



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

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: 5 June 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 THE PROSECUTION MOTION FOR ADMISSION OF THE WRITTEN STATEMENT OF PRH130 (MOHAMMED KHEIREDDINE)

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 Mettraud
& Mr. Geoffrey Roberts



INTRODUCTION

1. On 20 December 2013 and 30 January 2014, the Trial Chamber issued two decisions on a Prosecution motion under Rule 155 of the Rules of Procedure and Evidence seeking admission of written witness statements in lieu of oral testimony and without cross-examination of the witnesses.¹ The applicable law was set out in the first decision.²
2. On 15 May 2014, the Prosecution filed a motion requesting that the witness statement of Mr. Mohammed Kheireddine (Witness PRH130)—a member of the Lebanese Internal Security Forces (ISF)—be admitted into evidence in lieu of oral testimony under Rule 155. The Prosecution also sought leave to add the statement to its exhibit list.³ Counsel for Mr. Mustafa Amine Badreddine responded on 27 May 2014,⁴ while counsel for Mr. Hassan Habib Merhi responded on 29 May 2014.⁵ Counsel for the other three Accused did not respond to the motion, and the Prosecution indicated that it would not reply to the Defence responses.

DISCUSSION

A. Addition of Mr. Kheireddine’s Witness Statement to the Prosecution’s Exhibit List

3. The Prosecution submits that Mr. Kheireddine’s statement does not contain any new evidence as it is merely a re-formatted version of previously disclosed evidence in the form mandated by the Practice Direction.⁶ Accordingly, the Prosecution states that there is good cause to grant the amendment sought, while its addition to the exhibit list will not result in undue delay to the

¹ STL, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, STL-11-01/PT/TC, First Decision on the Prosecution Motion for Admission of Written Statements Under Rule 155, 20 December 2013; Second Decision on the Prosecution Motion for Admission of Written Statements Under Rule 155, 30 January 2014. *See also*, Prosecution Rule 155 Motion for Admission of Written Statements in lieu of Oral Testimony for the First Section of the Prosecution Case, 15 November 2013.

² First Rule 155 decision, paras 7-14.

³ STL, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, STL-11-01/T/TC, Prosecution Rule 155 Motion for Admission of PRH130’s Written Statement in lieu of Oral Testimony, 15 May 2014.

⁴ Defence for Mr. Badreddine Response to “Prosecution Rule 155 Motion for Admission of PRH130’s Written Statement in lieu of Oral Testimony”, 27 May 2014.

⁵ Réponse de la Défense de Merhi à la “Prosecution Rule 155 Motion for Admission of PRH130’s Written Statement in lieu of Oral Testimony”, 29 May 2014.

⁶ While the new statement was disclosed on 9 May 2014, it had previously been disclosed to the first four Defence teams by 18 February 2013 and to the Merhi Defence by 13 January 2014. The Practice Direction prescribes additional requirements for admission of written statements to those found in Rule 155. *See*, STL-PD-2010-02, Practice Direction on the Procedure for Taking Depositions Under Rules 123 and 157 and for Taking Witness Statements for Admission in Court Under Rule 155, 15 January 2010.

proceedings.⁷ Counsel for Mr. Badreddine and Mr. Merhi did not make any submissions on the addition of the statement to the Prosecution's exhibit list.

4. The Trial Chamber, in considering whether to allow the Prosecution to amend its exhibit list must balance the Prosecution's interest in presenting any available evidence against the rights of an accused person to adequate time and facilities to prepare for trial. General factors for consideration include: (1) whether the proposed evidence is *prima facie* relevant and probative; (2) whether the Prosecution has shown good cause for not seeking the amendments at an earlier stage; (3) the stage of the proceedings; and, (4) whether granting the amendment would result in undue delay.⁸

5. The Trial Chamber, having reviewed the witness statement of Mr. Kheireddine, is satisfied that the proposed evidence is *prima facie* relevant and probative as it relates to the forensic examination carried out at the crime scene by Lebanese authorities. As the evidence was disclosed previously, the only relevant change is its format. Good cause therefore exists to add the statement to the Prosecution's list as a proposed exhibit. As the statement's addition will not delay the proceedings or prejudice the Defence, it is in the interests of justice to add the new statement to the exhibit list.

B. Admission of Mr. Kheireddine's Witness Statement Under Rule 155

6. Rule 149 (F) provides that the Trial Chamber may receive the evidence of a witness orally or in written form pursuant to Rules 93, 123, 125, 155, 156, 157 and 158. Rule 155 (C) provides that, while the admission of a witness statement in lieu of oral testimony without cross-examination remains exceptional, it is permitted when it is in the interests of justice and contributes to a fair and expeditious trial.

The Parties' submissions

7. The Prosecution submits that the statement of Mr. Kheireddine: is relevant and probative; relates to the crime-base (i.e., and not to a "live issue"); does not go to the acts and conduct of the Accused; and, satisfies the requirements of the Practice Direction. Accordingly, it can be admitted under Rule 155.⁹

⁷ Prosecution motion, paras 10-11.

⁸ STL-11-01/PT/TC, Decision on Prosecution's Motion to Admit into Evidence Photographs, Videos, Maps, and 3-D Models, 13 January 2014, para. 3; First Decision on the Prosecution Motion for Admission of Written Statements under Rule 155, 20 December 2013, para. 5; Decision Authorising the Prosecution to Amend its Exhibit List and to Redact Exhibit 55, 19 November 2013, para. 4; Decision on Prosecution Motion on a Consolidated Indictment and Amending Witness and Exhibit Lists, 4 April 2014, para. 15.

⁹ Prosecution motion, paras 2-3, 6-7.

8. Counsel for Mr. Badreddine do not object to the admission of Mr. Kheireddine's statement under Rule 155, *if* they will have the opportunity to question Witness PRH262. However, in the absence of such an opportunity they would like to cross-examine Mr. Kheireddine.¹⁰ Counsel for Mr. Merhi opposed the motion, arguing that *viva voce* testimony is the rule while admission of a written statement is the exception. They stressed the importance of the crime scene investigation to the Defence, and requested alternatively that Mr. Kheireddine be made available for cross-examination.¹¹

Analysis of proposed Rule 155 statement

9. The proposed statement relates to the investigation of the crime scene by Lebanese authorities. Mr. Kheireddine describes the inspection of the crime scene by the ISF, including photographs that were taken and samples of human remains that were collected. The statement has annexes that include: an earlier statement by the witness to the Special Tribunal's Prosecutor in 2013; an earlier statement by the witness to the United Nations Independent International Investigation Commission in August 2005; and, two relevant reports—which include contemporaneous photographs—the witness co-authored along with other members of the ISF in 2005. The Trial Chamber can, when appropriate, admit such material under Rule 155 and partly under Rule 154.

10. The statement of Mr. Kheireddine is relevant and probative, and it is thus admissible under Rule 149 (C). Further, the statement does not go to the acts and conduct of the Accused and meets the requirements of the Practice Direction. Accordingly, it—and the two earlier statements—may be admitted into evidence under Rule 155. Additionally, the two reports annexed to the statement, which form an indispensable part of the evidence, are admissible under Rule 154.

11. However, counsel for Mr. Badreddine and Mr. Merhi have requested to cross-examine Mr. Kheireddine in regard to topics relevant to the Defence (i.e., crime scene management, command structure of the authorities involved, etc.). As the Trial Chamber considers that Mr. Kheireddine is capable of providing evidence relevant to the Defence, the Prosecution is required to make him available for cross-examination either in The Netherlands or via video-conference link.

¹⁰ Badreddine response, paras 4-5.

¹¹ Merhi response, paras 1-4.

CONCLUSION

12. The proposed statement (and its annexes) bears sufficient indicia of reliability and is therefore admissible under Rule 155 and Rule 154. The Prosecution request for public non-disclosure of the statement at this stage is granted, until the issue of any potential redactions has been resolved.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

ALLOWS the Prosecution to add the witness statement to its exhibit list;

ALLOWS the admission into evidence under Rule 155 of the proposed statement (and, the earlier annexed statements), and the two annexed reports under Rule 154; and

REQUIRES the Prosecution to make the witness available for cross-examination, either in The Netherlands or via video-conference link.

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

Leidschendam,
The Netherlands
5 June 2014

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

