



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: 14 October 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 WITNESS PRH291**

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 Mettrafik
& Mr. Geoffrey Roberts



INTRODUCTION

1. On 29 September 2014, the Prosecution requested that Witness PRH291 be authorised to testify via video-conference link pursuant to Rule 124 of the Special Tribunal's Rules of Procedure and Evidence.¹ Counsel for Mr. Mustafa Amine Badreddine responded to the Prosecution motion on 2 October 2014.² Counsel for Mr. Hassan Habib Merhi informed the Trial Chamber that they do not object to Witness PRH291 testifying via video-conference link.³ Counsel for the other three Accused did not respond.

DISCUSSION

2. 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'. In applying this Rule, the Trial Chamber has issued a number of decisions in relation to specific witnesses⁴ and one 'general decision' in which it identified the key principles associated with testimony via video-conference link.⁵ These principles are applicable to this decision.

3. The Prosecution submits that disruption to the daily professional and family obligations of Witness 291 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 the witness was allowed to testify via video-conference link. Additionally, avoidance of a delay in Witness 291's appearance requires him to testify via video-conference link. Counsel also note that only two Defence teams intend to cross-examine the witness. Finally, the rights of the Accused are respected and preserved if the request is granted.⁶

¹ STL, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, STL-11-01/T/TC, Prosecution Motion for Testimony by Video-Conference Link for Witness PRH291, 29 September 2014.

² Badreddine Defence Response to "Prosecution Motion for Testimony by Video-Link for Witnesses PRH291", 2 October 2014; the public redacted version of Badreddine Defence response was filed on 7 October 2014.

³ Transcript of 1 October 2014, p. 52, lines 22-25 and p. 53, lines 7-9.

⁴ Decision on the Prosecution Motion for Testimony by Video-Conference Link for Witness PRH450, 17 June 2014; Decision on the Prosecution Motion for Testimony by Video-Conference Link for Witnesses PRH130, PRH120, and PRH548, 19 June 2014; See also oral decisions at 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.

⁶ Prosecution motion, paras 5-8.

4. Counsel for Mr. Badreddine responded by arguing that the Prosecution did not provide any reasons why the personal circumstances of this witness require that he be exempted from testifying at the seat of the Special Tribunal; that the nature of the witness's testimony will be improved if he will testify *viva voce*; and that counsel's concerns—expressed in an earlier motion⁷—about Witness 291 and Witness 507 being in a position to know each other's testimony and to communicate with each other will be addressed if Witness 291 testifies at the seat of the Special Tribunal. Counsel also submit that the principal reasons offered by the Prosecution—namely, inconvenience for the witness, potential delays in the witness's appearance due to previous witnesses' appearance, and resource concerns—are not sufficient to authorise testimony via video-conference link as these factors are typical for all witnesses who must appear before the Special Tribunal. Further, counsel anticipate a lengthy cross-examination of this witness.⁸

5. The statement⁹ and annexes¹⁰ of Witness 291, an electronics technician, concern the installation and maintenance of electronic jamming devices in the convoy vehicles of the former Lebanese Prime Minister, Mr. Rafiq Hariri, how such devices operate, where in the convoy they were placed, and the impact of the jammers on wireless signals. The Trial Chamber held that Witness 291's written statements and its annexes were admissible under Rule 155 but that he must be available for cross-examination by the Defence.¹¹ His expected testimony does not go to the acts and conduct of the Accused. 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. The interruption to the witness' continuing commitments will thus be limited. Additionally, the Witness's testimony appears to be partly cumulative to Witness PRH507's. The cumulative effect of these relevant factors results in the Trial Chamber finding that it is in the interests of justice to hear Witness 291's testimony via video-conference link.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

AUTHORISES Witness PRH291 to testify before the Special Tribunal via video-conference link.

⁷ Badreddine Defence Response to "Prosecution Motion for Admission of PRH291's Statement, Declaration of PRH507 as an Expert, and Admission of PRH507's Expert Statement", 15 September 2014, para. 6.

⁸ Badreddine response, paras 4- 9.

⁹ ERN 60289682-60289686.

¹⁰ ERN 60289686A-60289770.

¹¹ Decision on Expert and Witness Statements of witnesses PRH291 and PRH507, paras 3-7, 14.

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

Leidschendam,
The Netherlands
14 October 2014

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

