

**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: 10 January 2017

Original language: English

Classification: Public

DECISION DISMISSING MERHI DEFENCE'S REQUEST FOR SPECIAL MEASURES REGARDING THE TESTIMONY OF THE FOUR OGERO WITNESSES DATED 19 DECEMBER 2016

(Extract from Official Public Transcript of Hearing on 10 January 2017, page 40, line 14 to page 43, line 11)

The Trial Chamber makes the following decision on a filing from the Merhi Defence, filing F2915, entitled in English “Merhi Defence Request for Special Measures Regarding the Testimony of the Four Ogero Witnesses,” filed on the 19th of December, 2016, which was opposed by the Prosecution.

In the motion, counsel for Mr. Hassan Habib Merhi requested three orders: Firstly, that for the duration of the testimony of the four Ogero witnesses they be prohibited from speaking with each other about the content of their respective testimonies; secondly, an order that for the duration of their testimony they be prohibited from being present while their colleague is testifying and from viewing the hearings, whether at the Tribunal's headquarters or in another country; and thirdly, an order that for the duration of the testimony of the four witnesses, they may not discuss their testimony with a representative of the Office of the Prosecutor.

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The Chamber has carefully reviewed the request and the arguments supporting it and the Prosecution's submissions, and it has decided to decline the request but to issue some directions which more or less cover that ground.

In setting this out, I will just briefly outline the reasoning for the Chamber's denying the motion.

In respect of the first order requested, that the Ogero witnesses be prohibited from speaking with each other about the content of their respective testimonies, the Chamber observes that this is a standard direction the Trial Chamber gives to each witness while they are in mid-testimony and will do so with any of the witnesses from Ogero, including Witness [...] 711, who is testifying today.

The Trial Chamber will remind that witness and every other one not to discuss their testimony at all with other potential witnesses.

In relation to the second order sought, namely, that the witnesses are prohibited from being present while their colleague is testifying and from viewing the hearings, whether at the Tribunal's headquarters or in another country, that is an, in effect, redundant request as it is, in effect, covered by Rule 150(C) of the Rules of Procedure and Evidence, which provides:

“A witness, other than an expert, who has not yet testified, shall not be present when the testimony of another witness . . . however, a witness who has heard the testimony of another witness shall not, for that reason alone, be disqualified from testifying.”

The Chamber will, however, remind the Registry to ensure that any witnesses testifying by video-conference link from the Beirut office not present in the video link -- video-conference room or are in a position to observe the testimony live from the Beirut office. An order in relation to other circumstances is impractical.

In relation to the third order sought, that for the duration of the testimony of the four Ogero witnesses they may not discuss their testimony with a representative of the Office of the Prosecutor, the Chamber observes that this is actually covered by guideline 17 of the Direction on the Conduct of Proceedings issued on the 16th of January, 2014, which provides:

“The parties and the Legal Representative of Victims must not communicate with a witness after the witness has made the solemn declaration under 150(A) or commenced testifying under Rule 150(B).”

The guideline partly covers the orders sought. However, the Chamber in balancing the request from the Merhi Defence, which was supported by counsel for Mr. Ayyash, is of the

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view that it is in the interests of justice that parties prepare witnesses properly for their testimony, including focusing the witnesses on the most relevant issues.

The Chamber notes that all counsel are bound by various ethical codes and we are confident that this won't be breached and the Prosecution will not step outside its ethical boundaries in preparing any witnesses who follow Witness 711 for their testimony.

So for these reasons, the Chamber is declining the request of the Merhi Defence supported by the Ayyash Defence. However, we will remind Witness 711 who is following the proceedings and is here to testify not to discuss his evidence with any other person from the Prosecution or any other person from Ogero or anyone at all until the witnesses have finished their testimony.

And we also remind the Registry to kindly ensure that any witnesses in the Beirut office of the Special Tribunal are, in effect, segregated from each other, which is, of course, the standard practice in any event.

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