

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: 20 October 2017

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

DECISION DENYING PROSECUTION APPLICATION FOR CERTIFICATION TO APPEAL 'DECISION ADMITTING STATEMENTS OF WITNESS PRH103 UNDER RULE 158 INTO EVIDENCE'

Office of the Prosecutor:

Mr Norman Farrell & Mr Alexander Hugh 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 Youssef 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 Geoffrey Roberts & Ms Sarah Bafadhel



1. The Trial Chamber admitted into evidence, under Rule 158 of the Special Tribunal's Rules of Procedure and Evidence, several statements of Mr Ziad Ramadan (Witness PRH103).¹ The Trial Chamber found that the witness was 'unavailable'² and decided to admit into evidence—on the Prosecution's application—statements made to the Lebanese investigating authorities and the United Nations International Independent Investigation Commission,³ and declared admissible—on the application of counsel for the Accused, Mr Assad Hassan Sabra—statements made to Lebanese and Syrian investigating authorities.⁴

2. The Prosecution opposed the statements proposed for admission by the Sabra Defence and seeks certification for interlocutory appeal, under Rule 126 (C), of the following two questions:⁵

Whether the Trial Chamber has the obligation to assess whether witness statements were made in circumstances warranting their exclusion, pursuant to Rule 162, regardless of whether any Party makes specific submissions under Rule 162, and

Whether the rules pertaining to the admissibility of evidence, specifically the requirement to show reliability, relevance and probative value, apply equally to all Parties to the proceedings.

3. Defence counsel acting for each of the four Accused did not respond to the Prosecution's application.

4. Rule 126 (C), 'Motions Requiring Certification,' allows the Trial Chamber to certify a decision for interlocutory appeal:

if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which an immediate resolution by the Appeals Chamber may materially advance the proceedings.

5. The Trial Chamber does not disagree as a matter of law with either proposition. It does not therefore require appellate intervention. So, for this reason it cannot meet the test in either limb of Rule 126 (C). The appropriate relief would be seeking reconsideration of any 'offending' aspects of the Trial Chamber's decision.

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2901, Decision Admitting Statements of Witness PRH103 under Rule 158, 12 December 2016 (confidential).

² Rule 158 permits a Chamber to admit into evidence the statement of a witness 'who can no longer with reasonable diligence be traced, or who is for good reason otherwise unavailable to testify orally' if it finds that the statement is reliable. The Chamber must also consider whether the statement goes to the acts and conduct of the accused as charged in the indictment.

³ These are exhibits P1774, P1775 and P1776.

⁴ These await formal admission into evidence.

⁵ F2920, Prosecution Request for Certification to Appeal the "Decision Admitting Statements of Witness PRH103 under Rule 158", 20 December 2016 (confidential), paras 1-2.

6. The decision was filed confidentially to allow the Prosecution to file an application for protective measures for Mr Ramadan. Since then, the Trial Chamber has denied the Prosecution request for protective measures for the witness and ordered that the decision be reclassified as public.⁶ Now that the decision is public, there is no reason for the Prosecution's application to remain confidential. It should therefore be reclassified.

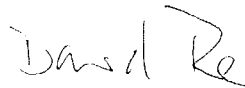
DISPOSITION

FOR THESE REASONS, the Trial Chamber dismisses the application; and

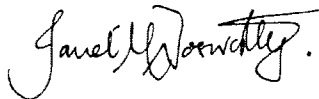
ORDERS the Prosecution's application to be reclassified as public.

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

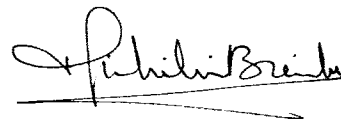
Leidschendam,
The Netherlands
20 October 2017



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy



⁶ See F3366, Decision Denying Prosecution Motion for Protective Measures for Witness PRH103, 20 October 2017.