



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:** 13 July 2018

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

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

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**DECISION NOTING THE ADMISSION INTO EVIDENCE OF WITNESS PRH028'S  
STATEMENT UNDER RULE 155 AND REVOKING A SUMMONS FOR THE  
WITNESS TO APPEAR**

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**Office of the Prosecutor:**  
Mr Norman Farrell & Mr Nigel Povoas

**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 & Mr Jad Youssef Khalil

**Government of the Lebanese Republic**

**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. On the Prosecution's application, the Trial Chamber, on 31 January 2017, decided to admit into evidence a statement of Witness PRH028—a relative of the Accused, Mr Hassan Habib Merhi—under Rule 155 of the Special Tribunal's Rules of Procedure and Evidence<sup>1</sup> but required the Prosecution to make the witness available for cross-examination, under Rule 156,<sup>2</sup> as the Merhi Defence wanted to cross-examine him.<sup>3</sup>
2. On 24 March 2017, the Trial Chamber issued a summons ordering the witness's appearance on 7 April 2017, via video conference link, from the Special Tribunal's Beirut Office. However, the summons could not be served before this date, despite the Lebanese authorities' attempts to find or telephone the witness. The Prosecution, consequently, sought to have his statement admitted under Rule 158 as an 'unavailable person'.<sup>4</sup> This allows the Trial Chamber to admit into evidence statements of witnesses 'who [have] died, who can no longer with reasonable diligence be traced, or who [are] for good reason otherwise unable to testify orally'.
3. The Trial Chamber, on 20 July and 28 August 2017, issued further summonses—the latter with an open date for the testimony—which the Lebanese Government was again unable, despite multiple attempts, to serve. On 8 December 2017, the Trial Chamber found that the witness was unavailable—although not necessarily permanently—and decided to admit his statement under Rule 158.<sup>5</sup> The Trial Chamber, however, specified that 'should Witness 28 become available during the course of trial, he must appear for cross-examination'. For this reason, it ordered the Prosecution to continue, with the assistance of the Lebanese Government, its diligent efforts to secure the witness's attendance during the trial.<sup>6</sup>

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<sup>1</sup> Rule 155 allows written statements and transcripts to be admitted in lieu of oral testimony. The evidence must go to proof of a matter other than the acts and conduct of the accused as charged in the indictment. The Trial Chamber decides, after hearing the Parties, whether to require the witness to appear for cross-examination. If the Trial Chamber decides to require the witness to appear for cross-examination, Rule 156 applies.

<sup>2</sup> According to Rule 156, the witness must be present in court, be available for cross-examination and any questioning by the Judges, and attest that the written statement, or transcript, accurately reflects that witness's declaration and what the witness would say if examined.

<sup>3</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2963, Decision on the Prosecution Motion to Admit Ten Witness Statements relating to Salim Jamil Ayyash and Hassan Habib Merhi and to Admit One Exhibit, 31 January 2017.

<sup>4</sup> F3050, Order Issuing a Summons for a Witness, 24 March 2017 (confidential); F3124, Prosecution Motion to Admit the Statement of PRH028 under Rule 158 and for Provisional Protective Measures for PRH028, 5 May 2017 (confidential with confidential annex).

<sup>5</sup> Witness 28's statement was admitted into evidence as exhibit P2126.

<sup>6</sup> F3238, Interim Decision on the Admission of Witness PRH028's Statement pursuant to Rule 158 and Order Issuing a Further Summons, 20 July 2017 (confidential with confidential annex A: Order Issuing a Summons for a Witness); F3298, Second Interim Decision on the Admission of Witness PRH028's Statement pursuant to

4. On 6 July 2018, the Prosecution informed the Trial Chamber that the Lebanese authorities, on 20 June 2018, had contacted the witness and informed him of the summons. The Prosecution investigators also telephoned him, on 6 July, and he agreed to contact them to arrange his testimony. At the Trial Chamber's request, the Merhi Defence informed it that it no longer wishes to cross-examine the witness. The Prosecution then filed a detailed update on its attempts to locate the witness.<sup>7</sup>

5. As Witness 28's attendance for cross-examination is no longer required, the legal basis to admit his statement into evidence is now Rule 155 and, consequently, **it is admitted into evidence under Rule 155**. The open-dated summons of 28 August 2017 is accordingly **revoked**.

6. The Trial Chamber granted Witness 28 provisional protective measures.<sup>8</sup> These will continue until the Prosecution has informed the Trial Chamber whether the witness requires them. The Prosecution update contains identifying information,<sup>9</sup> so the filing will remain confidential pending any further order.

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

Leidschendam,  
The Netherlands  
13 July 2018

*David Re*

Judge David Re, Presiding

*Janet Nosworthy*

Judge Janet Nosworthy

*Micheline Braidy*

Judge Micheline Braidy

Rule 158, Order Issuing a Further Summons, and Request for Further Cooperation from the Lebanese Government in Its Service, 28 August 2017 (confidential with confidential annex A: Order Issuing a Summons for a Witness); F3473, Decision Admitting Witness PRH028's Statement pursuant to Rule 158 and Granting Provisional Protective Measures, 8 December 2017 ('Decision of 8 December 2017'), paras 21-22.

<sup>7</sup> Email from the Prosecution to the Trial Chamber senior legal officer, copying Defence counsel and the Legal Representatives of Victims, 6 July 2018; email from a Trial Chamber legal officer to the Merhi Defence, copying the other Parties and the Legal Representatives of Victims, 6 July 2018; email from the Merhi Defence to a Trial Chamber legal officer, copying the other Parties and the Legal Representatives of Victims, 9 July 2018; F3708/20180713/PROSECUTION UPDATE REGARDING PRH028, 11 July 2018 (confidential) ('Prosecution update').

<sup>8</sup> Decision of 8 December 2017, paras 29-31, disposition.

<sup>9</sup> See Prosecution update, para. 18.