



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

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: 17 June 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 THE PROSECUTION MOTIONS FOR TESTIMONY BY
VIDEO-CONFERENCE LINK AND PROTECTIVE MEASURES FOR
WITNESS PRH450**

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. Dorothée 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 Mettrich
& Mr. Geoffrey Roberts



INTRODUCTION

1. In a decision on 30 January 2014, the Trial Chamber ordered that the evidence of Witness PRH450 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 Additionally, the Trial Chamber required the Prosecution to make witness 450 'available for cross-examination either in The Netherlands or via video-conference link'.²
2. On 28 May 2014, the Prosecution requested that witness 450 (and others) be authorised to testify via video-conference link pursuant to Rule 124.³ Counsel for Mr. Salim Jamil Ayyash, Mr. Mustafa Amine Badreddine, Mr. Hassan Habib Merhi, and Mr. Hussein Hassan Oneissi responded to the Prosecution motion on 11 June 2014.⁴ Counsel for Mr. Assad Hassan Sabra did not respond.
3. On 30 May 2014, the Prosecution asked the Trial Chamber to grant protective measures for witness 450 (and others).⁵ Counsel for Mr. Sabra responded on 6 June 2014, and counsel for Mr. Ayyash, Mr. Badreddine, Mr. Merhi, and Mr. Oneissi responded on 13 June 2014.⁶

APPLICABLE LAW – VIDEO-CONFERENCE LINK

4. Rule 124 provides, 'At the request of either Party, the Pre-Trial Judge or a Chamber may, in the interests of justice, order that testimony be received via video-conference link'.

¹ *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, STL-11-01/PT/TC, Second Decision on the Prosecution Motion for Admission of Written Statements under Rule 155, 30 January 2014.

² Second Decision on the Prosecution Motion for Admission of Written Statements under Rule 155, 30 January 2014, para. 17.

³ STL, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, STL-11-01/T/TC, Prosecution Motion for Testimony by Video-Conference Link for Witnesses PRH450, PRH130, PRH120, and PRH548, 28 May 2014.

⁴ Ayyash Defence Response to the Prosecution Motion for Testimony by Video-Conference Link for Witnesses PRH450, PRH130, PRH120, and PRH548, 11 June 2014; Badreddine Defence Response to "Prosecution Motion for Testimony by Video-Link for Witnesses PRH450, PRH130, PRH120, and PRH548", 11 June 2014; Réponse de la Défense de Merhi à la "Prosecution Motion for Testimony by Video-Conference Link for Witnesses PRH450, PRH130, PRH120, and PRH548", 11 juin 2014; The Defence for Hussein Hassan Oneissi Response to the "Prosecution Motion for Testimony by Video-Conference Link for Witnesses PRH450, PRH130, PRH120, and PRH548" of 28 May 2014, 11 June 2014.

⁵ Prosecution Motion for Protective Measures regarding Six Witnesses and Estimates of Time regarding Defence requests for Cross-Examination, 30 May 2014.

⁶ Sabra Response to Prosecution Motion for Protective Measures and Estimates of Time for Cross-Examination, 6 June 2014; Ayyash Defence Response to Prosecution Motion for Protective Measures Regarding Six Witnesses and Estimates of Time Regarding Defence Requests for Cross-Examination, 13 June 2014; Badreddine Defence Consolidated Response to Prosecution Motions for Protective Measures and Estimates of Time Regarding Defence Requests for Cross-examination, 13 June 2014; Réponse consolidée de la défense de merhi aux requêtes du procureur du 30 mai et du 6 juin 2014 aux fins de mesures de protection et d'indications sur les contre-interrogatoires, 13 juin 2014; Réponse de la Défense de M. Oneissi aux Requêtes des 30 mai et 6 juin 2014 visant à obtenir des mesures de protection pour onze témoins, 13 juin 2014. The Trial Chamber shortened the deadline for Defence responses to 12.00 on 13 June 2014. This was done via e-mail from the Trial Chamber's Legal Officer to the Parties.

5. In applying this Rule, the Trial Chamber has issued a number of oral decisions⁷ and one ‘general decision’ in which it identified the key principles associated with testimony via video-conference link.⁸ In its general decision, the Trial Chamber outlined a non-exhaustive list of factors to evaluate whether the interests of justice permit testimony by video-conference link for a particular witness, which includes: the rights of the Accused; the nature of the evidence; the reported views and personal circumstances of the witness; the current situation in Lebanon; the concerns and objections, if any, of the Defence; the expeditiousness of the proceedings; and, the Special Tribunal’s logistical and financial resources.⁹

DISCUSSION

The Parties’ submissions

6. The Prosecution submits that disruption to the extensive official obligations of witness 450 makes his personal appearance in The Netherlands unnecessarily burdensome. Further, the impact on the Special Tribunal’s logistical and financial resources would be significantly reduced if he is allowed to testify via video-conference link. Additionally, the Prosecution refers to witness 450’s specific request for protective measures and states that his testimony via video-conference link will minimise his public exposure. Finally, the rights of the Accused are respected and preserved if the request is granted.¹⁰

7. Counsel for the four Accused who responded argue that the ordinary course for testimony is *viva voce*, and that the motion should be dismissed. They submit that the two reasons proffered by the Prosecution—namely, personal inconvenience for witness 450 and resource concerns—are not sufficient to authorise testimony via video-conference link because these two factors are typical for all witnesses who must appear before the Special Tribunal. Further, they state that the present

⁷ Transcript, 9 January 2014, pp 12-14; Transcript, 22 January 2014, pp 65-66; Transcript, 29 January 2014, pp 64-67; Transcript, 4 February 2014, p. 61.

⁸ General Decision on Video-Conference Link Testimony and Reasons for Decision on Video-Conference Link Testimony of Witness PRH128, 25 February 2014. The key principles are found in paras 21-23, and include: i) Video-conference link is merely an extension of the courtroom to the location of the witness; ii) Despite the witness’s physical absence, the rights of an accused to cross-examine and confront a witness against them are respected; iii) Video-conference link allows the Trial Chamber to assess the credibility and reliability of the witness; and, iv) Testimony by video-conference link should be given as much probative value as testimony presented in the courtroom.

⁹ General decision on video-conference link, para. 27.

¹⁰ Prosecution video-conference link motion, paras 6, 8-9.

circumstances are distinguishable from those when the Trial Chamber previously authorised testimony via video-conference link because the same time pressures do not currently exist.¹¹

Analysis of testimony via video-conference link for witness 450

8. Witness 450—a high-ranking Lebanese military officer—is expected to testify regarding an unidentified male victim that he discovered at the crime scene on 21 February 2005. His anticipated evidence does not go to the acts and conduct of the Accused, and he has requested protective measures due to security concerns—according to Rule 133 (C) (i) (d), testimony via video-conference link may be an appropriate protective measure. He is scheduled to testify on 24 June 2014,¹² and the Prosecution has submitted that there are certain ‘logistical difficulties’ making his appearance before the Special Tribunal next week problematic.¹³ Accordingly, the Trial Chamber is satisfied that the expeditiousness of the proceedings and the resources of the Special Tribunal would be served by authorising his testimony via video-conference link. Further, the disruption to the witness’s day-to-day professional commitments will be minimised. While having considered the objections of counsel for the Defence, the rights of the Accused will be respected if the request is granted. Accordingly, the Trial Chamber finds that it is in the interests of justice to authorise PRH450’s testimony by video-conference link.

APPLICABLE LAW – PROTECTIVE MEASURES

9. 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.

10. These protective measures may include means 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

¹¹ Ayyash response to video-conference link motion, paras 2-3, 5-6; Badreddine response to video-conference link motion, paras 4-7, 9; Merhi response to video-conference link motion, paras 1-4; Oneissi response to video-conference link motion, paras 2, 9-12.

¹² Notice of Proposed Witness Order for Trial Hearings in June 2014, 6 June 2014, Annex A.

¹³ Transcript, 16 June 2014, pp 4-5.

identifying the witness; using devices to distort the witness' image or voice; using closed circuit television or video-conference link; and, using pseudonyms.¹⁴

11. The Trial Chamber will grant protective measures case-by-case, on the basis of persuasive evidence for each application, and only when it is satisfied that the protective measures sought will not prejudice the rights of the Accused to a fair trial.¹⁵

DISCUSSION

The Parties' submissions

12. The Prosecution requests that the Trial Chamber maintains the confidentiality of the identity of witness 450 by making orders to enforce the use of his pseudonym, to redact any identifying information from public documents, and to restrain anyone who knows or discovers identifying information from disclosing it. Additionally, the Prosecution submits that the image and voice of witness 450 should be distorted so that he is unrecognizable publicly during his testimony. These measures are necessary because public disclosure of his participation in this trial may subject him and his relatives to security and privacy risks due to the 'tense political, territorial and security situation prevailing in Lebanon'. Witness 450's specific concerns are detailed in a confidential statement provided with the Prosecution's motion.¹⁶

13. Counsel for Mr. Badreddine and Mr. Sabra took no position in regard to the requested protective measures.¹⁷ Counsel for Mr. Ayyash, Mr. Merhi, and Mr. Oneissi oppose the motion, arguing that the proffered grounds for the request are insufficient to substantiate granting protective measures. They argue that the purported concerns do not evidence an objective risk to the witness and/or his family.¹⁸

¹⁴ See Rule 133 (C) (i).

¹⁵ Reasons for Decision Denying Certification to Appeal the Decision on Protective Measures for Witness PRH-566, 19 February 2014, paras 11-13; Decision on Protective Measures for Six Witnesses Giving Evidence Under Rule 155, 26 February 2014, paras 4-6.

¹⁶ Prosecution motion for protective measures, paras 1, 8-9, 11-12, 19, public annex.

¹⁷ Badreddine response to motion for protective measures, para. 4; Sabra response to motion for protective measures, para. 5.

¹⁸ Ayyash response to motion for protective measures, paras 2, 4-5, 9-10; Oneissi response to motion for protective measures, para. 10; Merhi response to motion for protective measures, paras 1-4.

Analysis of proposed protective measures for witness 450

14. The Trial Chamber considers that the protective measures requested are appropriate for witness 450, given the combination of the general security situation in Lebanon at the present time and the particular personal circumstances of the witness. The witness—a high-ranking Lebanese military officer—relies upon confidentiality of his identity in his day-to-day work. Disclosure of his name, voice, and image may jeopardise this work and endanger him and his family.

15. Counsel for the Accused contest the sufficiency of witness 450's concerns. However, the Trial Chamber is satisfied that the concerns are well-grounded and that ordering the protective measures requested will not prejudice the rights of the five Accused to a fair trial. This takes into account the fact that relevant disclosure has taken place, that Defence counsel know the witness's identity, and they are therefore able to answer the Prosecution case as may be required (including undertaking their own relevant defence investigations).

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

AUTHORISES witness 450 to testify before the Special Tribunal via video-conference link;

GRANTS the protective measures requested for witness 450;

ORDERS that—

the identity of witness 450 must remain confidential;

witness 450 will only be described by his pseudonym in the Special Tribunal's public hearings and published documents;

information identifying witness 450 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 witness 450 and his involvement in these proceedings, may disclose information protected by this order;

the voice and image of witness 450 must be distorted during his testimony; and

REAFFIRMS that a knowing violation of this order may result in prosecution under Rule 60 *bis*.¹⁹

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

Leidschendam,
The Netherlands
17 June 2014

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

¹⁹ Punishable by a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 euros, or both.

