

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

**BEFORE THE TRIAL CHAMBER**  
**SPECIAL TRIBUNAL FOR LEBANON**

**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:** 26 July 2016

**Original language:** English

**Classification:** Public

**PROSECUTOR**

v.

**SALIM JAMIL AYYASH  
HASSAN HABIB MERHI  
HUSSEIN HASSAN ONEISSI  
ASSAD HASSAN SABRA**

**DECISION ON PROSECUTION MOTION FOR VIDEO-CONFERENCE LINK  
TESTIMONY FOR WITNESS PRH620**

**Office of the Prosecutor:**  
Mr Norman Farrell

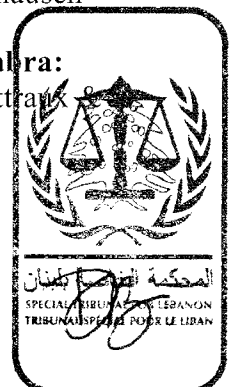
**Counsel for Mr Salim Jamil Ayyash:**  
Mr Emile Aoun, Mr Thomas Hannis & Mr Chad Mair

**Legal Representatives of  
Participating Victims:**  
Mr Peter Haynes, Mr Mohammad F. Mattar  
& Ms Nada Abdelsater-Abusamra

**Counsel for Mr Hassan Habib Merhi:**  
Mr Mohamed Aouini, Ms Dorothee Le Fraper du  
Hellen & Mr Jad Khalil

**Counsel for Mr Hussein Hassan Oneissi:**  
Mr Vincent Courcelle-Labrousse, Mr Yasser  
Hassan & Ms Natalie von Wistinghausen

**Counsel for Mr Assad Hassan Sabra:**  
Mr David Young, Mr Guénaél Mettraux  
Mr Geoffrey Roberts



## **INTRODUCTION**

1. The Trial Chamber, on 15 July 2016, on the Prosecution's application, declared Witness PRH620 as qualified to give limited expert opinion in analysing videoed jihadist claims of responsibility for attacks.<sup>1</sup> The Prosecution requests the Trial Chamber to authorise the witness to testify by video-conference link from a third State under Rule 124 of the Special Tribunal's Rules of Procedure and Evidence.<sup>2</sup> Counsel for the Accused, Mr Hassan Habib Merhi,<sup>3</sup> and counsel for Mr Hussein Hassan Oneissi<sup>4</sup> opposed the motion.<sup>5</sup>

## **SUBMISSIONS**

### *Prosecution submissions*

2. The Prosecution submits that it is in the interests of justice to receive the witness's testimony by video-conference link. First, the length of testimony, including travel time and courtroom familiarisation, would mean the witness being away for nearly a week. The exigencies of her work require her to be at her work place. Confidential Annex A to the motion sets out the witness's personal circumstances.

3. Second, video-conference testimony is equivalent to courtroom testimony in terms of its probative value and respect for the accused's rights. Counsel can effectively cross-examine and confront witnesses by video-conference link, all concerned may assess credibility and reliability as if the witness were physically present in the courtroom, and witnesses can be shown documents electronically and questioned about them.

### *Defence submissions*

4. Counsel for Mr Merhi oppose Witness 620 testifying by video-conference link on the basis that the numerous expenses and complications involved in arranging a video-conference

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<sup>1</sup> STL, STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2653, Decision on Prosecution Motion to Declare Witness PRH620 as an Expert Witness and to Receive her Report into Evidence, 15 July 2016.

<sup>2</sup> F2642, Prosecution Motion for Video-Conference Link Testimony for PRH620, Public with Confidential Annex A, 12 July 2016.

<sup>3</sup> F2646, Merhi Defence Response to the "Prosecution Motion for Video-Conference Link Testimony for PRH620", Confidential, 13 July 2016.

<sup>4</sup> F2647, Defence for Hussein Hassan Oneissi Response to the "Prosecution Motion for Video-Conference Link Testimony for PRH620" of 12 July 2016, Confidential, 13 July 2016.

<sup>5</sup> The Trial Chamber varied the time for filing a response to 24 hours from the filing of the motion: F2628, Order for Filing of Responses to Proposed Prosecution Motion on Video-Conference Link Testimony of Witness PRH620, 28 June 2016.

link in a third State outweigh the witness's personal interests in these circumstances. The time difference between Leidschendam and the third State would reduce the hearings to half-days, requiring the testimony to be spread over a number of days and therefore add delay to the trial proceedings. Moreover, the video-conference link requires Special Tribunal personnel travelling and making arrangements for appropriate video-conferencing facilities, thus impacting on the Special Tribunal's limited financial resources in a manner disproportionate to any advantage of video-conference link testimony. Furthermore, the Prosecution has failed to demonstrate with precision why Witness 620 can only carry out her professional obligations on site in the third State and not via the numerous means of communication.

5. Counsel for Mr Oneissi submit that the request is not "in the interests of justice", but rather is solely in the interest of the witness. The witness's work commitments do not justify testimony via video-conference link, particularly since the witness could still communicate with staff and work from Leidschendam. The Trial Chamber has previously denied video-conference link applications where the reasons put forward were solely work-related.<sup>6</sup> Moreover, the witness's proposed evidence is 'integral' to the case against the Accused and the Defence intends to challenge the witness's credibility which militates in favour of the witness testifying in the courtroom. Finally, the Prosecution has improperly classified Annex A to the motion as confidential. With the exception of one paragraph, it should be made accessible to the public.

## **DISCUSSION**

6. 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 a number of decisions in relation to specific witnesses and a 'general decision' in which it identified the key principles associated with testimony via video-conference link.<sup>7</sup> These principles are applicable to this decision.

7. Having considered the specific personal circumstances of the witness, the nature of the evidence, and the rights of the Accused, the Trial Chamber is satisfied, under Rule 124, that it is in the interests of justice to hear this witness via video-conference link. In particular, testimony by video-conference link will minimise the impact on the witness's work

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<sup>6</sup> Oneissi Response, para. 12.

<sup>7</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.

commitments. The Trial Chamber is not persuaded by the Defence argument that, because the evidence of this witness ‘is *integral* to the Prosecution case against the Accused’, the witness must testify in person. Testimony by video-conference link preserves the right of counsel for the Accused to cross-examine witnesses and allows the Trial Chamber to effectively assess witness credibility and reliability.<sup>8</sup> Further, the Trial Chamber does not necessarily agree with the Defence assessment of the importance of this witness’s evidence to the Prosecution case. As the Trial Chamber has already held, video-conference link testimony is not an exceptional measure.<sup>9</sup> Moreover, the Trial Chamber is not convinced that video-conference link testimony here would compromise the general expeditiousness of the trial proceedings. The witness could testify over several half-day sessions but other witnesses would testify in remaining court time. The courtroom would not remain idle.<sup>10</sup> The Trial Chamber, therefore, authorises video-conference link testimony for Witness 620.

### **CONFIDENTIALITY**

8. The Prosecution requests that Annex A to the motion, detailing why Witness 620 requested to testify by video-conference link, remain confidential.<sup>11</sup> The Prosecution may request protective measures for this witness and the information in the annex may raise security concerns for the witness. The annex also contains confidential information from the Special Tribunal’s Victims and Witnesses Unit. For these reasons, the Trial Chamber will allow the annex to remain confidential. However, Defence counsel must file public redacted versions of their submissions once the witness has testified.

### **DISPOSITION**

**FOR THESE REASONS**, the Trial Chamber,

**AUTHORISES** Witness PRH620 to testify before the Special Tribunal via video-conference link from the third State;

**ORDERS** Annex A to the Motion remain confidential; and

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<sup>8</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 21-24.

<sup>9</sup> F1973, Decision on Prosecution Motion for Testimony by Video-Conference Link for Witnesses PRH041, PRH459, PRH075 and PRH063, 27 May 2015, para. 7.

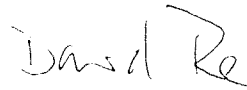
<sup>10</sup> Email from Prosecution to the Trial Chamber’s Senior Legal Officer, 20 July 2016.

<sup>11</sup> Motion, para. 12.

**ORDERS** Defence counsel to file public redacted versions of their submissions following the completion of the witness's testimony.

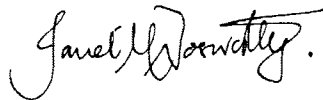
Done in Arabic, English, and French, the English version being authoritative.

Leidschendam,  
The Netherlands  
26 July 2016



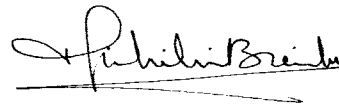
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Judge David Re, Presiding



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Judge Janet Nosworthy



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Judge Micheline Braidy

