

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: 23 October 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 AUTHORISING VIDEO-CONFERENCE LINK
TESTIMONY FOR WITNESS PRH688**

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 Iain Edwards & Ms
Mylene Dimitri

Counsel for Mr Hassan Habib Merhi:

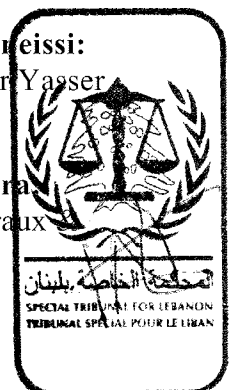
Mr Mohamed Aouini, Ms Dorothée Le Fraper
du Hellen & Mr Jad Khalil

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 16 October 2015, the Prosecution filed a motion requesting, under Rule 124 of the Special Tribunal's Rules of Procedure and Evidence, authorisation for testimony by video-conference link for Witness PRH688.¹ In its decision of 9 October 2015, the Trial Chamber granted leave to the Prosecution to add Witness 688 to its witness list, declared his statement admissible under Rule 155 (C) and required him to attend for cross-examination.² In a separate motion, the Prosecution seeks protective measures for this witness.³ Counsel for the Accused, Mr Mustafa Amine Badreddine and Mr Hassan Habib Merhi, responded to the motion.⁴

SUBMISSIONS

2. The Prosecution submits that video-conference link testimony is in the interests of justice because Witness 688 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 688 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 witnesses. Additionally, testimony by video-conference link helps conserve the Special Tribunal's finite financial and logistical resources.⁵

3. Counsel for Mr Merhi oppose the motion, arguing that it is not in the interests of justice to hear Witness 688 by video-conference link because of the nature of his testimony. This witness is one of the only Prosecution's witnesses who personally knows Mr Merhi's family and is able to testify about him and his relatives. The personal inconveniences raised by the witness are in no way, in this case, sufficient grounds to departing from in-court testimony. Counsel intend to cross-examine Witness 688 and show him documents. The physical presence of the witness in the courtroom will therefore facilitate his testimony.

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F2273, Prosecution Motion for Video-Conference Link for PRH688, 16 October 2015.

² F2258, Decision on Prosecution Motion for the Admission of Evidence Related to the Locations of Residences Associated with the Accused, 9 October 2015, paras 8-9, 63-67.

³ F2271, Prosecution Motion for Video-Conference Link Testimony for PRH101, PRH289, PRH065, and Protective Measures for PRH101, PRH078, PRH650, PRH647, PRH050, PRH086, PRH688, 16 October 2015.

⁴ F2275, Consolidate Badreddine Defence Response to "Prosecution Motion for Video-Conference Link for PRH688", 20 October 2015; F2277, Reponse de la Defence de Merhi aux requetes du Procureur aux fins de deposition de PRH688 par voie de videoconference et d'octroi de mesures de protection, 21 October 2015.

⁵ Prosecution motion, paras 4-9.

Finally, the ‘hasty’ decision of the Prosecution to call this witness with notification of the Parties two weeks beforehand cannot justify the departure from in-court testimony. This is because it is the Prosecution’s responsibility to anticipate the appearance of its witnesses so as to enable them to make the appropriate travel arrangements.⁶

DISCUSSION

4. 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 which it identified the key principles associated with testimony via video-conference link.⁷ These principles apply here.

5. 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 is one of the only Prosecution’s witnesses who personally knows one of the Accused 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 688.

CONFIDENTIALITY

6. The Prosecution requests that Annex A to the motion, detailing the specific reasons why Witness 688 requested to testify by video-conference link, remain confidential without having to submit a publicly redacted version.⁸ Because the information in the annex is publicly summarised in paragraphs 4 and 5 of the motion, the Trial Chamber, *in this instance*, will order that the annex remain confidential without ordering a publicly redacted version be filed.

⁶ Merhi response, paras 2-4.

⁷ 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.

⁸ Prosecution motion, paras 10-11.

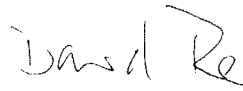
DISPOSITION

FOR THESE REASONS, the Trial Chamber:

AUTHORISES Witness PRH688 to testify before the Special Tribunal via video-conference link.

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

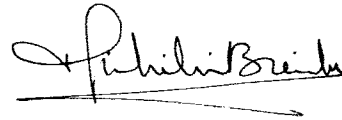
Leidschendam,
The Netherlands
23 October 2015



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

