

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:** 30 June 2017

**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 WITNESS PRH040****Office of the Prosecutor:**Mr Norman Farrell & Mr Alexander Hugh  
Milne**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 Dorothée Le Fraper  
du Hellen & Mr Jad Youssef 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 &  
Ms Sarah Bafadhel

1. The Prosecution requests protective measures for Witness PRH040, under Rule 133 of the Special Tribunal's Rules of Procedure and Evidence, to maintain the witness' confidential identity.<sup>1</sup> The Trial Chamber held that the witness' evidence was relevant to the pleaded fact of the amended consolidated indictment that all four Accused, as was the former Accused, Mr Mustafa Amine Badreddine,<sup>2</sup> were Hezbollah supporters,<sup>3</sup> and declared specific parts of his statements admissible, pursuant to Rule 155, without requiring him to attend court.<sup>4</sup>

2. To ensure the public character of the trial, the Prosecution must read the summary of the witness' statement into the court record.<sup>5</sup> The Prosecution submits that publicly disclosing the witness' identity, in the summary and in general, would adversely affect his privacy as it would negatively impact his interactions with his colleagues. The Defence has notice of the witness' identity and evidence which enables them to respond to the Prosecution's case. The witness lives and works in Lebanon, and his concerns should be considered in the context of the tense political, territorial and security situation prevailing in the country.<sup>6</sup> The witness' particular circumstances are described in a confidential statement of Prosecution investigator, Witness PRH539, dated 25 May 2017, and in a confidential annex. The Prosecution requests that these documents remain confidential.<sup>7</sup> Defence counsel did not respond to the Prosecution motion.

3. The Trial Chamber has carefully reviewed the Prosecution's motion and the accompanying confidential material. The Trial Chamber finds that the Prosecution has persuasively demonstrated that the witness' employment and livelihood could be compromised if his status as a witness becomes publicly known. Granting these protective measures will not prejudice the Accused's right to a fair trial because the witness' identity and evidence have been previously disclosed to the Defence. The conditions set out in Rule 133 are met and the requested protective measures are necessary and justified. The Trial Chamber

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F3163, Prosecution Motion for Protective Measures for PRH040, 30 May 2017 (public with confidential annex A), ('Prosecution motion').

<sup>2</sup> See STL-11-01/T/AC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra* AR126.11\_F0019, Decision on Badreddine Defence Interlocutory Appeal of the "Interim Decision on the Death of Mr Mustafa Amine Badreddine and Possible Termination of Proceedings", 11 July 2016. See also STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F2633, Order Terminating Proceedings against Mustafa Amine Badreddine without Prejudice and Ordering the Filing of an Amended Consolidated Indictment, 11 July 2016.

<sup>3</sup> F2720, Amended Consolidated Indictment, 12 July 2016, para. 49.

<sup>4</sup> F3104, Decision Admitting 12 Documents and a Witness' Statements Related to Hezbollah, its Officials and Telephone Numbers, 26 April 2017, paras 74-77.

<sup>5</sup> F1326, Directions on the Conduct of the Proceedings, Guidelines on the Conduct of Proceedings, 16 January 2014, para. 8; F2541, Decision on In-Court Summaries of Evidence, 7 April 2016, paras 29-30.

<sup>6</sup> Prosecution motion, paras 2, 4-6.

<sup>7</sup> Prosecution motion, paras 4, 8-10.

will maintain the confidentiality of the annex and the statement of the Prosecution investigator until further order.

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

**GRANTS** the protective measures requested for Witness PRH040;

**ORDERS** that:

- the identity of the witness must remain confidential;
- the witness be referred to by pseudonym in all public hearings and public documents;
- any documents that are disclosed to the public shall be redacted to protect the witness' identity and information which may identify him as a witness at trial;
- no person, including members of the media and third parties who become aware of the witness' identity and his involvement in these proceedings may disclose information protected by these orders;

**REAFFIRMS** that a knowing violation of this order may result in prosecution under Rule 60 *bis*;<sup>8</sup> and

**MAINTAINS** the confidentiality of Witness PRH539's statement of 25 May 2017 and the annex of the Prosecution motion until it decides otherwise.

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

Leidschendam,  
The Netherlands  
30 June 2017

David Re

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Judge David Re, Presiding

Janet Nosworthy

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Judge Janet Nosworthy

Micheline Braidy

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Judge Micheline Braidy

<sup>8</sup> Under Rule 60 *bis* 'Contempt and Obstruction of Justice', such a violation is punishable by imprisonment not exceeding seven years, or a fine not exceeding 100,000 Euros, or both.

