

**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: 13 March 2015

Original language: English

Classification: Public

DECISION ON DR GHAZI ALI YOUSSEF'S (PRH265) OPINION EVIDENCE

(Extract from Official Public Transcript of Hearing on 13 March 2015, page 3, line 18 to page 9, line 2)

On the 10th of March, the Prosecution called a Lebanese Member of Parliament, Dr. Ghazi Ali Youssef, to testify as a witness in the case. The Prosecution counsel informed the Trial Chamber that he wished to play audio tapes of a meeting between the former Lebanese Prime Minister Mr. Rafik Hariri and the Director-General of the Syrian military intelligence in Lebanon, Brigadier-General Rustom Ghazaleh, and Mr. Charles Ayoub, who is a prominent media proprietor in Lebanon, and to have Dr. Youssef provide his opinions as to what was said in the meeting. Counsel assigned to act for the accused, Mr. Mustafa Amine Badreddine, objected to Dr. Youssef giving what is termed opinion evidence in this respect.

The meeting, according to the Prosecution, occurred in the afternoon of Sunday, the 9th of January, 2005, at Mr. Hariri's residence and office in Quraitem Palace in Beirut and included lunch. It was secretly recorded by Mr. Hariri's chief of security, the late Mr. Wissam El-Hassan. Mr. El-Hassan provided the tapes to the United Nations International Independent Investigations Commission on 20th of August, 2005, the tapes have been transcribed but were unclear in part.

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The Defence neither disputed these facts nor that Dr. Youssef could identify or, indeed, more correctly, recognize the voices of the three participants to that meeting. Their contention was limited to the opinion evidence that Dr. Youssef could give as to what was said in the meeting.

The Prosecution submitted that Dr. Youssef could assist the Trial Chamber in interpreting and explaining some of what was discussed in the conversation, and in particular, what the Prosecution termed the subtext and the significance of certain concepts discussed. The Prosecution counsel submitted that the Trial Chamber would "have the assistance of Dr. Youssef's considered opinion, which you can give some weight to, no weight to, or considerable weight to." Hearing the tape without some explanation of the background context, argued the Prosecution, would leave the Chamber less informed than it would be entitled to be.

In support of this, the Prosecution counsel relied upon a decision of the International Criminal Tribunal for Rwanda in the case of Prosecutor against Karemera of the 8th of August, 2008, the title of that decision is: "Decision on" and what follows is in French, [Interpretation] "Motion from the Defence for Mr. Ngirumpatse subsequent to the deposition of the Witness JFG." [In English] At paragraph 5 the name of the decision is actually that in French so it probably doesn't require translation. The decision -- at paragraph 5 they relied on another decision, one of this Trial Chamber, the 7th of July, 2014, entitled: "Decision on expert witnesses PRH120, Professor Fouad Hussein Ayoub, and expert witness PRH508, Dr. Issam Mansour," at paragraphs 5 and 6. Also a decision of the International Criminal Tribunal for the former Yugoslavia in the against of Prosecutor against Ratko Mladic of the 3rd of July, 2012, entitled: "Decision with regard to Prosecution motion for admission into evidence of Witness Harland's statement and associated documents," at paragraph 8.

The Prosecution also referred to a decision of the Supreme Court of Canada in *Graat*, that's G-r-a-a-t, against the Queen found at 2 R.C.S. 819, that was in 1982, at page 835. These cases broadly all relate to the difference between fact and opinion evidence and where it is appropriate to allow a non-expert witness to offer opinion evidence.

For example, in the ICTR decision in *Karemera*, the Trial Chamber allowed a non-expert Defence witness to provide his opinion on the Rwandan genocide. In reaching this decision, it took into account that the witness had lived through the relevant events in Rwanda, had worked for the MRND, which was, this is in French, "Le Mouvement

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Révolutionnaire National pour le Développement," [Interpretation] the National Revolutionary Movement for Development, [In English] and had participated in meetings, rallies and events and personally knew the accused. On that basis the witness was allowed to provide his opinion, although he was not an expert witness.

The Prosecution also submitted that Dr. Youssef has specialized knowledge, having regard to his association with Mr. Hariri, and his knowledge of electoral issues, according to the Prosecution, "puts him in the category of somebody who has the capacity to speak. "

Defence counsel had no objection to Dr. Youssef giving evidence of the political context in which the meeting occurred. However, as he was not a participant to the meeting, Dr. Youssef "was not well-placed to provide the Trial Chamber with evidence of what effectively was in the minds of the participants of that meeting." Dr. Youssef, according to Defence counsel, can give no evidence whatsoever of the meeting and nothing in his witness statement actually referred to it. I said "statement," I mean "statements." Counsel did concede, however, that how the Trial Chamber received any of Dr. Youssef's opinion really only went to the question of the weight to be given to that evidence.

The Trial Chamber has reached its decision for the following reasons. Dr. Youssef was a close political associate of and an economic adviser to Mr. Hariri, and Mr. Hariri had proposed to support Dr. Youssef's candidacy for Parliament in 2000 and 2005. Dr. Youssef's testimony covers a large area relating to contemporary political events between those years, including the relationship between Syria and Lebanon; Mr. Hariri and Syria; Mr. Hariri and other Lebanese politicians; Mr. Hariri and the Lebanese media; the 2005 proposed electoral laws; and the extension of the mandate of President Emile Lahoud.

Dr. Youssef himself had very frequent, sometimes daily, meetings with Mr. Hariri at the time of Mr. Hariri's meeting with Mr. Ghazaleh and Mr. Ayoub in January 2005. He could thus be considered to have been within Mr. Hariri's trusted inner circle of advisers, in this case as an economic adviser. The tapes and their transcripts, that is, Exhibits P395 and P395.1, are of a meeting that lasted for one hour, 43 minutes, and 54 seconds, of which the Prosecution relied upon several extracts in evidence in court.

[...]

The content and context of the discussions is clear in many areas; however, other references are less obvious and there are numerous references to unspoken things that the participants themselves, although not necessarily an uninformed outsider, would clearly

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understand to what they were referring. A contemporary political insider may also be able to provide the relevant context or interpretation that would aid the Trial Chamber's understanding of what was discussed at the meeting.

Dr. Youssef, in the Trial Chamber's view, is one such contemporary political insider whose interpretation or opinion of what was being discussed could assist the Trial Chamber to evaluate the evidence.

The Prosecution did not offer him as an expert witness and the Trial Chamber is not treating his testimony as that of an expert. Rather, it is allowing or it allowed his opinion testimony because, in a manner similar to the ICTR decision of Karemera referred to earlier, "it emanated from his personal experience and activities." In the Trial Chamber's view, Dr. Youssef is thus ideally placed to assist the Trial Chamber in deciphering the meaning of what was being said where it was unclear.

This does not mean, however, that the Trial Chamber will necessarily accept Dr. Youssef's opinions or interpretations as correct. And Defence counsel may of course cross-examine and challenge Dr. Youssef on any of his opinions or interpretations.

The Trial Chamber will assess Dr. Youssef's opinions and interpretations in the context of the evidence as a whole, and noting that he was not present as a participant to the meeting, the Trial Chamber will then give it whatever weight it considers appropriate. This may be substantial or, conversely, it may be none, or it may vary depending upon the passage in the interpretation.

For these reasons, the Trial Chamber on the 11th of March decided to permit Dr. Youssef to provide his opinions and interpretations of the meeting of the 9th of January, 2005.

The Trial Chamber notes -- also notes that the tapes are unclear in part and that the Tribunal's Languages Services Section is working on providing a better transcription. Dr. Youssef's opinion evidence was based upon what he could hear. That of course does not alter the effect of this decision.

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