

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, Registrar

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THE PROSECUTOR

v.

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

**DECISION ON PROSECUTION MOTION FOR TESTIMONY BY
VIDEO-CONFERENCE LINK FOR WITNESSES PRH041, PRH459, PRH075
AND PRH063**

Office of the Prosecutor:

Mr Norman Farrell, Mr Graeme Cameron
& Mr Alexander Milne

**Legal Representatives of
Participating Victims:**

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 Khalil Jad

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 Guénaël Mettraux &
Mr Geoffrey Roberts



INTRODUCTION

1. The Prosecution requests the Trial Chamber to authorise the testimony of Witnesses PRH041, PRH459, PRH075 and PRH063 by video-conference link under Rule 124 of the Special Tribunal's Rules of Procedure and Evidence.¹ These witnesses will testify about the sale of the Mitsubishi Canter allegedly used in the assassination of former Lebanese Prime Minister Rafik Hariri on 14 February 2005, in Beirut.²

2. Counsel for the Accused Mr Salim Jamil Ayyash and Mr Mustafa Amine Badreddine responded to the motion.³ At the Trial Chamber's request, the Parties filed supplementary submissions.⁴ Although counsel for the Accused Mr Hassan Habib Merhi did not respond to the Prosecution's motion, they filed observations on the Prosecution's supplementary submissions.⁵

SUBMISSIONS

3. The Prosecution argues that video-conference testimony would reduce the disruption to the witnesses' lives by allowing them to testify from their home country rather than travelling to the Netherlands. It would also avoid further disruption to the witnesses in case of last minute changes to the witness schedule.⁶ In addition, the Prosecution cites a number of logistical hurdles, namely that none of the witnesses have visas, two do not have travel documents, and one has a medical condition requiring special care and monitoring, making it impossible for them to testify in person before mid-

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F1923, Prosecution Motion for Testimony by Video-Conference Link for PRH041, PRH459, PRH075 and PRH063, 23 April 2015. The Trial Chamber has granted the four witnesses protective measures: see oral orders in Transcript of 21 May 2015, pp. 1-3; and Transcript of 15 April 2015, pp. 2-5.

² F1939, Consolidated Ayyash Defence Response to Prosecution Motions for Protective Measures and Testimony by Video-Conference Link, 7 May 2015, para. 11; F1444, Consolidated indictment, 7 March 2014, paras 3 (b), 19 (a), 26 and 32.

³ Ayyash consolidated response; F1940, Badreddine Defence Joinder to "Consolidated Ayyash Defence Response to Prosecution Motions for Protective Measures and Testimony by Video-Conference Link", 7 May 2015.

⁴ Provisional Transcript of 21 May 2015, pp. 57-58; F1958, Prosecution Supplementary Submissions to the Motion for Testimony by Video-Conference Link for PRH041, PRH459, PRH075 and PRH063, 22 May 2015; F1964, Ayyash Defence Response to Prosecution Supplementary Submissions to the Motion for Testimony by Video-Conference Link for PRH041, PRH459, PRH075, and PRH063, 22 May 2015.

⁵ F1962, Observations de la défense de Merhi relatives aux "Prosecution Supplementary Submissions for Testimony by Video-Conference Link for PRH041, PRH459, PRH075 and PRH063", 22 May 2015.

⁶ Prosecution motion, paras 6, 8 and 9.

July 2015.⁷ Postponing their testimony to a later date, however, would affect the order of the Prosecution's presentation of evidence.⁸

4. Counsel for Mr Ayyash and Mr Badreddine oppose the motion.⁹ They consider these four witnesses highly material to the Prosecution case against Mr Ayyash and Mr Badreddine, because the Prosecution alleges they coordinated the purchase of the Mitsubishi Canter. It is accordingly crucial that the judges can analyse and observe the witnesses. The Defence's right to cross-examination can only be meaningfully and effectively exercised through in-person testimony.¹⁰ Counsel also argue that the Prosecution should have filed its motion earlier, particularly as it must have been aware of the timelines and procedures required to allow the witnesses to travel to the Netherlands. Any logistical barriers are therefore the Prosecution's own doing.¹¹

5. Counsel for Mr Merhi take no position on the Prosecution motion, but argue that the interests of justice cannot serve to justify multiplying the number of witnesses appearing by video-conference link, if this is due to the Prosecution's lack of diligence.¹²

DISCUSSION

6. Rule 124 permits the Trial Chamber, at the request of a Party, to receive testimony by video-conference link in the interests of justice. The Trial Chamber has issued several decisions identifying the relevant principles for video-conference link testimony.¹³

7. The Trial Chamber has carefully examined the four witnesses' statements. It is not persuaded by the Defence argument that, because the evidence concerns 'contested matters going to the very

⁷ Prosecution supplementary submissions, paras 3-7 and 10.

⁸ Prosecution supplementary submissions, paras 8 and 10.

⁹ Ayyash consolidated response, para. 20; Badreddine response, para. 1.

¹⁰ Ayyash consolidated response, paras 11 and 16.

¹¹ Ayyash supplementary submissions, para. 5.

¹² Merhi observations, paras 2-4.

¹³ F1696, Decision on the Prosecution Motion for Testimony by Video-Conference Link for Witness PRH291, 14 October 2014; F1586, Decision on the Prosecution Motion for Testimony by Video-Conference Link for Witnesses PRH130, PRH120 and PRH548, 19 June 2014; F1583, Decision on the Prosecution Motions for Testimony by Video-Conference Link and Protective Measures for Witness PRH450, 17 June 2014; F1425, General Decision on Video-Conference Link Testimony and Reasons for Decision on Video-Conference Link Testimony of Witness PRH128, 25 February 2014; see also oral decisions at Transcript of 15 December 2014, pp. 29-31; Transcript of 4 February 2014, p. 61; Transcript of 29 January 2014, pp. 64-67; Transcript of 22 January 2014, pp. 65-66; Transcript of 9 January 2014, pp. 12-14.

heart of the allegations against the accused', the witnesses must testify in person.¹⁴ The Trial Chamber is also not convinced that the right to cross-examination can only be meaningfully exercised in person rather than through video-conference link. As the Trial Chamber has already held, video-conference link testimony is not an exceptional measure. It safeguards the rights of the accused, and allows for a witness's credibility and reliability to be assessed as if he or she were physically present in the courtroom.¹⁵ The nature of the witnesses' evidence here does not outweigh other factors that the Trial Chamber may consider in allowing testimony by video-conference link.

8. The Trial Chamber agrees that, given the possible ramifications of an unfavourable decision, the Prosecution should have filed its application earlier. The Parties should file similar requests in a timely fashion so that, regardless of the outcome of a Trial Chamber decision, the trial schedule is undisrupted.

9. Nevertheless, the Trial Chamber has previously allowed video-conference link testimony based on logistical concerns.¹⁶ Here, in the exercise of its discretion under Rule 124, the Trial Chamber finds that the identified logistical issues, in addition to the personal circumstances of the witnesses, justify allowing their testimony by video-conference link. Most importantly, the Defence has not shown any prejudice to its rights by the witnesses' physical absence from the courtroom. Requiring the witnesses to travel to the Netherlands may disrupt the trial schedule and delay the proceedings, and would therefore be against the interests of justice. The Trial Chamber may, if it becomes necessary, revisit this decision.

CONFIDENTIALITY

10. Because it contains confidential witness information and details of the Victims and Witnesses Unit's internal procedures, the Prosecution filed its supplementary submissions confidentially. The Trial Chamber reiterates the public nature of the proceedings and orders the Prosecution either to file a public redacted version of its filing or have it reclassified as public.

¹⁴ Ayyash consolidated response, para. 16.

¹⁵ General Decision on Video-Conference Link, 25 February 2014, paras 25-26; see also oral orders at Transcript of 15 December 2014, p. 30; and Transcript of 22 January 2014, pp. 65-66.

¹⁶ General Decision on Video-Conference Link, 25 February 2014, para. 19.

11. The Merhi Defence filed its observations confidentially, but only because they were in response to the Prosecution's confidential submissions. These should be reclassified as public.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

GRANTS the motion;

ORDERS the Prosecution to file a public redacted version of its supplementary submissions or to have them reclassified as public; and

DIRECTS the Registry to reclassify as public the observations of counsel for Mr Merhi.

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

Leidschendam,
The Netherlands

27 May 2015

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

