



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: 2 July 2014

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

CONSOLIDATED DECISION ON THE PROSECUTION MOTIONS FOR PROTECTIVE MEASURES REGARDING TEN WITNESSES

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 Mettraux
& Mr. Geoffrey Roberts



INTRODUCTION

1. On 20 December 2013 and 30 January 2014, the Trial Chamber ordered that the evidence of forty-five witnesses 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. The Prosecution, on 30 May 2014, asked the Trial Chamber to grant protective measures under Rule 133 for six witnesses covered by the Rule 155 decision of 30 January 2014—witnesses PRH450, PRH489, PRH513, PRH538, PRH596, and PRH653.² On 6 June 2014, the Prosecution requested that protective measures be granted regarding a further five witnesses—four covered by the Rule 155 decision of 20 December 2013 (witnesses PRH003, PRH285, PRH401, and PRH530) and witness PRH348.³ In a decision of 17 June 2014, the Trial Chamber granted protective measures to witness PRH450,⁴ who subsequently testified on 24 and 25 June 2014. Accordingly, this decision will only deal with the ten remaining witnesses.
3. Counsel for Mr. Salim Jamil Ayyash, Mr. Mustafa Amine Badreddine, Mr. Hassan Habib Merhi, and Mr. Hussein Hassan Oneissi responded to both motions, while counsel for Mr. Assad Hassan Sabra responded only to the first motion.⁵

¹ STL, *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; Second Decision on the Prosecution Motion for Admission of Written Statements under Rule 155, 30 January 2014.

² STL, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, STL-11-01/T/TC, Prosecution Motion for Protective Measures regarding Six Witnesses and Estimates of Time regarding Defence requests for Cross-Examination, 30 May 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.

³ Prosecution Motion for Protective Measures regarding a Further Five Witnesses, 6 June 2014.

⁴ Decision on the Prosecution Motions for Testimony by Video-Conference Link and Protective Measures for Witness PRH450, 17 June 2014.

⁵ 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; Ayyash Defence Response to Prosecution Motion for Protective Measures Regarding a Further Five Witnesses, 17 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; Sabra Response to Prosecution Motion for Protective Measures and Estimates of Time for Cross-Examination, 6 June 2014.

APPLICABLE LAW

4. Article 16 (2) of the Statute of the Special Tribunal provides that, '[t]he accused shall be entitled to a fair and public hearing, subject to measures ordered by the Special Tribunal for the protection of victims and witnesses'. 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.

5. These protective measures may include using 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 identifying the witness; using devices to distort the witness' image or voice; using closed circuit television or video-conference link; and, using pseudonyms.⁶

6. 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.⁷

DISCUSSION

Parties' submissions

7. The Prosecution requests that the confidentiality of the identities of the ten witnesses be maintained. The measures sought include orders: to enforce the use of pseudonyms; to redact any identifying information from public documents; to restrain anyone who knows or discovers identifying information from disclosing it; and, to distort the image and voice of witness PRH348. These measures will not prejudice the rights of the Accused as the Defence is aware of the ten witnesses' identities, and because the identity of injured victims is not a contested issue. The measures are necessary considering the 'tense political, territorial and security situation prevailing in Lebanon' and because public disclosure of the ten witnesses' participation in this trial may subject

⁶ See Rule 133 (C) (i).

⁷ Decision on Protective Measures for Six Witnesses Giving Evidence Under Rule 155, 26 February 2014, para. 6; Decision on the Prosecution Motions for Testimony by Video-Conference Link and Protective Measures for Witness PRH450, 17 June 2014, para. 11.

them and their relatives to security and privacy risks. Further, the identity of three victim witnesses—PRH285, PRH401, and PRH530—remain confidential pursuant to previous orders of the Pre-Trial Judge and circumstances have not changed since those orders were issued. Confidential statements annexed to the Prosecution motions detail the concerns of the witnesses.⁸

8. Counsel for Mr. Badreddine submit that open proceedings require that protective measures be the exception—and not the rule.⁹ Counsel Mr. Sabra took no position on the protective measures sought.¹⁰ Counsel for Mr. Ayyash oppose the first motion and part of the second (regarding witness PRH348), and counsel for Mr. Merhi and Mr. Oneissi oppose both motions. They argue that the purported concerns are not sufficiently substantiated, and no objective risk to the witnesses or their families has been established.¹¹

9. While counsel for Mr. Badreddine took no position on the requested measures, in regard to witnesses PRH285 and PRH401—included in the second motion—they stressed that the Prosecution has been unable to contact these two witnesses. Further, it is unclear whether the Prosecution has ever been in contact with them since they gave their statements to the United Nations International Independent Investigation Commission in 2005 and 2006. Accordingly, they express concern that these statements were admitted under Rule 155, as their admission should have been sought under Rule 158 (relating to unavailable persons).¹² Counsel for Mr. Ayyash support these submissions,¹³ while counsel for Mr. Merhi and Mr. Oneissi highlighted that these two witnesses have not requested the measures sought.¹⁴ Finally, and regarding the second motion, counsel for Mr. Ayyash took no position on the measures requested for witnesses PRH003 and PRH530.¹⁵

Analysis

10. The Trial Chamber considers that the protective measures requested are appropriate for witnesses PRH596 and PRH530, given the combination of the general security situation in Lebanon at the present time and their particular personal circumstances. Specifically, witnesses PRH596 and

⁸ First protective measures motion, paras 1, 8-12, 19, Public Annex; Second protective measures motion, paras 1, 3-6, 9-13, 16-18, Public Annex.

⁹ Badreddine consolidated response, para. 5.

¹⁰ Sabra response to first motion, para. 5.

¹¹ Ayyash response to first motion, paras 2, 4-5, 9, 11; Ayyash response to second motion, para. 5; Oneissi consolidated response, para. 10; Merhi consolidated response, paras 1-4.

¹² Badreddine consolidated response, paras 4, 6-8.

¹³ Ayyash response to second motion, para. 4.

¹⁴ Oneissi consolidated response, para. 10(a); Merhi consolidated response, para. 5.

¹⁵ Ayyash response to second motion, para. 3.

PRH530 live in areas which expose them and their families to potential security threats in the event that their identities are publicised.

11. Counsel for some of the Accused contested the sufficiency of these witnesses' concerns. However, the Trial Chamber is satisfied that the concerns are substantiated and that ordering the protective measures requested for these witnesses will not prejudice the rights of the Accused to a fair trial. Indeed, relevant disclosure has informed Defence counsel of the witnesses' identities, and they are therefore able to undertake relevant investigations and respond to the Prosecution case as they deem appropriate.

12. However, concerning witnesses PRH003, PRH285, PRH348, PRH401, PRH489, PRH513, PRH538, and PRH653, the Prosecution has only provided evidence of generalised concerns (or, no specific concerns at all). It has not related these broad concerns to the individual circumstances of the witnesses. For example:

- two witnesses stated that they have no specific security concerns, but prefer to keep their identities confidential;
- two witnesses are described as having no specific security concerns, but are worried generally about potential negative consequences from their testimony;
- two witnesses believe that their public identification would not be good based on where they live, but no objective concerns seem to exist; and
- two witnesses have not even been contacted by the Prosecution—and therefore have not personally requested protective measures—while the request was made 'out of an abundance of caution'.

13. The Trial Chamber is not persuaded that protective measures are warranted for these eight witnesses. As the Trial Chamber has previously held, limited evidence establishing only generalised concerns (at best) are not satisfactory for granting protective measures.¹⁶ Further, the Trial Chamber is not satisfied that the protective measures for witnesses PRH285 and PRH401, put in place by the Pre-Trial Judge, are still required. These requests are accordingly denied. However, this is without prejudice to the Prosecution submitting properly substantiated requests at a later date.

¹⁶ Decision on Protective Measures for Six Witnesses Giving Evidence Under Rule 155, 26 February 2014, para. 10.

CONCLUSION

14. The protective measures requested for witnesses PRH596 and PRH530 are appropriate and are granted. However, because the evidence supporting the applications in relation to witnesses PRH003, PRH285, PRH348, PRH401, PRH489, PRH513, PRH538, and PRH653 is overly broad and non-specific, these requests are dismissed without prejudice.

15. The Trial Chamber notes the difficulty that the Prosecution has encountered in trying to contact witnesses PRH285 and PRH401, and the related concerns of the Defence about the admission into evidence of their statements under Rule 155. The Prosecution is reminded of its duty to submit requests which appropriately outline relevant circumstances. However, and as the identity of injured victims—including witnesses PRH285 and PRH401—is not a contested issue in this case by counsel for any of the five Accused,¹⁷ the Trial Chamber will not reconsider its decision to admit the two witness statements into evidence. Their statements are uncontested and Defence counsel did not seek to cross-examine the two witnesses. Ultimately, the two statements remain admissible even if the request for their admission may have been more appropriately sought under a different rule.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

GRANTS the protective measures requested for witnesses PRH596 and PRH530;

ORDERS that—

the identity of witnesses PRH596 and PRH530 must remain confidential;

witnesses PRH596 and PRH530 will only be described by their pseudonyms in the Special Tribunal's public hearings and published documents;

information identifying witnesses PRH596 and PRH530 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 PRH596 and PRH530 and their involvement in these proceedings, may disclose information protected by these orders;

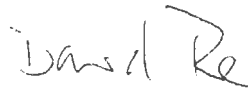
¹⁷ Second Decision on Agreed Facts Under Rule 122, 11 April 2014.

REAFFIRMS that a knowing violation of this order may result in prosecution under Rule 60 *bis*;¹⁸
and

DISMISSES the request for protective measures concerning witnesses PRH003, PRH285, PRH348,
PRH401, PRH489, PRH513, PRH538, and PRH653.

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

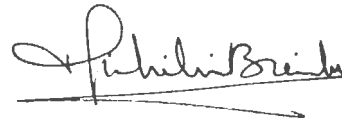
Leidschendam,
The Netherlands
2 July 2014



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

¹⁸ Punishable by a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 euros, or both.

