

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: 11 November 2016

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

**DECISION UNDER RULE 155 ADMITTING STATEMENTS OF WITNESSES
PRH338, PRH369, PRH423, PRH470 AND PRH605 IDENTIFYING SAMI ISSA**

Office of the Prosecutor:

Mr Norman Farrell & Mr Alexander Milne

Counsel for Mr Salim Jamil Ayyash:

Mr Emile Aoun, Mr Thomas Hannis & Mr Chad Mair

**Legal Representatives of
Participating Victims:**Mr Peter Haynes, Mr Mohammad F. Mattar
& Ms Nada Abdelsater-Abusamra**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 Mettraux &
Mr Geoffrey Roberts

THE EVIDENCE

1. The Prosecution alleges that the former Accused, Mr Mustafa Amine Badreddine,¹ at relevant times, used the alias of Sami Issa, attended the Lebanese American University and operated some jewellery shops called Samino, and was a supporter of Hezbollah. Following the discontinuance of the case against him, Mr Badreddine is now named as a co-conspirator to the charges in the amended consolidated indictment.²

2. The Prosecution seeks to admit into evidence 18 witness statements of five witnesses—Witnesses PRH338, PRH369, PRH423, PRH470 and PRH605—relating to Mr Badreddine. The Prosecution submits that they are relevant and probative of: a description of Sami Issa or ‘Safi’, the identification of Mr Badreddine as Sami Issa from photographs and a video, attributing mobile numbers 3966663 and or 3833354 to Sami Issa, and of Mr Badreddine’s lifestyle as Sami Issa.³ These witness statements complement those of Witnesses PRH264, PRH306 and PRH416 who have already identified photographs of Mr Badreddine as the person they knew as Sami Issa. The Trial Chamber has decided to admit those statements into evidence, but with one witness testifying as to the process of identifying Sami Issa from media images, published in May 2016, of Mr Badreddine.⁴

3. Witness 338 has four statements relevant to: Sami Issa’s description and his lifestyle, that Sami Issa answered to a different name during a university roll call, attributing 3966663 to Sami Issa, identifying Sami Issa from six photographs and a video of Mr Badreddine that Hezbollah issued after his death in May 2016. The witness also identified Sami Issa as the person wearing a baseball cap featured in exhibit P724 MFI.⁵

4. Witness 369 has three statements, describing Sami Issa and his lifestyle, and also identifying him as Sami Issa in the same Hezbollah images said to be of Mr Badreddine.

¹ The proceedings against Mr Badreddine were terminated on 11 July 2016 consequent to an order of the Appeals Chamber. See STL-11-01/T/AC/AR126.11, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F0019, Decision on Badreddine Defence Interlocutory Appeal of the “Interim Decision on the Death of Mr Mustafa Amine Badreddine and Possible Termination of Proceedings”, 11 July 2016. See also F2633, Order Terminating Proceedings against Mustafa Amine Badreddine without Prejudice and Ordering the Filing of an Amended Consolidated Indictment, 11 July 2016.

² STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2640, Amended consolidated indictment, 12 July 2016, para. 3.

³ F2755, Prosecution motion to admit statements of five witnesses pursuant to Rule 155 in relation to the identification of Sami Issa as Mustafa Amine Badreddine, public with confidential annex A, 30 September 2016.

⁴ See, F2829, Decision on Rule 155 statements of Witnesses PRH264, PRH306 and PRH416 identifying Sami Issa as Mustafa Amine Badreddine, 11 November 2016 (‘Sami Issa as Mustafa Amine Badreddine decision’).

⁵ Witnesses 306 and 416 also have identified that person as Sami Issa, and Witness 264 testified that it looked like him; see Sami Issa as Mustafa Amine Badreddine decision, para. 3.

5. Witness 423's four statements describe Sami Issa and his lifestyle, that he knew him as Sami Issa and Safi, attribute 3833354 to Sami Issa and provide the same identification as with Witnesses 338 and 369.

6. Witness 470's evidence is in four statements and is relevant to describing Sami Issa and the Samino Jewellery enterprise that Sami Issa operated, the attribution of the two numbers to Sami Issa, and identifying Sami Issa as described above.

7. Witness 605 has made three statements. They too describe Sami Issa and his lifestyle, attribute 3966663 to him and identify Mr Badreddine as Sami Issa from the same images.

8. The Prosecution asks the Trial Chamber to receive the witness statements into evidence under Rule 155 of the Special Tribunal's Rules of Procedure and Evidence, without requiring their attendance for cross-examination. The statements do not go to the acts and conduct of the Accused as charged in the amended consolidated indictment and comply with the Rule 155 Practice Direction.⁶ There is no overriding public interest in requiring their attendance in court, and admitting the statements would lead to an efficient use of court time.

9. Counsel for the Accused, Mr Hussein Hassan Oneissi, responded taking no position on the motion, but submitting that the Trial Chamber under Article 20 (2) of the Statute of the Special Tribunal and Rule 145 (A) could conduct the in-court questioning of witnesses for itself. They argued that the interests of justice favoured the Trial Chamber doing this.⁷

10. Counsel for the Accused, Mr Hassan Habib Merhi and Mr Salim Jamil Ayyash, filed a joint response opposing the motion. They argued that the identification was prejudicial and irrelevant to the case against the Accused. In particular, the Prosecution had not divulged the source of the photographs or the video, and further identification from media sources was unreliable. This could influence the identification process and it should be excluded under Rule 149 (D) because its prejudice outweighed its probative value. Also, the Prosecution had not produced any evidence of the identification process. Finally, the evidence of mobile

⁶ 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.

⁷ F2817, Defence for Hussein Hassan Oneissi consolidated response to the "Prosecution Motion to Admit Statements of PRH264, PRH306, PRH416 pursuant to Rule 155", dated 16 September 2016 and to the "Prosecution Motion to Admit Statements of Five Witnesses pursuant to Rule 155 in relation to the Identification of Sami Issa as Mustafa Amine Badreddine", dated 30 September 2016, public, 4 November 2016.

attribution did not meet the minimum requirements, under Rule 149 (C), of being relevant with probative value.⁸

DISCUSSION

11. The Trial Chamber has examined the 18 statements, and the annexed six photographs and the video extract. It is satisfied that the evidence is relevant to the allegations pleaded in the amended consolidated indictment in relation to the pleaded role of Mr Badreddine and his alleged alter ego of Sami Issa. The mobile numbers are relevant for this reason. Some evidence is also relevant to the pleading at paragraph 49 of the amended consolidated indictment that Mr Badreddine was a supporter ‘of Hezbollah, which is a political and military organisation in Lebanon’.

12. The Trial Chamber has recognized the potential danger of identification evidence, but here, the witnesses—according to their statements—all knew Sami Issa for some time before they identified him. The Trial Chamber has ruled on the issue of the reliability of the media images released by Hezbollah after Mr Badreddine’s death in May 2016, finding the recognition evidence of those who already knew Mr Badreddine as Sami Issa was *prima facie* reliable,⁹ while requiring further evidence of the identification process itself. Essentially, the evidence of the five witnesses is of recognizing the man they knew before as Sami Issa. The evidence is therefore *prima facie* reliable and probative. The statements do not go to the acts and conduct of the Accused persons and are admissible under Rule 155.

13. One witness, however, should be called to provide evidence as to the identification process. The Parties have stated that they do not object to this witness testifying by video-conference link under Rule 124.¹⁰ The Trial Chamber accordingly finds that it is in the interest of justice to hear the evidence in this manner.

14. The Prosecution, as required by the Trial Chamber in its previous relevant decision,¹¹ should also obtain a statement from the relevant investigators about the identification process employed with the five witnesses in respect of the media images of Mr Badreddine, and submit it into evidence.

⁸ F2814, Réponse de la défense de M. Merhi et de M. Ayyash aux requêtes du procureur intitulées “Prosecution motion to admit statements of PRH264, PRH306, PRH416 pursuant to Rule 155” et “Prosecution motion to admit statements of five witnesses pursuant to Rule 155 in relation to identification of Sami Issa as Mustafa Amine Badreddine”, public with confidential annexes A and B, 4 November 2016.

⁹ Sami Issa as Mustafa Amine Badreddine decision, paras 10-11.

¹⁰ Provisional transcript of proceedings, 10 November 2016, pp 3-4.

¹¹ Sami Issa as Mustafa Amine Badreddine decision, para. 12.

15. In relation to the submissions of counsel for Mr Oneissi requesting the Trial Chamber to call the witnesses and to question them, the Trial Chamber has pointed out that the correct rule would be Rule 165, which permits the Trial Chamber to summons witnesses or to order the production of additional evidence, rather than Rule 145 (A) which governs the questioning of witnesses already before the court.¹²

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

DECLARES admissible, under Rule 155, the statements of Witnesses PRH338, PRH369, PRH423, PRH470 and PRH605, and associated exhibits (photographs and video extract)—as listed in annex A to the Prosecution motion—and will receive them into evidence and allocate exhibit numbers at an appropriate point in the proceedings; but requires the attendance of one of the witnesses for questioning under Rule 156;

AUTHORISES one of the five witnesses to testify by video-conference link before the Special Tribunal; and

ORDERS that any 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
11 November 2016

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

¹² Sami Issa as Mustafa Amine Badreddine decision, para. 14.

