to the Ayyash Defence and the Prosecution Regarding Call Sequence Table Exhibit 1D453 Marked for Identification”, dated 24 November 2017, 1 December 2017.

<sup>14</sup> F3457, Ayyash Defence Provision of Updated Exhibit 1D00453 Marked for Identification and Memorandum Supporting Reliability in Compliance with Trial Chamber Order of 24 November 2017, 5 December 2017 (public with public annexes).

recreate and verify the call sequence table. It did not inform the Trial Chamber of any problems encountered in that regard.<sup>15</sup> Accordingly, exhibit 1D453 MFI has some probative value and may be admitted into evidence.

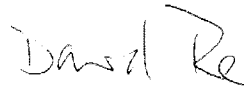
### **DISPOSITION**

**FOR THESE REASONS**, the Trial Chamber:

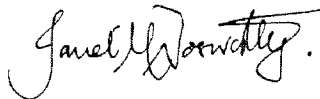
**ORDERS** the admission into evidence of the exhibits marked for identification as 1D453, 3D431, 3D433, 3D436 and 3D437, as modified.

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

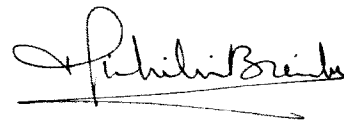
Leidschendam,  
The Netherlands  
7 December 2017



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy



<sup>15</sup> See above, fn 12-13.