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:	**19 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 MOTION FOR TESTIMONY BY VIDEO-CONFERENCE LINK FOR WITNESSES PRH130, PRH120, AND PRH548

Office of the Prosecutor:
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Counsel for Mr. Mustafa Amine Badreddine:
Mr. Antoine Korkmaz, Mr. John Jones & Mr. Iain Edwards

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Counsel for Mr. Hussein Hassan Oneissi:
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Mr. David Young, Mr. Guénaël Mettraux & Mr. Geoffrey Roberts

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INTRODUCTION

1. On 28 May 2014, the Prosecution requested that Dr. Fouad Hussein Ayoub (Witness PRH120) and Witness PRH450 be authorised to testify via video-conference link pursuant to Rule 124 of the Special Tribunal's Rules of Procedure and Evidence. Additionally, the Prosecution sought authorisation for Mr. Mohammed Kheireddine (Witness PRH130) and Mr. Iskander Sursock (Witness PRH548) to testify via video-conference link *if* they would be required to appear before the Special Tribunal for their testimony.[1]

2. 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.[2] Counsel for Mr. Assad Hassan Sabra did not respond.

3. On 17 June 2014, the Trial Chamber issued a decision regarding the application for video-conference link testimony by Witness PRH450.[3] Accordingly, this decision will only deal with the remaining applications for Dr. Ayoub, Mr. Kheireddine, and Mr. Sursock.

APPLICABLE LAW

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'.

5. In applying this Rule, the Trial Chamber has issued a number of oral decisions[4] and one 'general decision' in which it identified the key principles associated with testimony via video-conference link.[5] 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

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[1] 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.

[2] 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 PRH458" of 28 May 2014, 11 June 2014.

[3] Decision on the Prosecution Motions for Testimony by Video-Conference Link and Protective Measures for Witness PRH450, 17 June 2014.

[4] 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.

[5] 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.

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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.[6]

DISCUSSION

The Parties' submissions

6. The Prosecution submits that disruption to the extensive daily professional obligations of all three witnesses makes their personal appearance in The Netherlands unnecessarily burdensome. Further, the impact on the Special Tribunal's logistical and financial resources would be significantly reduced if the witnesses were allowed to testify via video-conference link. Additionally, efficient trial management and avoidance of a delay in the proceedings require Mr. Kheireddine and Mr. Sursock to testify via video-conference link if they must appear before the Special Tribunal. Finally, the rights of the Accused are respected and preserved if the request is granted.[7]

7. Counsel for the four Accused who responded argue that testimony should ordinarily be *viva voce*, and that the motion should be dismissed. They submit that the two reasons offered by the Prosecution—namely, inconvenience for the witnesses and resource concerns—are not sufficient to authorise testimony via video-conference link as these two factors are typical for all witnesses who must appear before the Special Tribunal. Further, they state that these 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.[8]

Analysis of testimony via video-conference link

8. As the Trial Chamber must evaluate whether the interests of justice permit testimony by video-conference link for *a particular witness*, all relevant factors will be considered on a case-by-case basis.

- **Mr. Kheireddine**

9. Mr. Kheireddine's proposed evidence relates to the forensic examination carried out at the crime scene by Lebanese authorities. The Trial Chamber held that his written statement was

[6] General decision, para. 27.
[7] Prosecution motion, paras 7-9, 11-13.
[8] Ayyash response, paras 2-3, 5-6; Badreddine response, paras 4-7, 9; Merhi response, paras 1-4; Oneissi response, paras 2, 9-12.

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admissible under Rule 155 but that he must be made available for cross-examination by the Defence.[9] His expected testimony does not go to the acts and conduct of the Accused, and he is currently scheduled to testify on 26 June 2014.[10] This evidence can be heard expeditiously via video-conference link, and as a result, the financial and logistical resources of the Special Tribunal will be appropriately conserved in these circumstances. Additionally, the interruption to the witness' continuing work commitments will be limited. It is in the interests of justice for the Trial Chamber to hear Mr. Kheireddine's testimony by video-conference link, considering the combination of relevant elements in the request.

- **Dr. Ayoub**

10. Dr. Ayoub is a medical doctor specialising in forensics who is expected to testify about reports that he produced regarding the analysis of biological material collected from the Hariri crime scene. He is the subject of a pending Prosecution motion to be qualified as an expert in this case.[11] His anticipated testimony on 1-2 July 2014[12] does not go to the acts and conduct of the Accused. And, while this evidence may be technical in nature, '[c]ounsel and the Trial Chamber judges can effectively question a witness via video-conference link' as documents can easily be tendered and shown electronically to a witness.[13] Accordingly, the Trial Chamber considers that the testimony of Dr. Ayoub by video-conference link will lead to increased expeditiousness and savings of the Special Tribunal's resources. The cumulative effect of these relevant factors results in the Trial Chamber finding that it is in the interests of justice to hear Dr. Ayoub's testimony via video-conference link.

- **Mr. Sursock**

11. Mr. Sursock is a geophysicist whose anticipated testimony will focus on seismic activity recorded in Lebanon following the Hariri attack. He is the subject of a pending Prosecution motion seeking to admit his expert report without requiring his physical appearance before the Special Tribunal.[14] Mr. Sursock has not been scheduled to testify in advance of the Special Tribunal's summer recess which commences at the end of July 2014, and accordingly his evidence—if received—will not be heard before the end of August 2014, at the earliest. His report does not go to the acts and conduct of the Accused. Mr. Sursock's testimony by video-conference link would

[9] Decision on the Prosecution Motion for Admission of the Written Statement of PRH130 (Mohammed Kheireddine), 5 June 2014, Disposition.
[10] Prosecution notice of 6 June 2014, Annex A.
[11] Prosecution Motion Regarding Upcoming Expert Witnesses, 26 May 2014, para. 7.
[12] Prosecution notice of 6 June 2014, Annex A.
[13] General decision, para. 21.
[14] Prosecution Motion Regarding Upcoming Expert Witnesses, 26 May 2014, para. 19.

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certainly be less disruptive to his professional obligations, and it would conserve limited resources. While these two factors alone (i.e., the witness's personal circumstances and the Special Tribunal's resources) do not persuade the Trial Chamber, the collective effect of all relevant issues lead to the conclusion that his testimony by video-conference link is in the interests of justice. However, this is only relevant if the Trial Chamber later decides that Mr. Sursock must appear before the Special Tribunal (after having ruled upon the pending Prosecution motion regarding his report).

CONCLUSION

12. Video-conference link testimony: is merely an extension of the courtroom; protects the rights of the Accused; allows all concerned to assess the credibility and reliability of the witness; and, garners as much probative value as in-person testimony. Having considered the relevant factors for each witness, the Trial Chamber is satisfied under Rule 124 that it is in the interests of justice to hear these three witnesses via video-conference link.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

AUTHORISES Mr. Mohammed Kheireddine, Dr. Fouad Hussein Ayoub, and Mr. Iskander Sursock to testify before the Special Tribunal via video-conference link.

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

Leidschendam,
The Netherlands
19 June 2014

Judge David Re, Presiding

Judge Janet Nosworthy

Judge Micheline Braidy

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