

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: 15 March 2017

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

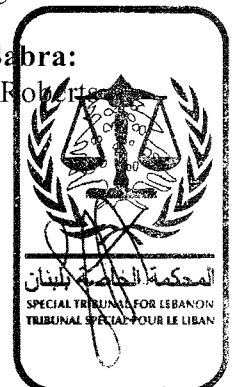
**DECISION ON REGISTRY REQUEST FOR CLARIFICATION OF DECISION
VARYING PROTECTIVE MEASURES FOR A WITNESS**

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 Geoffrey Roberts



1. On 27 February 2017—to allow Defence counsel to efficiently investigate and question potential witnesses while maintaining the measures necessary to protect a witness’ identity—the Trial Chamber varied its protective measures for the witness. The Trial Chamber ordered Defence counsel to obtain from each interviewed person, in advance of an interview, a signed undertaking to maintain the confidentiality of all relevant information disclosed, and to keep an accurate log record of those interviewed.¹

Victims and Witnesses Unit’s submissions

2. On 8 March 2017, the Victims and Witnesses Unit (VWU), through the Registrar, sought clarification of the decision. The VWU requested the Trial Chamber to: (i) clarify if it may inform the witness of the variation of the protective measures, and the information that it may provide; (ii) confirm the prohibition against disclosing the status of the witness; and (iii) order Defence counsel to provide advance notice of interviews and the signed undertakings to the VWU, or inform the unit if anyone refuses to sign the undertaking.

3. The VWU submits that the variation could affect the witness’ security and safety; therefore, under Rule 50 (B) (ii) of the Special Tribunal’s Rules of Procedure and Evidence, it is obliged to inform the witness about the decision.² This would increase the witness’ alertness and, hence, capability to identify new threats. The VWU also wishes to notify the witness of whom Defence counsel intend to interview. Receiving the undertakings and advance notice of the interviews from Defence counsel would enable the VWU to take action to ensure the continued security and safety of the witness.³

Prosecution’s submissions

4. The Prosecution supported the VWU’s request, adding that the VWU could provide the public redacted version of the Trial Chamber’s decision to the witness and explain who it relates to. The benefit of notifying the witness about potential witnesses’ identities should be balanced against their possible requests for protective measures if called to testify. Defence

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F3014, Decision Varying Protective Measures for a Witness, 27 February 2017 (confidential). A public redacted version of the decision was filed on 2 March 2017.

² Pursuant to Rule 50 (B) (ii) the Victims and Witnesses Unit shall provide all necessary administrative and logistical assistance to witnesses appearing before the Tribunal, including informing witnesses about any matter relating to their security and safety.

³ F3025, Registry Submission pursuant to Rule 48 (C) regarding the Trial Chamber’s “Decision Varying Protective Measures for a Witness”, 8 March 2017 (confidential), paras 5-16.

counsel could provide a list of potential witnesses *ex parte* to the VWU, and how they relate to the witness, to enable the unit to identify any concerns regarding the security of the witness that may stem from the interviews. The decision granting protective measures prohibits disclosing confidential information to any potential witnesses who do not sign the undertaking.⁴

Defence submissions

5. Defence counsel responded, objecting to notifying the witness of the variation, its terms and the identities of the potential witnesses *before* commencing any interview, but not opposing informing the witness during or after any interviews. Counsel would not disclose confidential information to the interviewees signing the undertaking before an interview. Further, the VWU could have consulted them to resolve these matters before seizing the Trial Chamber with this request for clarification.⁵

Discussion and decision

6. Despite its obligation under Rule 50 (B) (ii)—as Defence counsel have noted—the VWU should have consulted Defence counsel and attempted to resolve any issues arising from the variation decision before putting these matters before the Trial Chamber. The VWU and Defence counsel should confer and agree on when the witness may be informed of the variation decision and who has been interviewed by Defence counsel. The Trial Chamber’s decision clearly states that confidential information cannot be disclosed to a potential witness until the undertaking is signed.

7. There is nothing to clarify in respect of the continuing obligation under the Trial Chamber’s orders in not identifying the status of a witness. The decision is clear on this point.

8. Defence counsel in their response did not address the VWU’s third request to order Defence counsel to notify the VWU of the interviews before they occur and to provide the signed undertakings to VWU, or inform them if a witness refuses to sign one. The Trial Chamber, however, sees no reason to issue such an order.

⁴ F3032, Prosecution Response to “Registry Submission Pursuant to Rule 48 (C) Regarding the Trial Chamber’s ‘Decision Varying Protective Measures for a Witness’”, 10 March 2017 (confidential), paras 3-9.

⁵ F3033, Response to ‘Registry Submission Pursuant to Rule 48 (C) Regarding the Trial Chamber’s “Decision Varying Protective Measures for a Witness”’ dated 8 March 2017, 10 March 2017 (confidential), paras 2-7.

DISPOSITION

FOR THESE REASONS, the Trial Chamber,

DISMISSES the request for clarification filed by the Registrar on behalf of the Victims and Witnesses Unit; and

DIRECTS the Victims and Witnesses Unit to engage in consultation with Defence counsel concerning the issues identified in the Defence response, and any other matters regarding the implementation of the Trial Chamber's decision.

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

Leidschendam,
The Netherlands
15 March 2017

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

