

THE TRIAL CHAMBER

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: 2 April 2014

Original language: English

Classification: Public

THE PROSECUTOR

v.

**SALIM JAMIL AYYASH
MUSTAFA AMINE BADREDDINE
HASSAN HABIB MERHI
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA**

DECISION ON AGREED FACTS UNDER RULE 122**Office of the Prosecutor:**

Mr. Norman Farrell, Mr. Graeme Cameron
& Mr. Alexander Milne

Victims' Legal Representatives:

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

Counsel for Mr. Salim Jamil Ayyash:

Mr. Eugene O'Sullivan, Mr. Emile Aoun
& Mr. Thomas Hannis

Counsel for Mr. Mustafa Amine Badreddine:

Mr. Antoine Korkmaz, Mr. John Jones
& Mr. Iain Edwards

Counsel for Mr. Hassan Habib Merhi:

Mr. Mohamed Aouini, Ms. Dorothee Le Fraper
du Hellen & Mr. Jad Khalil

Counsel for Mr. Hussein Hassan Oneissi:

Mr. Vincent Courcelle-Labrousse, Mr. Yasser
Hassan & Mr. Philippe Larochelle

Counsel for Mr. Assad Hassan Sabra:

Mr. David Young, Mr. Guénaél Mettraux
& Mr. Geoffrey Roberts



1. On 19 March 2013, following an order by the Pre-Trial Judge,¹ the Prosecution filed a notice under Rule 122 of the Rules of Procedure and Evidence informing the Pre-Trial Judge that counsel for Mr. Salim Jamil Ayyash, Mr. Mustafa Amine Badreddine, Mr. Hussein Hassan Oneissi and Mr. Assad Hassan Sabra had agreed that they do not contest the following nine facts:

(i) In addition to killing Mr. Rafiq Hariri, the explosion killed 21 other persons listed in Schedule A of the Indictment;

(ii) The explosion injured 226 persons listed in Schedule B of the Indictment;

(iii) The video of the claim of responsibility was later broadcast on television;

(iv) Mr. Rafiq Hariri was born on 1 November 1944 in the city of Sidon, Lebanon;

(v) Mr. Rafiq Hariri served as Prime Minister of Lebanon in five governments from 31 October 1992 to 4 December 1998, and from 26 October 2000 until his resignation on 26 October 2004;

(vi) Mr. Rafiq Hariri was a prominent political figure in Lebanon;

(vii) After his resignation, Mr. Rafiq Hariri started preparing for parliamentary elections which were due to start in late May 2005;

(viii) Parliament is located at Place de l'Etoile, Beirut; and

(ix) In his armoured vehicle, Mr. Rafiq Hariri was accompanied by the Member of Parliament, Mr. Bassel Fuleiham.²

2. The notice allows the Trial Chamber to accept these facts as proven. Rule 122 provides:

The Prosecutor and the Defence may agree that an alleged fact [...] is not contested, and, accordingly, a Chamber may consider such alleged fact as being proved, unless the Chamber is of the opinion that a more complete presentation of the alleged facts is required in the interests of justice, in particular the interests of the victims.

3. On 11 February 2014, the Trial Chamber ordered the joinder of the case of *Prosecutor v. Hassan Habib Merhi* with that of *Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan*

¹ STL, *Prosecutor v. Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi and Assad Hassan Sabra*, STL-11-01/PT/PTJ, Order Regarding Narrowing Issues Contested at Trial, 24 December 2012.

² STL-11-01/PT/PTJ, Prosecution's Notice on the Implementation of the Pre-Trial Judge's "Order Regarding Narrowing Issues Contested at Trial", 19 March 2013, para. 5.

Oneissi and Assad Hassan Sabra.³ The Trial Chamber later issued written reasons for the decision and further orders on trial management including ordering counsel for Mr. Merhi to inform the Parties of their position in relation to these non-contested facts.⁴

4. On 14 March 2014, counsel for Mr. Merhi wrote to the Prosecutor, counsel for the other four Accused, and the Legal Representative of Victims, copying the Trial Chamber and the Defence Office, providing a provisional agreement on these nine otherwise non-contested facts.⁵ Defence counsel, however, purported to qualify their agreement to these nine facts as only valid for the time being (*'pour le moment'*), arguing that they have not yet been able to get acquainted with most of the Prosecution evidence and had not yet developed a strategy, nor filed a pre-trial brief with a position on the merits of the case. They added that this provisional agreement was meant to reserve all of the defence rights (*'sous toutes réserves'*) in other words, 'without prejudice'.

5. The nine facts in question are relevant to the case. The first two relate to elements of some of the offences charged in the amended indictment. The remainder, however—except maybe fact (ix)—could probably be qualified as 'facts of common knowledge' for which proof is not required at trial. Under Rule 160, the 'Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof'.

6. The geographic location of the Lebanese Parliament, Mr. Hariri's personal details including his date and place of birth, his terms as the Lebanese Prime Minister, and that he was a prominent political figure in Lebanon, for example, cannot be seriously contested. The Trial Chamber has some difficulty in understanding the basis for not accepting those facts and, in particular, since lead counsel for Mr. Merhi was assigned on 20 December 2013.

7. The Defence communication does not actually agree 'that an alleged fact' 'is not contested' such as to allow it to be deemed to be proved at trial. The purported 'agreement' is subject to caveats and possible new defence submissions. This is contrary to the policy rationale of Rule 122—identical to Rule 69 of the International Criminal Court's Rules of Procedure and Evidence (Agreements as to evidence)—and interpreted at that Court to enable a Chamber to 'effectively exercise its case-

³ STL-11-01/T/TC & STL-13-04/PT/TC, Transcript of 11 February 2014, pp. 91-96.

⁴ STL-11-01/T/TC, Decision on Trial Management and Reasons for Decision on Joinder, 25 February 2014, Disposition.

⁵ 'Notification sur les faits non contestés dans le dossier Ayyash', 14 March 2014: 'La Défense de M. Merhi rappelle que son dossier n'est pas encore mis en état, qu'elle n'a pas été en mesure de prendre connaissance de la majeure partie du dossier à charge, de mener des enquêtes, et qu'en tout état de cause elle n'a pas encore adopté de ligne de défense ou déposé de mémoire d'avant procès, sur le fondement de l'article 91(I) du Règlement, qui lui permettrait de prendre position sur le fond de l'affaire. Cependant, compte tenu de la nature des neuf faits susvisés et sous toutes réserves, la Défense de M. Merhi informe les parties qu'elle n'entend pas pour le moment contester ces faits.'

management powers [...] and, in particular, to ensure that witnesses are not needlessly brought to court when their evidence is not in dispute'.⁶ To ensure that any ambiguity is exercised in Mr. Merhi's favour, the Trial Chamber will not accept this as an agreement. With regret, therefore, the Trial Chamber is not satisfied that the position expressed in the communication suffices under Rule 122 *in relation to Mr. Merhi*. The Trial Chamber will therefore ask counsel for Mr. Merhi to explain their position on those facts at the status conference scheduled for 10 April 2014.

8. The Trial Chamber, however, is satisfied that it can, under Rule 122, record the agreement between the Prosecution and counsel for Mr. Ayyash, Mr. Badreddine, Mr. Oneissi and Mr. Sabra in respect of those nine listed facts and may accept them as being proved against them at trial. None of these facts go to the acts or conduct of the four Accused and some could be accepted under Rule 160. The Trial Chamber is not of the opinion that a more complete presentation of the alleged facts is required in the interests of justice to prove those facts at trial.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

RECORDS under Rule 122 the agreement of the Prosecutor and counsel for Mr. Salim Jamil Ayyash, Mr. Mustafa Amine Badreddine, Mr. Hussein Hassan Oneissi and Mr. Assad Hassan Sabra in relation to the following nine facts that it may accept as being proved at trial, in respect of them:

- (i) In addition to killing Mr. Rafiq Hariri, the explosion killed 21 other persons listed in Schedule A of the Indictment;
- (ii) The explosion injured 226 persons listed in Schedule B of the Indictment;
- (iii) The video of the claim of responsibility was later broadcast on television;
- (iv) Mr. Rafiq Hariri was born on 1 November 1944 in the city of Sidon, Lebanon;
- (v) Mr. Rafiq Hariri served as Prime Minister of Lebanon in five governments from 31 October 1992 to 4 December 1998, and from 26 October 2000 until his resignation on 26 October 2004;
- (vi) Mr. Rafiq Hariri was a prominent political figure in Lebanon;

⁶ ICC, *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-1179, Decision on agreements between the parties, 20 February 2008, para. 11; *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08-872, Order setting deadlines for agreements as to facts and evidence and for the filing of expert reports, 6 September 2010, para. 17.

(vii) After his resignation, Mr. Rafiq Hariri started preparing for parliamentary elections which were due to start in late May 2005;

(viii) Parliament is located at Place de l'Etoile, Beirut; and

(ix) In his armoured vehicle, Mr. Rafiq Hariri was accompanied by the Member of Parliament Mr. Bassel Fuleiham;

AND

FINDS that it cannot yet record any agreement under Rule 122 for these facts in respect of Mr. Hassan Habib Merhi.

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

Leidschendam,
The Netherlands,
2 April 2014

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

