



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:** 21 June 2018

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

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

**DECISION GRANTING SABRA DEFENCE MOTION TO PARTIALLY  
RECONSIDER 'DECISION PARTLY GRANTING SEVENTH SABRA DEFENCE  
MOTION FOR THE ADMISSION OF DOCUMENTS RELATING TO AHMED ABU  
ADASS – THE 'MOHAMMED' STORY' AND ADMITTING INTO EVIDENCE A  
CALL SEQUENCE TABLE RELATED TO THE ABU ADASS HOUSEHOLD  
LANDLINE**

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## **BACKGROUND AND INTRODUCTION**

1. The amended consolidated indictment pleads that, on 14 February 2005, shortly after the attack that killed former Lebanese Prime Minister Mr Rafik Hariri, the Al-Jazeera news network in Beirut received a video in which Mr Ahmed Abu Adass falsely claimed responsibility for the attack on behalf of a fictional fundamentalist group called ‘Victory and Jihad in Greater Syria’. It also alleges that the Accused, Mr Hussein Hassan Oneissi and Mr Assad Hassan Sabra—under Mr Hassan Habib Merhi’s supervision— identified Mr Abu Adass as a suitable person for using in the video. To that end, Mr Oneissi introduced himself as ‘Mohammed’ to Mr Abu Adass in January 2005, at the Al-Houry Mosque in Beirut. On 16 January 2005, Mr Abu Adass left his home with ‘Mohammed’. In the evening of 15 January 2005, and on 17 January 2005, ‘Mohammed’ made one and two calls, respectively, to the Abu Adass family house. Mr Abu Adass was not seen again until he appeared on the video on 14 February 2005.<sup>1</sup>

2. On 22 January 2018, counsel for Mr Sabra filed a motion seeking the admission of, among other documents, a call sequence table<sup>2</sup> for the Abu Adass household landline, a number ending in 017. The Trial Chamber declined to admit the document into evidence<sup>3</sup> and the Sabra Defence now asks the Trial Chamber to reconsider that part of its decision under Rule 140 of the Special Tribunal’s Rules of Procedure and Evidence.<sup>4</sup> The Prosecution opposes the motion.<sup>5</sup>

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2720, Amended Consolidated Indictment, 12 July 2016 (confidential, a public redacted version was filed on the same day), paras 3 (b)-(d), 5, 23, 27-29, 44 (e).

<sup>2</sup> Call sequence tables render the information contained in call data records legible by presenting ‘chronological sequences of calls relating to a particular, or target, telephone number over a specified period of time’: STL-11-01, *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 UNIIIC and STL’s Prosecution, 6 May 2015, para. 2. See also STL-11-01, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2799, Decision on the Prosecution Motions for the Admission of the Call Sequence Tables Related to the Five Colour-Coded Mobile Telephone Groups and Networks, 31 October 2016, para. 3.

<sup>3</sup> F3614, Decision Partly Granting Seventh Sabra Defence Motion for the Admission of Documents Relating to Ahmed Abu Adass – The ‘Mohammed’ Story, 3 April 2018.

<sup>4</sup> F3651, Request for Reconsideration of the Admission of the Call Sequence Table for the Abu Adass Family Landline, 7 May 2018.

<sup>5</sup> F3669, Prosecution Response to Sabra Defence “Request for Reconsideration of the Admission of the Call Sequence Table for the Abu Adass Family Landline”, 22 May 2018 (confidential).

## SUBMISSIONS

### *Sabra Defence motion*

3. The Sabra Defence sought the admission of the call sequence table on three grounds: (i) the table did not include the alleged calls from ‘Mohammed’ to the Abu Adass household as alleged by the Prosecution; (ii) it showed the amount of contact between the Abu Adass landline and mobile numbers *prima facie* attributed to Mr Hussam Mohsen and a friend of Mr Abu Adass, Mr Ziad Ramadan (Witness PRH103); and (iii) it showed contact between the Abu Adass landline and the phone attributed to Mr Bilal Zaaroura. The Trial Chamber abused its discretion by denying the admission of the call sequence table.

4. The table’s admission was denied on reliability grounds as the Defence had sought to attribute a public payphone to Mr Zaaroura on the basis of a statement that had been denied admission. However, the Trial Chamber made no reference to the fact that the call sequence table did not include three calls—on 15 January and around 17 January 2005—that the Prosecution alleges were made by ‘Mohammed’ to the Abu Adass household. The table is inconsistent with the Prosecution’s case and relates directly to a relevant issue at trial.

5. The call sequence table concerns Kalam and Telecarte pre-paid telephone card data, which the Trial Chamber have deemed reliable. The Prosecution must prove that the alleged calls from ‘Mohammed’ were made from a telephone whose calls were not recorded in call data records. Moreover, the Prosecution’s case that ‘Mohammed’’s calls were made from a landline is speculation from Prosecution witnesses, including Mr Abu Adass’ father, Mr Taysir Abu Adass (Witness PRH636) who was not cross-examined.

6. The Trial Chamber also ignored the Defence argument that the table was relevant to show the amount of contact between the Abu Adass landline and the mobile number attributed to Mr Ramadan on the basis of admitted evidence. There was no reason to exclude the table’s admission when another call sequence table for Mr Ramadan’s number was admitted based on the same evidence. As to the third ground for admission, the Defence does not assert a positive case that Mr Zaaroura was responsible for making a telephone call to the Abu Adass house on 16 January 2005, but it presents evidence that a public telephone that Mr Zaaroura had used contacted the Abu Adass landline on that day—which the Prosecution did not investigate.

7. The reliability of the call sequence table was not substantively challenged by the Prosecution nor was it addressed in the Trial Chamber's decision. An internal memorandum for the table's production was attached as an annex to the motion. The Trial Chamber's decision means that one of the most directly relevant pieces of evidence in relation to the one person all Parties consider directly connected to Mr Hariri's assassination will not be admitted into evidence and the Trial Chamber may not rely upon it in its deliberations. This anomaly should be resolved.

*Prosecution response*

8. The Sabra Defence does not demonstrate an injustice involving prejudice as required by Rule 140. The mere allegation of error concerning the admission of evidence cannot demonstrate prejudice.

9. The Sabra Defence's argument that the Trial Chamber ignored its contention that the call sequence table did not include the 'Mohammed' calls is contradicted by the Trial Chamber's explicit reference to it in the decision. While the Trial Chamber did not directly address it when rejecting its admission, this omission cannot *per se* amount to an error of law warranting reconsideration.

10. In any event, the Sabra Defence did not demonstrate how this alleged error could impact the outcome of the decision. The Trial Chamber had already declined the admission into evidence of other tables on the basis that the OGERO<sup>6</sup> call data records are incomplete as to the landline to landline calls. This equally applies to this table. Such incompleteness deprives the table of any *prima facie* reliability and probative value. The table cannot demonstrate that the Abu Adass landline did not receive any calls from 'Mohammed' on 15 and 17 January 2005. The Trial Chamber has already found that the OGERO evidence is material to assess the admissibility of call sequence tables related to landline evidence.

11. The Sabra Defence never argued that it was seeking the admission of the table to demonstrate the amount of contacts between a number purportedly attributed to Mr Ramadan and the Abu Adass house. The Trial Chamber cannot be faulted for disregarding a submission that was never made. Further, the Sabra Defence suffered no prejudice as it relies on a different table for Mr Ramadan's number—which the Trial Chamber admitted into

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<sup>6</sup> OGERO has been the main operator of Lebanon's fixed telecommunications network since 1972. *See* exhibit P1777 'Witness statement on behalf of OGERO' para. 102.

evidence—to show the contacts between the Abu Adass house and the number attributed to Mr Ramadan.

12. The Sabra Defence incorrectly represents its position in the original motion regarding its contention on the contacts between Mr Zaaroura and the Abu Adass landline. It shows mere disagreement with the Trial Chamber’s decision, but no error. Further, it seeks to draw inferences from material that is not on the trial record and the Prosecution’s investigation is not on trial.

### **DISCUSSION AND DECISION**

13. Under Rule 140, the Trial Chamber ‘may’—by request or *proprio motu*—‘reconsider a decision, other than a judgement or sentence, if necessary to avoid injustice.’ Reconsideration is exceptional and actual injustice must be shown.<sup>7</sup> What constitutes an injustice is dependent on the specific circumstances. Rule 140 cannot be used to alter imperfections in a decision or to remedy unfavourable rulings. Injustice that involves prejudice must be shown on specific grounds by the Party seeking reconsideration, which may include, but are not limited to, an error of law, an abuse of discretion, or the existence of new facts or a material change in circumstances.<sup>8</sup>

14. The Trial Chamber has carefully examined the arguments of the Sabra Defence and the Prosecution and will exercise its discretion to reconsider its decision and to admit the call sequence table into evidence.

15. In its reconsideration motion the Sabra Defence now argues—as it should have in its original motion seeking to admit the table into evidence—that the call sequence table is relevant to show calls from Mr Ramadan to the Abu Adass landline, 017. Further, the table has some relevance in that it does *not* include three calls—allegedly made on 15 January<sup>9</sup> and 17 January 2005—that the Prosecution alleges were made by ‘Mohammed’ to the Abu Adass

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<sup>7</sup> STL-11-01/PT/AC/R176bis, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F0327, Decision on Defence Requests for Reconsideration of the Appeals Chamber’s Decision of 16 February 2011, 18 July 2012 (‘Appeals Chamber decision of 18 July 2012’), paras 22-23, 27.

<sup>8</sup> See STL-11-01, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F3459, Decision Clarifying Decision of 25 September 2017 Admitting Exhibit 5D251 MFI (Relevant to Mr Ahmed Abu Adass) and Denying Prosecution Application for Reconsideration, 6 December 2017, para. 8; F2719, Decision on Ayyash Defence Motion for ‘Reissuance’ and Oneissi Defence Motion for Reconsideration of the Trial Chamber’s Decision of 29 July 2016, 14 September 2016, para. 10; Appeals Chamber decision of 18 July 2012, paras 22-26.

<sup>9</sup> The call sequence table contains no calls on 15 January 2005.

household. The table therefore is relevant to and has some probative value to the Defence case, but its weight is a matter of later assessment.

16. Having considered these new arguments, the Trial Chamber is satisfied that it is in the interests of justice to reconsider the decision and to admit the document into evidence. The presence of certain calls in it—or their absence—is a material fact, relevant to the Defence and in issue between the Parties. Admitting the call sequence table will cause no procedural prejudice to the Prosecution.

### **CONFIDENTIALITY**

17. The Sabra Defence's motion was filed publicly, but the Prosecution's response was filed confidentially because it contains direct quotes from confidential filings. The Prosecution will, however, file a public redacted version. It asks that the confidential classification of the response be maintained until the Trial Chamber decides otherwise, either upon a Prosecution request or after the Prosecution is heard.

18. Wherever possible, motions, responses and replies should be publicly filed before the Trial Chamber, unless a different classification is justified. This follows from the public nature of the proceedings before the Special Tribunal. The Trial Chamber, therefore, orders the Prosecution to file a public redacted version of its response.

### **DISPOSITION**

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

**GRANTS** the motion and partly **RECONSIDERS** its 'Decision Partly Granting Seventh Sabra Defence Motion for the Admission of Documents relating to Ahmed Abu Adass – The 'Mohammed' Story' and will admit into evidence the call sequence table for the Abu Adass family landline, number ending in 017, concerning calls between 1 December 2004 and 28 February 2005 (ERN 1DT5-13351-1DT5-13357); and

**ORDERS** the Prosecution to file a public redacted version of its response.

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

Leidschendam,  
The Netherlands  
21 June 2018

*David Re*

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Judge David Re, Presiding

*Janet Nosworthy*

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Judge Janet Nosworthy

*Micheline Braidy*

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Judge Micheline Braidy

