

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: 18 September 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 WITNESSES PRH076,
PRH155, PRH256, AND PRH507**

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 Mettraux
& Mr. Geoffrey Roberts



BACKGROUND

1. The Prosecution has sought to maintain the confidentiality of the identities of Witnesses PRH076, PRH155, PRH256, and PRH507 by having the Trial Chamber order the use of pseudonyms, the redaction from public documents of any identifying information, restrictions upon anyone who knows or discovers such information from disclosing it, and the distortion of any publicly broadcasted images and voice.¹ The Prosecution submits that these measures are justified by the tense security situation in Lebanon. Moreover, revealing to the public these witnesses' participation in the trial would subject them and their relatives to a security risk and would affect their privacy.² These concerns are detailed in two annexes to the Prosecution motion.³

2. Counsel for Mr. Salim Jamil Ayyash responded, stating that they do not object to the measures requested, as long as the redactions are limited to protect the identity of the individuals concerned as witnesses in this trial.⁴ Counsel for Mr. Hassan Habib Merhi responded, arguing that the concerns would be sufficiently addressed by redacting the identities of Witnesses 155 and 507 from documents and by having the witnesses testify about their current professional activities in closed session.⁵ Counsel for the other Accused did not respond.

DISCUSSION

3. The Trial Chamber identified the principles governing the protection of witnesses in decisions of 26 February and 2 July 2014.⁶ They apply to this decision. In particular, the Trial Chamber is mindful of the requirement for a public trial, as spelled out in Rule 136 of the Special Tribunal's Rules of Procedure and Evidence according to which '[a]ll proceedings before a Chamber ... shall be held in public, unless otherwise decided'. It has thus only heard evidence in public. Protective measures will be granted case-by-case, on the basis of persuasive evidence for each application, and only when the Trial Chamber is satisfied that these measures will not prejudice the rights of the five Accused to a fair trial. In this regard, the Trial Chamber considers that, to ensure the

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi, and Sabra*, Prosecution Motion for Protective Measures regarding Four Witnesses, 4 September 2014.

² Prosecution motion, paras 3-4.

³ Prosecution motion, Annex A, Public; Annex B, Confidential.

⁴ Ayyash Defence Response to Prosecution Motion for Protective Measures Regarding Four Witnesses, 15 September 2014, para. 2.

⁵ Réponse de la défense de Merhi a la requête du Procureur du 4 septembre aux fins d'obtenir des mesures de protection pour quarts témoins, 17 September 2014, paras 5-7.

⁶ Decision on Protective Measures for Six Witnesses Giving Evidence Under Rule 155, 26 February 2014, paras 4-6; Consolidated Decision on the Prosecution Motions for Protective Measures Regarding Ten Witnesses, 2 July 2014, paras 4-6.

protection of a witness, it suffices that only documents which identify him or her as a witness in this trial should be redacted.

4. The Trial Chamber considers that most of the measures requested are justified by the prevailing general security situation in Lebanon, and the personal circumstances of each witness, as described in the annexes to the Prosecution motion which also annex relevant witness statements.⁷ In particular, and due to past incidents, Witnesses 076 and 256 live in areas which expose them and their family to potential security risk if their identities are publicised. Witness 256 has also expressed security concerns for his and his family's safety. Witness 155, who lives outside Lebanon, has expressed legitimate concerns that the public disclosure of his identity may compromise his personal security. Witness 507 is security expert, who travels to Lebanon. Due to the nature of his work, he has concerns regarding his personal security and his ability to continue working if his identity is publicly disclosed, including through internet broadcasts.

5. The Trial Chamber is satisfied that granting the measures of protection requested will not prejudice the rights of the five Accused to a fair trial since the witnesses' identities and statements have been disclosed to Defence counsel. They are therefore able to undertake relevant investigations and to respond to the Prosecution case as they deem appropriate. Accordingly, the protective measures for Witnesses 076, 256 and 155 are appropriate and are granted, with the caveat referred to above by counsel for Mr. Ayyash.

6. As for Witness 507, the Trial Chamber is not satisfied that the reasons thus far advanced by the Prosecution justify all the measures requested and considers that facial distortion during his testimony will suffice to address his concerns.⁸

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

GRANTS protective measures for Witnesses PRH076, PRH155, PRH256, and PRH507;

ORDERS

In respect of Witnesses PRH076, PRH155, and PRH256 that:

- the identity of Witnesses PRH076, PRH155, and PRH256 must remain confidential;

⁷ Prosecution motion, Annexes A, Public.

⁸ The identity of Witness 507 must however remain confidential until further order or until he testifies.

- Witnesses PRH076, PRH155, and PRH256 must only be described by their pseudonyms in public hearings and published documents;
- information related to Witnesses PRH076, PRH155, and PRH256 must be redacted from public documents which identify them as witnesses at trial;
- when testifying before the Special Tribunal, the publicly broadcasted images and voice of Witnesses PRH076, PRH155, and PRH256 must be distorted and unrecognizable;
- no person, including members of the media and third parties who become aware of the identity of Witnesses PRH076, PRH155, and PRH256 and their involvement in these proceedings, may disclose information protected by these orders; and

In respect of Witness PRH507 that:

- the identity of Witness PRH507 must remain confidential until further order or until he testifies; and
- when testifying before the Special Tribunal, the publicly broadcasted images of Witness PRH507 must be distorted and unrecognizable.

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

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

Leidschendam,
The Netherlands
18 September 2014

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

