

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: 8 November 2016

Original language: English

Classification: Public

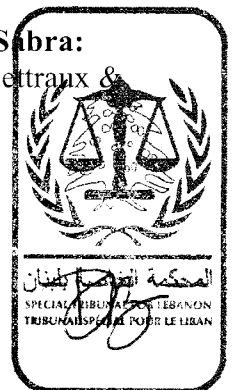
THE PROSECUTOR

v.

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

DECISION ON WITNESS PRH017 UNDER RULE 155**Office of the Prosecutor:**

Mr Norman Farrell & Mr Alexander 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 Dorothee Le Fraper
du Hellen & Mr Jad 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 Guénaél Meltraux &
Mr Geoffrey Roberts

1. Witness PRH017 was employed as the Official Visit Coordinator and Secretary to the former Lebanese Prime Minister, Mr Rafik Hariri. He was responsible for organising and arranging the logistics for Mr Hariri's international trips, and travelled abroad with Mr Hariri. The witness used a mobile telephone in 2004 and 2005 as part of his work; this number is relevant to the Prosecution's case. He can also provide information about the nature of payments to Mr Rustom Ghazaleh, the senior Syrian Military Intelligence officer then in Lebanon, in the months before Mr Hariri's assassination on 14 February 2005.

2. The Prosecution seeks to tender a brief witness statement into evidence under Rule 155 of the Special Tribunal's Rules of Procedure and Evidence,¹ without requiring the witness to testify, submitting that the statement does not go to the acts and conduct of the Accused as charged in the amended consolidated indictment. Further, the statement is reliable, it complies with the Rule 155 Practice Direction,² and there is no overriding public interest requiring the witness to attend court.

3. Counsel acting for the Accused, Mr Salim Jamil Ayyash, Mr Hassan Habib Merhi and Mr Assad Hassan Sabra disagree.

4. Counsel for Mr Ayyash complain that the statement is too succinct and that the witness's prior statements totalling 29 pages have been reduced to one of four (relevant) paragraphs, thereby omitting other relevant information. There are also inconsistencies between the statements. Receiving the statement into evidence without cross-examination would be prejudicial. The witness must therefore appear for cross-examination.³ Counsel for Mr Merhi make similar, but shorter, submissions.⁴

5. Counsel for Mr Sabra likewise complain about the selective nature of the witness's new four-paragraph statement—which contradicts his earlier statements—and submit that the Trial Chamber should also receive into evidence five prior witness statements. The Trial Chamber should therefore either deny the motion or admit all the statements into evidence.⁵

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2736, Prosecution motion to admit statement of Witness PRH017 pursuant to Rule 155, public with confidential annex A, 26 September 2016.

² STL, 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.

³ F2766, Ayyash Defence response to Prosecution motion to admit statement of PRH017 pursuant to Rule 155, confidential, 10 October 2016. A public redacted version of the response was filed on 13 October 2016.

⁴ F2768, Merhi Defence Response to the "Prosecution motion to admit statement of PRH017 pursuant to Rule 155", 10 October 2016.

⁵ F2765, Sabra Defence response to Prosecution motion to admit the statements of PRH017 pursuant to Rule 155, confidential, 10 October 2016.

6. The Prosecution replied that the new statement reflects what the Prosecution considers is relevant to its case, following a Trial Chamber suggestion to tender new statements of relevant evidence rather than lengthy statements containing irrelevant material. The Defence may tender other statement under Rules 155 and Rule 149 (C) by demonstrating their relevance, probative value and reliability.⁶

7. The Trial Chamber has examined all of the statements referred to in the Sabra Defence submissions. In light of the Defence submissions and the apparent contradictions between the different statements, the Trial Chamber agrees that the witness should be made available for cross-examination under Rule 156. His statement may be received into evidence under Rule 155. It is relevant and probative and complies with the Practice Direction and does not go to the acts and conduct of the Accused.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

DECLARES admissible, under Rule 155, the statement of Witness PRH017, dated 2 September 2016, and requires his attendance for cross-examination under Rule 156; and

ORDERS that the confidential filings be reclassified as public or filed in redacted versions.

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

Leidschendam,
The Netherlands
8 November 2016

David Re

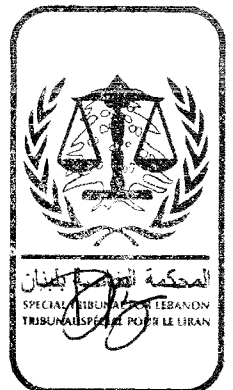
Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy



⁶ F2786, Prosecution Reply to Ayyash, Sabra and Merhi Defence to Prosecution motion to admit the statement of PRH017, confidential, 17 October 2016.