

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: 27 August 2015

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 PROSECUTION MOTION FOR VIDEO-CONFERENCE
LINK TESTIMONY FOR WITNESSES PRH032, PRH067, PRH089,
PRH090 AND PRH553**

Office of the Prosecutor:

Mr Norman Farrell, Mr Graeme Cameron
& Mr Alexander Hugh Milne

Counsel for Mr Salim Jamil Ayyash:

Mr Eugene O'Sullivan, Mr Emile Aoun &
Mr Thomas Hannis

Victims' Legal Representatives:

Mr Peter Haynes, Mr Mohammad F. Mattar
& Ms Nada Abdelsater-Abusamra

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 Laroche

Counsel for Mr Assad Hassan Sabra:

Mr David Young, Mr Guénaél Mettraux
Mr Geoffrey Roberts



INTRODUCTION

1. On 24 July 2015, the Prosecution requested authorisation for Witnesses PRH032, PRH067, PRH089, PRH090 and PRH553 to testify via video-conference link under Rule 124 of the Special Tribunal's Rules of Procedure and Evidence.¹ Counsel for the Accused, Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine and Mr Assad Hassan Sabra responded to the motion.²

SUBMISSIONS

2. The Prosecution submits that video-conference link testimony is in the interests of justice because the five witnesses would experience significant disruption if obliged to travel to the Netherlands to testify, some of them for only part of a day. Video-conference link is equivalent to their being physically present in the courtroom and preserves the rights of the Accused to cross-examine the witnesses. Additionally, testimony by video-conference link conserves the Special Tribunal's finite financial and logistical resources.³

3. Witnesses 067 and 089 requested to testify by video-conference link because of business and travel commitments. Witness 533 cited medical reasons and travel document issues. Witnesses 032 and 090 based their requests on family and work commitments. Witness 090 also lacks travel documents⁴

4. Counsel for Mr Ayyash disagree that travel to the Netherlands constitutes significant disruption and further submit that the Prosecution's logistical and financial concerns do not merit video-conference link testimony.⁵

5. Counsel for Mr Sabra oppose testimony by video-conference link for Witnesses 032 and 553 because their evidence goes to the core of the Prosecution case and they 'must be placed in the best possible position in order to test the witnesses' credibility'. None of the

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F2097, Prosecution Motion for Authorisation of Video-Conference Link Testimony for PRH067, PRH089, PRH553, PRH032 and PRH090, 24 July 2015.

² F2108, Ayyash Defence Response to "Prosecution Motion for Authorisation of Video-Conference Link Testimony for PRH067, PRH089, PRH553, PRH032 and PRH090", 5 August 2015; F2115, Response to Prosecution Motion for Authorisation of Video-Conference Link Testimony for PRH067, PRH089, PRH553, PRH032 and PRH090, 7 August 2015; F2117, Consolidated Badreddine Defence Response to Prosecution Motions for Protective Measures and Testimony by Video-Conference Link, 10 August 2015.

³ Prosecution motion, paras 3-6.

⁴ Prosecution motion, para. 3.

⁵ Ayyash response, paras 2-5.

tangential concerns raised by the Prosecution can overcome the normal preference for in-court testimony.⁶

6. Counsel for Mr Badreddine oppose the motion for all witnesses because mere inconvenience and logistical concerns do not merit departure from in-court testimony. In particular for Witness 089, counsel expect his evidence to be hotly contested, with document-intensive cross-examination, which weighs in favour of in-court testimony.⁷

DISCUSSION

7. Rule 124 provides, '[a]t 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 witnesses and one 'general decision' in which it identified the key principles associated with testimony via video-conference link.⁸ These principles are applicable to this decision.

8. For Witnesses 032, 067, 090 and 553, it is in the interests of justice to allow these witnesses to appear by video-conference link. Testimony in this manner will minimise the impact on the witnesses' personal lives, travel and business commitments. Witness 067 is expected to give brief evidence on a discrete issue for which travel to the Netherlands is not necessary. Witnesses 553 and 032 have medical concerns that justify their requests. Witness 090 has no passport and pressing family issues that merit his request. The Trial Chamber, therefore, authorises video-conference link testimony for Witnesses 032, 067, 090 and 553.

9. Witness 089 is expected to testify about some matters allegedly concerning one of the Accused. The Trial Chamber is not convinced, in the totality of the circumstances, that it is in the interests of justice to hear Witness 089 by video-conference link.

CONFIDENTIALITY

10. The Prosecution requests that Annex A to the motion, detailing the specific reasons why each witness requested to testify by video-conference link, remain confidential without having to submit a publicly redacted version. The Trial Chamber reemphasises the public

⁶ Sabra response, paras 5-9, 12-17.

⁷ Badreddine response, paras 5-11.

⁸ F1425, General Decision on Video-Conference Link Testimony and Reasons for Decision on Video-Conference Link Testimony of Witness PRH128, 25 February 2014, paras 21-23; F1696, Decision on the Prosecution Motion for Testimony by Video-Conference Link for Witness PRH291, 14 October 2014, para. 2.

nature of the proceedings. Because the information in the annex is publicly summarised in paragraph 3 of the motion, the Trial Chamber, in this instance, will order that the annex remain confidential without ordering a publicly redacted version be filed.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

AUTHORISES Witnesses PRH032, PRH067, PRH090 and PRH553 to testify before the Special Tribunal via video-conference link; and

DECLINES to authorise testimony by video-conference link for Witness PRH089.

Leidschendam,
The Netherlands
27 August 2015

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

