

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: 28 August 2017

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

**DECISION GRANTING THE LEGAL REPRESENTATIVES OF VICTIMS'
REQUEST FOR PROTECTIVE MEASURES FOR 11 WITNESSES**

Office of the Prosecutor:

Mr Norman Farrell & Mr Alexander Hugh
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 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



INTRODUCTION

1. On 31 July 2017, the Trial Chamber permitted the Legal Representatives of Victims to present witness evidence, either *viva voce* (live) in court or by submitting their statements for admission into evidence under Rules 155 and 158 of the Special Tribunal's Rules of Procedure and Evidence.¹
2. The Legal Representatives now request protective measures under Rule 133 for 11 of these witnesses, namely Witness PRH352 and Participating Victims V016, V026, V027, V033, V036, V037, V038, V058, V073 and V078.²
3. Ten of the 11 witnesses were previously granted confidentiality by the Pre-Trial Judge.³ In addition, two of the 11 witnesses were previously granted protective measures by the Trial Chamber, in line with those currently requested by the Legal Representatives, as witnesses in the earlier stages of this trial.⁴ V016 is due to testify in person,⁵ while the statements of the remaining 10 witnesses have been proposed for admission into evidence under Rule 155.⁶
4. At the Trial Chamber's request,⁷ the Legal Representatives filed confidential further submissions, on 23 August 2017, regarding whether the 11 witnesses requested and required

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F3260, Decision on the Legal Representatives of Victims' Application to Call Evidence, Schedule the Presentation of Evidence and Directions on Disclosure Obligations, 31 July 2017, disposition ('Decision of 31 July 2017').

² F3276, The Legal Representative of Victims Motion for Protective Measures for Eleven of Its Witnesses, 15 August 2017 ('Legal Representatives motion').

³ STL-11-01/PT/PTJ, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F0795, Decision on the Legal Representative of Victims' Resubmission of Eight Requests for Protective Measures (Confidentiality), 14 March 2013; F1062, Corrected Version Decision on the Fourth Motion of the Legal Representative of Victims for Protective Measures for 22 Victims Participating in the Proceedings, 15 August 2013 (confidential).

⁴ Transcript of 21 May 2015, pp 1-4; transcript of 24 January 2014, pp 15-17.

⁵ F3295, Witness Schedule of the Legal Representative of Victims for the Weeks Commencing 28 August and 4 September 2017. The Legal Representatives also obtained the Trial Chamber's permission for V027 to testify in person, and accordingly requested the protective measures of image and voice distortion, but subsequently requested that the witness' statement be admitted into evidence under Rule 155 instead; *see* Decision of 31 July 2017, disposition; Legal Representatives motion, paras 5, 12 (c); F3286, The Legal Representative of Victims Motion for the Admission of Evidence pursuant to Rules 154, 155 and 158, with Confidential Annexes A and B, 21 August 2017 ('Legal Representatives Rule 155 request'), paras 19-20.

⁶ Legal Representatives Rule 155 request, paras 16-20, 22, 23 (i). *See also* Decision of 31 July 2017, disposition; F3132, Request of the Legal Representative of Victims to add four Witnesses to its Witness List, with Confidential Annex A, Annex A, 10 May 2017 (confidential).

⁷ Transcript of 22 August 2017, pp 63-65.

protective measures under Rule 133.⁸ There were no responses to the initial or further submissions.⁹

SUBMISSIONS

5. The Legal Representatives request the following protective measures for 11 witnesses:
- (a) an order that all 11 of the Legal Representatives' witnesses' identities shall remain confidential, and that the Parties and participants (including victims participating in the proceedings who attend court sessions) shall maintain the confidentiality of the witnesses' identities and information which may identify them;
 - (b) refer to the witnesses only by their participating victims' numbers—and pseudonym for Witness 352—in all public hearings and public documents;
 - (c) the witnesses' publicly broadcasted images and voices shall be distorted and unrecognisable, 'particularly in relation to V016 and V027';
 - (d) any documents that are disclosed to the public shall be redacted to protect the witnesses' identities and information which may identify the witnesses; and
 - (e) an order that the media and any third parties, in the event that they become aware of any of the witnesses' identities or information which may identify the witnesses, are prohibited from disclosing the identities, whereabouts and information which may identify any of the witnesses, unless that information has been publicly disclosed by the Special Tribunal.¹⁰
6. Regarding Witness 352, to whom the Trial Chamber previously granted protective measures, the Legal Representatives submit that the witness' security concerns are still valid and that the witness' statement contains evidence relating to two confidential participating victims. Therefore, disclosing Witness 352's identity as the Legal Representatives' witness would reveal these two confidential victims' identities, and their affiliations to the witness. The remaining 10 witnesses were granted confidentiality by the Pre-Trial Judge, as victims participating in these proceedings. Due to the nature of their evidence, revealing their

⁸ F3290, The Legal Representative of Victims Further Submission to the Motion for Protective Measures for Eleven of Its Witnesses, 23 August 2017 (confidential) ('Legal Representatives further submissions').

⁹ Provisional transcript of 24 August 2017, p. 36.

¹⁰ Legal Representatives motion, para. 12.

identities as the Legal Representatives' witnesses would in turn reveal their identities as participating victims. The protective measures sought will not prejudice the Accused's rights, as the Defence was notified of the witnesses' identities by 3 May 2017, at the latest. The witnesses' statements have been disclosed to the Trial Chamber and the Parties.¹¹

7. In their confidential further submissions, the Legal Representatives clarified that they discussed protective measures with the participating victims on an ongoing basis. In particular, when asked by the Legal Representatives during meetings, all confidential participating victims who were potential witnesses requested to remain confidential, should they provide evidence as witnesses. Moreover, pursuant to the Trial Chamber's order of 22 August 2017, the Legal Representatives contacted the 11 witnesses. All requested protective measures as the Legal Representatives' witnesses, based on the security and/or political situation in Lebanon, concerns for their safety and/or that of their families, and/or concerns for the effects on their businesses. Moreover, Witness 352 reiterated that, as the guardian of two participating victims, being granted protective measures would also prevent the disclosure of the confidential identities of these two participating victims.¹²

DISCUSSION

8. Rule 133 (A) allows the Trial Chamber, '*proprio motu* or at the request of a Party, the victim or witness concerned, the Victims' Participation Unit or the Victims and Witnesses Unit, [to] order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused'. Moreover, Rule 133 (B) requires the requestor to 'seek to obtain the consent of the person in respect of whom the protective measures are sought'.

9. The Trial Chamber is satisfied that, for the reasons set out in the Legal Representatives' initial and further submissions, the requested protective measures are appropriate to safeguard the 11 witnesses' privacy and security, and that their consent has been sought in this regard. In addition, the Trial Chamber notes that there were no Defence objections to the requested measures. Having considered the Legal Representatives' submissions on the matter, the Trial Chamber finds that the requested protective measures are consistent with the Accused's right to a fair and expeditious trial.

¹¹ Legal Representatives motion, paras 6-11, 13-14.

¹² Legal Representatives further submissions, paras 4, 6-14.

10. Finally, the Trial Chamber notes that image and voice distortion is only required by witnesses who testify *viva voce* (live). As V016 is the only one of the 11 witnesses who will testify in this manner, image and voice distortion will only be granted to this witness.¹³

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

GRANTS the Legal Representatives of Victims' request for protective measures for Witness PRH352 and Participating Victims V016, V026, V027, V033, V036, V037, V038, V058, V073 and V078;

ORDERS that:

- (i) the witnesses' identities, and information which may identify them, must remain confidential;
- (ii) the witnesses be referred to only by their assigned pseudonyms in all public hearings and public documents;
- (iii) V016's publicly broadcast image and voice be distorted and unrecognisable;
- (iv) any documents that are disclosed to the public be redacted to protect the witnesses' identities and information which may identify them as witnesses at trial;
- (v) no person, including members of the media and third parties who become aware of the identities of the witnesses and their involvement in these proceedings, may disclose information protected by these orders; and

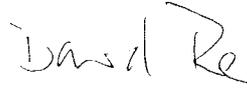
REAFFIRMS that a knowing violation of this order may result in prosecution under Rule 60 *bis*.¹⁴

¹³ The Legal Representatives no longer seek to present V027's evidence *viva voce* (live); *see* fn. 5 above.

¹⁴ Punishable by a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 Euros, or both; *see* Rule 60 *bis* (J).

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

Leidschendam,
The Netherlands
28 August 2017



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

