



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: 26 February 2014

Original language: English

Classification: Public

THE PROSECUTOR

v.

SALIM JAMIL AYYASH
MUSTAFA AMINE BADREDDINE
HASSAN HABIB MERHI
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA

DECISION ON PROTECTIVE MEASURES FOR SIX WITNESSES GIVING EVIDENCE UNDER RULE 155

Office of the Prosecutor:

Mr. Norman Farrell, Mr. Graeme Cameron
& Mr. Alexander Milne

Victims' Legal Representatives:

Mr. Peter Haynes, Mr. Mohammad F. Mattar
& Ms. Nada Abdelsater-Abusamra

Counsel for Mr. Salim Jamil Ayyash:

Mr. Eugene O'Sullivan, Mr. Emile Aoun
& Mr. Thomas Hannis

Counsel for Mr. Mustafa Amine Badreddine:

Mr. Antoine Korkmaz, Mr. John Jones
& Mr. Iain Edwards

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 & Mr. Philippe Larochelle

Counsel for Mr. Assad Hassan Sabra:

Mr. David Young, Mr. Guénaél Métraux, Mr.
Geoffrey Roberts



INTRODUCTION

1. In a decision on 20 December 2013, the Trial Chamber ordered that the evidence of witnesses PRH-062, PRH-070, PRH-240, PRH-260, PRH-351, and PRH-485 would be admitted into evidence under Rule 155 of the Special Tribunal's Rules of Procedure and Evidence, 'Admission of Written Statements and Transcripts in lieu of Oral Testimony'.¹
2. On 28 January 2014, the Prosecution asked the Trial Chamber to grant protective measures for these six witnesses and to set an expedited schedule for responses from Defence counsel.² Having considered all the circumstances, the Trial Chamber declined to set an expedited schedule. Nevertheless, none of the counsel for the four Accused, Mr. Salim Jamil Ayyash, Mr. Mustafa Amine Badreddine, Mr. Hussein Hassan Oneissi Oneissi and Mr. Assad Hassan Sabra Sabra, filed a response.
3. The Trial Chamber ordered the joinder of the case against Mr. Hassan Habib Merhi to that of Mr. Ayyash, Mr. Badreddine, Mr. Oneissi and Mr. Sabra on 11 February 2014;³ that was the last day for responses to the Prosecution's motion. Counsel for Mr. Merhi, however, did not request to extend the deadline to respond to any pending motions at the date of the joinder, and has not filed a response. The Trial Chamber assesses the risk of any prejudice to the interests of Mr. Merhi resulting from issuing this decision to be extremely minimal, having regard both to the essentially procedural issue at stake and the opportunity already provided to counsel for Mr. Merhi to make substantive submissions concerning the admissibility of the witnesses' evidence under Rule 155.⁴

APPLICABLE LAW

4. Rule 133 (A), 'Measures for the Protection of Victims and Witnesses', provides that:

The Trial Chamber may, *proprio motu* or at the request of a Party, the victim or witness concerned, the Victims' Participation Unit or the Victims and Witnesses Unit, order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused.

¹ *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, STL-11-01/PT/TC, First Decision on the Prosecution Motion for Admission of Written Statements under Rule 155, 20 December 2013.

² Urgent Prosecution Motion for Protective Measures for Witnesses PRH062, PRH070, PRH240, PRH260, PRH351, and PRH 485, 28 January 2014, Public with Confidential Annex.

³ Transcript of 11 February 2014, pp. 91-96 (oral decision on joinder, reserving written reasons).

⁴ See transcript of 12 February 2014, pp. 66, 121 (setting a deadline of 14 March 2014 for counsel for Mr. Merhi to apply to exclude evidence already admitted or ruled admissible).

5. These protective measures may include measures to prevent disclosure to the public or the media the identity or whereabouts of a witness, or persons associated with them, such as: expunging their names or identifying information from public records; non-disclosure to the public of any records identifying the witness; using devices to distort the witness' image or voice; using closed circuit television or video-conference link; and, using pseudonyms.⁵

6. The Trial Chamber will grant protective measures case-by-case, on the basis of persuasive evidence, and only when it is satisfied that the protective measures sought will not prejudice the rights of the Accused to a fair trial.⁶

DISCUSSION

7. The Prosecution requests that the Trial Chamber maintains the confidentiality of the identities of the six witnesses by making orders to enforce the use of pseudonyms, to redact any identifying information from Special Tribunal's public documents, and to restrain anyone who knows or discovers identifying information from disclosing it.⁷ The Prosecution submits that these measures are necessary because public disclosure of the witnesses' participation in this trial may subject them and their relatives to security risks, and will adversely affect their privacy.⁸ Each witness, according to the Prosecution, has expressed security concerns, 'in relation to where the witness resides or works', resulting from the 'tense political, territorial and security situation prevailing in Lebanon'.⁹ These concerns are detailed in a confidential annex to the Prosecution's motion.¹⁰

8. The Trial Chamber considers that the protective measures requested are appropriate for witnesses PRH-070, PRH-240, and PRH-351, given the combination of the general security situation in Lebanon at the present time and the particular personal circumstances of these witnesses. In particular:

- two witnesses, in their day-to-day work, deal with 'all factions of Lebanese society' and therefore are concerned that knowledge of their connection with the trial will affect their work and may cause other difficulties for them or their family; and

⁵ See Rule 133 (C) (i).

⁶ See, e.g., Reasons for Decision Denying Certification to Appeal the Decision on Protective Measures for Witness PRH-566, 19 February 2014, paras 11-13.

⁷ Motion, para. 5.

⁸ Motion, para. 7.

⁹ Motion, para. 8.

¹⁰ Motion, para. 7, Confidential Annex.

- one witness believes that disclosure of their identity will have ‘a serious negative impact’ on their work for additional reasons, and believes that knowledge of their identity will put their life, or the lives of their family members, at risk.

9. Counsel for the Accused have not contested the basis for the witnesses’ concerns in these respects, or their reasonableness. The Trial Chamber is satisfied that ordering the protective measures requested for witnesses PRH-070, PRH-240, and PRH-351 will not prejudice the rights of the five Accused to a fair trial. It takes into account the fact that relevant disclosure has taken place, and that counsel for the five Accused therefore know the witnesses’ identities and are able to answer the Prosecution case as may be appropriate, including undertaking their own relevant defence investigations.

10. Concerning witnesses PRH-062, PRH-260, and PRH-485, however, the Prosecution has only provided evidence of generalised concerns from these witnesses based on the situation within Lebanon as a whole. It has not related these concerns to the individual circumstances of the witnesses. For example:

- one witness is described as having ‘no specific concerns’ but rather to be concerned by ‘the difficult general situation currently in Lebanon’;
- one witness is described as having ‘no specific concerns’ and ‘no real issues’ but only to be concerned ‘because of the general situation in Lebanon’; and
- one witness is described as having ‘no specific security issues’ but to have asserted that ‘you only have to look at the general state of the country to realize the dangers’.¹¹

11. Before determining the application in relation to these three witnesses, the Trial Chamber believes that it could be assisted by receiving more specific information about the specific concerns of the witnesses. The Prosecution is therefore invited to obtain and file any further relevant information.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

GRANTS the protective measures requested for witnesses PRH-070, PRH-240, and PRH-351;

¹¹ See Motion, Confidential Annex.

ORDERS that—

the identities of witnesses PRH-070, PRH-240, and PRH-351 must remain confidential;

witnesses PRH-070, PRH-240, and PRH-351 will only be described by these pseudonyms in the Special Tribunal's public hearings and published documents;

information identifying witnesses PRH-070, PRH-240, and PRH-351 must be redacted from the Special Tribunal's public documents;

no person, including members of the media and third parties who become aware of the identity of witnesses PRH-070, PRH-240, or PRH-351 and their involvement in these proceedings, may disclose information protected by these orders;

REAFFIRMS that a knowing violation of these orders may result in prosecution under Rule 60 *bis*, 'Contempt and Obstruction of Justice', punishable by a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 euros, or both; and

DEFERS its decision concerning witnesses PRH-062, PRH-260, and PRH-485 pending further submissions from the Prosecution.

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

Dated 26 February 2014
Leidschendam
The Netherland

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

