

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

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: 5 September 2016

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

**DECISION GRANTING PROTECTIVE MEASURES FOR WITNESSES PRH051,
PRH069 AND PRH106**

Office of the Prosecutor:

Mr Norman Farrell & Mr Alexander Milne

Legal Representatives of**Participating Victims:**Mr Peter Haynes, Mr Mohammad F. Mattar
& Ms Nada Abdelsater-Abusamra**Counsel for Mr Salim Jamil Ayyash:**Mr Emile Aoun, Mr Thomas Hannis &
Mr Chad Mair**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 Maturat &
Mr Geoffrey Roberts

1. The Prosecution requests, under Rule 133 of the Special Tribunal's Rules of Procedure and Evidence, protective measures for Witnesses PRH051, PRH069 and PRH106.¹ The application is supported by a statement of a Prosecution investigator, Mr Erich Karnberger, who spoke to each witness. The Trial Chamber has previously decided to admit the statements of the witnesses into evidence, under Rule 155, without requiring their presence in court.² The Prosecution accordingly intends to read summaries of their statements in court at the point of their admission into evidence. The motion is unopposed; no Defence responses were received.

The evidence of the three witnesses

2. The three witnesses provide evidence, based on information stored in their mobile telephones, of individuals close to the Accused, Mr Assad Hassan Sabra, who allegedly had contact with one or more telephone numbers attributed to him in the consolidated indictment. Witness 69 provides a specific telephone number for Mr Sabra, and Witness 106 provides this same number as that of Mr Sabra's wife. The witnesses' self-attributed numbers had contact with one or all three numbers attributed to Mr Sabra. The witnesses also identified Mr Sabra in a photograph and provided an address or the area where he lived.³ The evidence, according to the Prosecution, assists in attributing mobile telephone use to Mr Sabra, including 'Purple 018', as pleaded.

Witnesses 51 and 106

3. The Prosecution submits that publicly disclosing the identities of Witnesses 51 and 106 would have a negative impact on their livelihoods, a reason for which protective measures have been granted in the past.

Witness 69

4. The Prosecution submits that publicly disclosing Witness 69's identity would raise security concerns for him and his family due to their place of residence in Lebanon. Further, public disclosure would negatively impact his job and hence his livelihood. He has already had a negative past employment experience as a result of his connected with this matter.

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2664, Prosecution Motion for Protective Measures for PRH069, PRH106 and PRH051, 25 July 2016.

² F2644, Decision on Prosecution Motion to Admit the Statements of Witnesses PRH024, PRH069, PRH106 and PRH051 pursuant to Rule 155, 12 July 2016 ("Decision of 12 July 2016").

³ See Decision of 12 July 2016, para. 3

5. In addition to the personal concerns expressed by the three witnesses, the Prosecution submits that because the evidence relates to Mr Sabra, an Accused in this case, it therefore raises further security concerns. The Defence already has the witnesses' identities and statements, so granting the protective measures will not prejudice the fair trial rights of the Accused.

Protective measures

6. The principles governing the protection of witnesses are set out in previous decisions.⁴ Protective measures are granted case-by-case, on the basis of persuasive evidence for each application, and only when the Trial Chamber is satisfied that these measures will not prejudice the rights of the Accused to a fair trial.

7. The Trial Chamber is satisfied from the submissions and Mr Karnberger's supporting statement that the requested protective measures are necessary. This is due to the general security situation in Lebanon and the risks to the witnesses' privacy, security and livelihood if their identities revealed, in particular because their evidence relates directly to an Accused. The Defence knows the witnesses' identities, the statements have been disclosed, and the motion is unopposed. Granting the requested protective measures will therefore not prejudice the Accused's rights to a fair trial.

Confidentiality

8. The Prosecution requests that Mr Karnberger's statement of 22 July 2016⁵ remains confidential, as its public disclosure would undermine the purpose of the Prosecution's motion and violate the privacy of the concerned witnesses. Because the statement contains the witnesses' personal details and identifying information, and given that the motion generally describes the information in the statement, the request is granted.

⁴ 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.

⁵ ERN 60319090-60319094.

FOR THESE REASONS, the Trial Chamber:

GRANTS the protective measures requested for Witnesses PRH051, PRH069 and PRH106;

ORDERS that:

- the identity of Witnesses PRH051, PRH069 and PRH106 remain confidential;
- Witnesses PRH051, PRH069 and PRH106 must be referred to by a pseudonym in all public hearings and public documents;
- any information which may identify Witnesses PRH051, PRH069 and PRH106 as witnesses must be redacted from public documents;
- no person, including members of the media and third parties who become aware of the identity of Witnesses PRH051, PRH069 and PRH106 and their involvement in these proceedings may disclose information protected by these orders; and

REAFFIRMS that a knowing violation of this order may result in prosecution under Rule 60 *bis*.⁶

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

Leidschendam,
The Netherlands
5 September 2016

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy



⁶ Under Rule 60 *bis* 'Contempt and Obstruction of Justice', such a violation is punishable by a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 Euros, or both.