

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:** 28 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 PROTECTIVE MEASURES  
AND AUTHORISATION FOR VIDEO-CONFERENCE LINK TESTIMONY  
FOR WITNESS PRH702**

**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,  
Hassan & Mr Philippe Laroche

**Counsel for Mr Assad Hassan Sabra:**

Mr David Young, Mr Guénaél Meunier  
& Mr Geoffrey Roberts



## INTRODUCTION

1. On 27 August 2015, the Prosecution filed a motion requesting, under Rule 133 of the Special Tribunal's Rules of Procedure and Evidence, protective measures and, under Rule 124, authorisation for testimony by video-conference link for Witness PRH702.<sup>1</sup> Because Witness 702 is scheduled to testify on 2 September 2015, the Prosecution requested an expedited schedule for responses.<sup>2</sup> Counsel for the Accused, Mr Mustafa Amine Badreddine, responded to the motion.<sup>3</sup>

## SUBMISSIONS

### **A. Protective measures**

2. Witness 702 has expressed concerns about his and his family's safety and the impact on his employment and livelihood from publicly disclosing his name.<sup>4</sup> The Prosecution submits that public disclosure of his identity would raise security concerns for himself and his family. Protective measures would not prejudice the rights of the Accused as the witness's identity and statement have been disclosed to the Parties and Legal Representative of the Victims.<sup>5</sup> Counsel for Mr Badreddine took no position on the requested protective measures.<sup>6</sup>

### **B. Video-conference link**

3. The Prosecution submits that video-conference link testimony is in the interests of justice because Witness 702 would experience significant disruption if forced to travel to the Netherlands to testify, possibly for only part of a day. As explained in Annex A to the motion, Witness 702 requested testimony by video-conference link because of work and family commitments. Video-conference link testimony is equivalent to testifying by being physically present in the courtroom and preserves the rights of the Accused to cross-examine the

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F2142, Prosecution Motion for Protective Measures and Authorisation for Video-Conference Link for PRH702, 27 August 2015.

<sup>2</sup> Prosecution motion, para. 3. The Trial Chamber informed the Parties of its intention to deal with the requests in a timely manner before the witness appears. Email from Trial Chamber Legal Officer to Counsel, 27 August 2015.

<sup>3</sup> F2144, Badreddine Defence Response to "Prosecution Motion for Protective Measures and Authorisation for Video-Conference Link for PRH702", 27 August 2015.

<sup>4</sup> Prosecution motion, para. 6.

<sup>5</sup> Prosecution motion, paras 4-8.

<sup>6</sup> Badreddine response, para. 2.

witnesses. Additionally, testimony by video-conference link helps conserve the Special Tribunal's finite financial and logistical resources.<sup>7</sup>

4. Counsel for Mr Badreddine oppose the motion, arguing that the Prosecution has only put forward generic, insufficient arguments. Mere inconvenience and logistical concerns do not merit departing from in-court testimony. Moreover, the use of video-conference link testimony to conserve the Special Tribunal's resources ignores that these resources are intended to facilitate witnesses' appearance in court. Arguing that these necessary, usual expenditures are a burden is inappropriate. In particular, this witness is important to their case. He will give evidence about a telephone line of interest, and they expect to rigorously and comprehensively challenge his reliability with document-intensive cross-examination. The interests of justice therefore require his appearance in court.<sup>8</sup>

## **DISCUSSION**

### **A. Protective measures**

5. The principles governing the protection of witnesses are in the Trial Chamber's decisions of 26 February and 2 July 2014.<sup>9</sup> Protective measures will be granted case-by-case, on the basis of persuasive evidence for each application, but only if the Trial Chamber is satisfied that these measures will not prejudice the rights of the Accused to a fair trial.

6. The Trial Chamber considers the measures requested are justified by the general security situation in Lebanon and the witness's concerns for his safety and livelihood that could result from having his identity revealed. The Trial Chamber is satisfied that, because the witness's identity and statement have been disclosed to the Defence, granting the requested protective measures will not prejudice the rights of the Accused to a fair trial.

### **B. Video-conference link**

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'. The Trial Chamber has issued decisions about specific witnesses and a 'general decision' in

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<sup>7</sup> Prosecution motion, paras 11-14.

<sup>8</sup> Badreddine response, paras 3-8.

<sup>9</sup> F1429, Decision on Protective Measures for Six Witnesses Giving Evidence under Rule 155, 26 February 2014, paras 4-6; F1606, Consolidated Decision on the Prosecution Motions for Protective Measures regarding Ten Witnesses, 2 July 2014, paras 4-6.

which it identified the key principles associated with testimony via video-conference link.<sup>10</sup> These principles apply here.

8. It is in the interests of justice to hear this witness by video-conference link as this will minimise the impact on his personal life and work commitments. That a witness's evidence is disputed is an insufficient reason, of itself, to require his or her appearance in the Netherlands. Video-conference link testimony allows for effective cross-examination, and the Special Tribunal's Beirut facility allows counsel to electronically show documents to witnesses. The Trial Chamber, therefore, authorises video-conference link testimony for Witness 702.

### **CONFIDENTIALITY**

9. The Prosecution requests that Annex A to the motion, detailing the specific reasons why Witness 702 requested to testify by video-conference link, remain confidential without having to submit a publicly redacted version. Because the information in the annex is publicly summarised in paragraph three 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:

**GRANTS** the protective measures requested for Witness PRH702;

**ORDERS** that:

- the identity of Witness PRH702 must remain confidential;
- Witness PRH702 must only be described by a pseudonym in public hearings and published documents;
- information related to Witness PRH702 must be redacted from public documents which identify the witnesses at trial;
- when testifying before the Special Tribunal, the publicly broadcasted images and voice of Witness PRH702 must be distorted and unrecognisable;

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<sup>10</sup> 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.

- no person, including members of the media and third parties who become aware of the identity of Witness PRH702 and their involvement in these proceedings, may disclose information protected by these orders;

**REAFFIRMS** that a knowing violation of this order may result in prosecution under Rule 60 *bis*;<sup>11</sup> and

**AUTHORISES** Witness PRH702 to testify before the Special Tribunal via video-conference link.

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

Leidschendam,  
The Netherlands  
28 August 2015

David Re

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Judge David Re, Presiding

Janet Nosworthy

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

Micheline Braidy

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Judge Micheline Braidy



<sup>11</sup> Punishable by a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 euros or both.