

**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 June 2015

**Original language:** English

**Classification:** Public

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**DECISION GRANTING VIDEO-CONFERENCE LINK TESTIMONY FOR PRH006, PRH430, PRH020, PRH007, AND PRH115**

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(Extract from Official Public Transcript of Hearing on 2 June 2015, page 56, line 5 to page 62, line 20)

The Prosecution on the 12th of May filed a motion entitled: "Motion for general authorization for video-conference link testimony and notice of video-conference link testimony for PRH006, 430, 020, 007, 115." That's filing F1947.

On the 21st of May, 2015, in a decision, the Trial Chamber granted protective measures to all of those except one of the witnesses.

The witnesses are scheduled to testify between the 23rd of June and the 9th of July.

The Prosecution requests the Trial Chamber under Rules 124 and 130 of the Special Tribunal's Rules of Procedure and Evidence to generally authorize all parties to have the option to call witnesses via video-conference link from the Special Tribunal's Beirut office with four weeks of notice. They ask that parties -- parties and participants may raise objections, if any, within three calendar days after receiving the notice.

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If the general request -- if the request for a general authorization was denied, the Prosecution alternatively requests the Trial Chamber to authorize under Rule 124 the video-conference testimony of these five specific witnesses.

Because of the urgency of that part of the motion relating to the five witnesses as they are all scheduled to testify before the 9th of July, the Trial Chamber is issuing the decision in relation 1 to them. The Trial Chamber will deal with the other part of the motion requesting general authorization for all parties to have the option to call witnesses via video-conference link in a written decision shortly.

Counsel for the accused Mr. Hassan Habib Merhi, Mr. Mustafa Amine Badreddine, and Mr. Assad Hassan Sabra opposed the request, arguing that the Prosecution failed to provide information on the personal circumstances of the five witnesses justifying the request.

Counsel for the accused Mr. Salim Jamil Ayyash also opposed the Prosecution's motion, arguing that it rests on a fundamental misreading of the Special Tribunal's Rules of Procedure and Evidence and the Trial Chamber's decisions and would result in a prejudicial burden in shifting to the Defence.

Counsel for Mr. Sabra state that the five witnesses must testify in person because their evidence may relate to the acts and conduct of Mr. Sabra as charged in the consolidated indictment.

Counsel for the accused Mr. Hussein Hassan Oneissi submitted that they intend to interview the five witnesses before they testify. They consider that if the Trial Chamber grants the motion, it would be burdensome for counsel to have to travel to Lebanon to interview four of the five witnesses and back to the Netherlands to cross-examine them. The fifth witness, moreover, specifically stated that he wishes to be interviewed by Defence counsel, if necessary, in Leidschendam before he testifies.

Upon the Trial Chamber's query in a filing entitled: "Supplementary submissions to the motion for general authorization for video-conference link testimony and notice of video-conference link testimony for PRH006, 430, 020, 007, 115" of the 27th of May, 2015, that's filing F1972, the Prosecution provided further information on the individual circumstances of the five witnesses.

More specifically, the Prosecution submitted that video-conference testimony of three of the five witnesses would avoid substantial disruption to their professional and personal

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commitments during that time. If required to travel to the Netherlands, all except one of the five would seek accompanying support persons whose availability was unknown.

One witness requested, in addition to the support person, that her young daughter travel with her, while another witness has a medical condition. At least three of the witnesses have yet to obtain travel documents to enter the Netherlands. One of the witnesses is willing to testify in person but is not available to travel to Leidschendam, in the Netherlands, during Ramadan.

Further, because the Trial Chamber ordered Witnesses 007 and 115 to appear in court as a result of Defence requests to cross-examine them, the Prosecution adjusted the witness schedule accordingly to ensure that had the two witnesses' in-court testimonies fitted appropriately within the Prosecution's presentation of its case.

In their responses to the Prosecution's supplementary submission, counsel for Mr. Sabra and Mr. Merhi argued that the disruption to the witnesses' lives cannot outweigh the rights of the accused to a fair trial. The significance of the nature of the five witnesses' evidence requires in-court testimony, and therefore to ensure that the rights of Mr. Sabra's counsel to cross-examine these witnesses is not diminished, they should appear live in Leidschendam. Further, counsel for Mr. Sabra anticipate that they will request interviewing the five witnesses before their testimony.

Counsel for Mr. Sabra, Mr. Merhi, and Mr. Oneissi also argue that the Prosecution should have filed the motion earlier, particularly as it must have been aware of the time-lines and procedures required to allow the witnesses to travel to the Netherlands. Any logistical barriers are therefore the Prosecution's own doing. Counsel argue that the Prosecutor Prosecution had sufficient time to arrange the travel documents and the assistance the five witnesses require to appear in person.

Counsel for Mr. Merhi also submit that while they do not oppose the fifth witness testifying by video-conference link, the Prosecution overstated the disruption to the four witnesses' lives. The Prosecution also failed to address the individual circumstances of the accompanying support persons requested by the four witnesses.

On the 29th of May, 2015, the Prosecution filed its reply to Defence responses to motion for general authorization for video-conference link testimony and notice of video-conference link testimony for Witnesses PRH006, 430, 020, 007, and 115. That's filing F1980.

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In response to the complaint by counsel for Mr. Oneissi and Mr. Sabra about the burden resulting from the need to interview the witnesses before they testify, the Prosecution submitted that all parties can use the Special Tribunal's video-conference link room to interview witnesses attending the Tribunal's Beirut office or other locations equipped with video-conference link facilities.

The Trial Chamber agrees with the Prosecution that all parties can use this video-link room to interview witnesses or can use other means. Counsel for Mr. Sabra and Mr. Oneissi, for example, could interview these witnesses by telephone or other widely accessible communication technologies that allow simultaneous two-way video and/or audio transmission, including various available internet protocol telephony services, which is a more complicated way of saying Skype, for example.

In addition, the Trial Chamber observes that the Prosecution notified counsel for Mr. Oneissi and Mr. Sabra in January 2014 that two witnesses consented to be interviewed by Defence counsel, the other two did not wish to be interviewed, and the fifth witness wanted to be interviewed in the Netherlands before testifying.

The Trial Chamber has issued several decisions identifying the relevant principles of video-conference link testimony, the most recent being on the 27th of May, 2015, in a decision on Prosecution motion for testimony by video-conference link for Witnesses PRH041, 075, and 063, filing F1973.

The Trial Chamber has carefully examined the five witness statements and the circumstances detailed in the Prosecution's application for video-conference link testimony.

In its decision of the 27th of May, the Trial Chamber rejected the general Defence argument that because of the significance of the nature of the witnesses' evidence the witnesses must testify in person. The Trial Chamber was also not convinced that the right to cross-examination will be diminished through video-conference link rather than when exercised in person.

The same reasoning applies here, including that, if necessary, the Trial Chamber can revisit that decision or this decision here.

As the Trial Chamber has already held in its general decision on video-conference link testimony of 25th of February, 2014, and the decision I just referred to of the 27th of May, 2015, video-conference link testimony is not an exceptional measure as it safeguards the

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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.

The Trial Chamber considers that here the nature of the witness's evidence does not outweigh other factors that it may consider in allowing video-conference link testimony.

While holding this, the Trial Chamber does sympathize with the Defence complaint that given the possible ramifications of an unfavourable decision to them, and this is one here, the Prosecution should have filed its motion in a more timely fashion. The Trial Chamber asks the parties to file similar requests in a timely fashion so that the trial schedule is not disrupted, regardless of the outcome of a Trial Chamber decision.

However, and additionally, the Trial Chamber has previously allowed video-conference link testimony based on logistical concerns. The Trial Chamber, in the exercise of its discretion under Rule 124, finds here that the identified logistical issues justify allowing the testimony of the five witnesses by video-conference link in addition to the personal circumstances of the witnesses.

Most importantly, in the Trial Chamber's view, the Defence has not shown any prejudice to its rights by the witnesses' physical absence from the courtroom being replaced by a virtual presence. It would therefore be against the interest of justice to require the five witnesses to travel to the Netherlands as this may disrupt the trial schedule and delay the proceedings.

[...]

PRESIDING JUDGE RE: Finally, on the issue of confidentiality. Counsel for Mr. Merhi and Mr. Oneissi filed their responses to the Prosecution's supplementary submissions confidentially but only because they were in response to the Prosecution's confidential submissions which have now been re-filed in a redacted version.

The two Defence responses - that is, filing 1975 of the Merhi Defence and 1976 of the Oneissi Defence - should be reclassified by the Registry as public.

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