

**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: 4 November 2015

Original language: English

Classification: Public

DECISION GRANTING PROTECTIVE MEASURES FOR WITNESS PRH539 AND PRH678

(Extract from Official Public Transcript of Hearing on 4 November 2015, page 58, line 20 to page 62, line 1)

I have a decision on filing F2290, "Prosecution motion for protective measures for PRH539 and PRH678," filed on 27th of October, 2015. The Trial Chamber has a motion from the Prosecution seeking protective measures under Rule 133 of the Special Tribunal's Rules of Procedure and Evidence for those two witnesses.

The Trial Chamber declared Witness 539's witness statement admissible under Rule 155(C) and required him to attend for cross-examination in its decision of 9th of July, 2015, F2062, "Decision on Prosecution motion for the admission of locations related evidence."

With respect to the other witness, the Trial Chamber declared Witness 678's statement admissible under Rule 155 without requiring his attendance. That was in filing F2292, "Decision on Prosecution motion for the admission into evidence under Rule 155 of the statements of Witness PRH078, PRH550 (Toby Smith) and PRH678," of 29th of October, 2015.

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Because the Prosecution intends to call Witness 539 and read a public summary of Witness 678's evidence imminently, the Trial Chamber, by e-mail, shortened the dead-line for the parties to respond to the Prosecution's motion filed on the 27th of October.

By e-mail, counsel for the accused Mr. Salim Jamil Ayyash, Mr. Mustafa Amine Badreddine, and Mr. Assad Hassan Sabra informed the Trial Chamber that they would not be filing any response.

The Prosecution requests the following protective measures for both witnesses: An order that their identities remain confidential and that parties and participants, including victims participating in the proceedings who attend court sessions, shall maintain the confidentiality of the witnesses' identities and information which may identify them; two, using a pseudonym in all public hearings and public documents; three, that any documents that are disclosed to the public must be redacted to protect the witnesses' identities and information which may identify them as witnesses at trial; and four, an order that the media and any third parties, if they become aware of the identity of the witnesses or information that may identify the witnesses or anyone related to or associated with them, are prohibited from revealing that information, unless that information has been publicly disclosed by the Special Tribunal.

In respect of Witness 539, the Prosecution further requests that the public broadcast image and voice of the witness be distorted and unrecognizable when he testifies.

The witnesses have requested protective measures because of security concerns related to their families, and Witness 678 identified a specific security situation underlying a request that was detailed in an annex to the Prosecution's motion.

Counsel for the accused Mr. Hussein Hassan Oneissi opposed protective measures for Witness 539 but take no position on protective measures for Witness 678. That was their response, filing F2300, "Defence for Hussein Hassan Oneissi response to 'Prosecution motion for protective measures for PRH539 and PRH678' of the 27th of October, 2015," filed on the 3rd of November, 2015. It was filed yesterday.

They submit that the "generalized" statements in the Prosecution motion are baseless and cannot be used to support specific requests for protective measures. Moreover, they submit that the Prosecution has failed to provide any valid objective reasons for the witnesses' security concerns. They say that when weighed against the right of the Defence to a fair and public trial, it is in the interests of justice to deny protective measures for Witness 539.

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The Trial Chamber has carefully considered the Prosecution's submissions and statements provided in support of the request for protective measures and has carefully considered the submissions filed by counsel for Mr. Oneissi. The Trial Chamber is satisfied here that the protective measures sought are appropriate given the specific personal circumstances and the security concerns voiced by the witnesses.

The Trial Chamber is also satisfied that the measures sought will not prejudice the rights of the accused to a fair trial as the witnesses' identities have been disclosed to the Defence and they have received all the confidential material filed in support of the Prosecution's motion.

For these reasons, the Trial Chamber finds that the Prosecution's request complies with Rule 133 in relation to protective measures and accordingly grants the four measures outlined sought for the two witnesses.

In addition to the measures requested and granted, the Prosecution also requests the Trial Chamber to maintain the confidential status of the annex to the motion and the witness statements provided in support of the motion.

Counsel for Mr. Oneissi's response is also currently classified as confidential, as it was filed confidentially.

Given that the statement, the response, and the reply contain personal details and identifying information of the witness and specify his security concerns, the Trial Chamber grants the Prosecution's request and orders that the annex, the statements, and the response remain confidential. The Chamber orders counsel for Mr. Oneissi to file a publicly redacted version of their response as soon as is practicable.

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