



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:** 9 December 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 PRH003, PRH185 AND PRH186

#### 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 Métraux  
& Mr Geoffrey Roberts



## INTRODUCTION

1. The Prosecution has requested the Trial Chamber to order protective measures under Rule 133 of the Special Tribunal's Rules of Procedure and Evidence for three witnesses, Witnesses PRH003, PRH185 and PRH186.<sup>1</sup> In July 2014, the Trial Chamber dismissed an application for protective measures in respect of Witness 003,<sup>2</sup> and the Prosecution has now resubmitted an application containing further relevant information.<sup>3</sup> In August 2014, the Trial Chamber issued a decision permitting the statements of Witnesses 185 and 186 to be received into evidence under Rule 155.<sup>4</sup> Only counsel for Mr Hassan Habib Merhi responded to the motion.<sup>5</sup>

## SUBMISSIONS

2. The Prosecution submits that public disclosure of the identities of Witnesses 185 and 186 may compromise their safety and their work. The relevant State authorities—whose advice the Prosecution has sought in relation to this motion—informed the Prosecution that the employers of both witnesses may require them to carry out international assignments. Therefore, publicly revealing their identity and their participation in the trial would affect their current and future work commitments and would expose them to security risks.<sup>6</sup>

3. With respect to Witness 003, the Trial Chamber, on 2 July 2014, dismissed a Prosecution motion for protective measures. It held that the evidence supporting the motion was overly broad and non-specific, but specified that the decision was without prejudice to the Prosecution resubmitting its motion.<sup>7</sup> The Prosecution has now provided additional information on the necessity to protect the witness, arguing that her current residence lacks adequate security and is situated in an area in Lebanon that exposes her to risk.<sup>8</sup>

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi, and Sabra*, Prosecution Motion for Protective Measures regarding PRH185 and PRH186, & Further Submissions regarding Protective Measures for PRH003, 5 November 2014, para. 9.

<sup>2</sup> Consolidated Decision on the Prosecution Motion for Protective Measures Regarding Ten Witnesses, 2 July 2014.

<sup>3</sup> Prosecution motion, para. 7.

<sup>4</sup> Decision on Twelve Expert Witnesses, 21 August 2014, paras 52-61. Rule 155 provides for the admission into evidence of written statements in lieu of oral testimony.

<sup>5</sup> Merhi Defence Response to the Motion for Protective Measures to be Granted to Witnesses PRH185, PRH186 and PRH003, 17 November 2014.

<sup>6</sup> Prosecution motion, paras 3-6.

<sup>7</sup> Consolidated Decision on the Prosecution Motion for Protective Measures Regarding Ten Witnesses, 2 July 2014, para. 14.

<sup>8</sup> Prosecution motion, para. 7 and Annex A.

4. Counsel for Mr Merhi oppose the requested protective measures on the basis that the Prosecution had failed to obtain the consent of Witnesses 185 and 186 as required by Rule 133 (B),<sup>9</sup> and has not demonstrated the existence of real and objective risks justifying the measures. They take no position in relation to Witness 003.<sup>10</sup>

### DISCUSSION

5. The principles governing the protection of witnesses are set out by the Trial Chamber's decisions of 26 February and 2 July 2014.<sup>11</sup> 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.

6. Contrary to counsel for Mr Merhi's assertion that the Prosecution has not obtained the consent of Witnesses 185 and 186, the relevant State authorities have informed the Prosecution that 'the interested parties have expressed their concerns about having to appear during trial due to fear that their anonymity may be lifted'.<sup>12</sup> The words 'interested parties' expressly refers to these witnesses.

7. The Trial Chamber considers that the measures requested are justified by the general security situation in Lebanon and the personal circumstances of each witness as described in Annexes A and B to the Prosecution motion. In particular, the public disclosure of the identity of Witnesses 185 and 186—who live outside Lebanon—may compromise their personal security and professional activities. Witness 003 lives in Lebanon in an area which exposes the witness to potential security risk if her identity is publicised.

8. The Trial Chamber is satisfied that, because the witnesses' identity, reports and statements have been disclosed to the Defence, granting the requested measures of protection will not prejudice the rights of the five Accused to a fair trial.<sup>13</sup> The identity of these witnesses will only be kept from the public. The Defence may therefore undertake relevant investigations and respond to the Prosecution case as it deems appropriate. Accordingly, the protective measures for Witnesses 003, 185 and 186 are appropriate and are granted.

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<sup>9</sup> Rule 133 (B) requires that '[a] Party requesting the Trial Chamber to order protective measures shall seek to obtain the consent of the person in respect of whom the protective measures are sought.'

<sup>10</sup> Merhi Defence response, paras 3-9.

<sup>11</sup> 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.

<sup>12</sup> Prosecution motion, Annex B.

<sup>13</sup> Prosecution motion, para. 8.

**DISPOSITION**

**FOR THESE REASONS**, the Trial Chamber:

**GRANTS** the protective measures requested for Witnesses PRH003, PRH185 and PRH186;

**ORDERS** that:

- the identity of Witnesses PRH003, PRH185 and PRH186 must remain confidential;
- Witnesses PRH003, PRH185 and PRH186 must only be described by their pseudonyms in public hearings and published documents;
- information related to Witnesses PRH003, PRH185 and PRH186 must be redacted from public documents which identify them as witnesses at trial;
- if testifying before the Special Tribunal, the publicly broadcasted images and voice of Witnesses PRH003, PRH185 and PRH186 must be distorted and unrecognizable;
- no person, including members of the media and third parties who become aware of the identity of Witnesses PRH003, PRH185 and PRH186 and their involvement in these proceedings, may disclose information protected by these orders; and

**REAFFIRMS** that a knowing violation of this order may result in prosecution under Rule 60 *bis*.<sup>14</sup>

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

Leidschendam,  
The Netherlands  
9 December 2014

*David Re*

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Judge David Re, Presiding

*Janet Nosworthy*

\_\_\_\_\_  
Judge Janet Nosworthy

*Micheline Braïdy*

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Judge Micheline Braïdy



<sup>14</sup> Punishable by a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 euros, or both.