

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 February 2017

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

**DECISION ON PROSECUTION MOTION FOR PROTECTIVE MEASURES
FOR WITNESSES PRH535, PRH270, PRH511, PRH281, PRH299, PRH464,
PRH474 AND PRH520**

Office of the Prosecutor:

Mr Norman Farrell & Mr Alexander 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 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. The Trial Chamber, on 31 January 2017, declared admissible, under Rule 155 of the Special Tribunal's Rules of Procedure and Evidence, the statements of Witnesses PRH535, PRH270, PRH511, PRH281 and PRH520.¹ On the same day, the Trial Chamber also declared admissible, under Rule 155, the statements of Witnesses PRH299, PRH464 and PRH474.²

2. The Prosecution now requests protective measures to maintain the witnesses' confidential identities. The statements of Witnesses 535, 270, 511, 281 and 520 are relevant to and probative of the attribution of mobile telephone numbers to the Accused, Mr Salim Jamil Ayyash and Mr Hassan Habib Merhi. The evidence of Witnesses 299, 464 and 474 supports the *prima facie* reliability of records of the witnesses' respective companies. These records assist in identifying users of telephone numbers in contact with numbers attributed to the two Accused and to the former Accused, Mr Mustafa Amine Badreddine.

3. The Prosecution submits that publicly disclosing the witnesses' identities would raise security concerns for them due to the tense political, territorial and security situation prevailing in Lebanon, where seven of them reside. It would also negatively affect their businesses and livelihoods. Witness 474 lives in another State but described a specific incident related to his security that made him leave Lebanon. The evidence of the witnesses relates to one or more of the Accused, and therefore raises security risks. The witnesses' particular personal circumstances warranting protective measures are described in a confidential annex, and seven statements of Prosecution investigators.³

4. Counsel for Mr Merhi, Mr Hussein Hassan Oneissi and Mr Assad Hassan Sabra take no position on the Prosecution motion.⁴ Counsel for Mr Ayyash object to granting protective measures for Witness 520, make observations as to how the Prosecution motion relates to the other witnesses, and take issue with the timing of the motion. Counsel note that the witness has consistently stated that he has no security concerns and does not need protective

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2963, Decision on the Prosecution Motion to Admit Ten Witness Statements Relating to Salim Jamil Ayyash and Hassan Habib Merhi and to Admit One Exhibit, 31 January 2017; F2963, Addendum to the 'Decision on the Prosecution Motion to Admit Ten Witness Statements Relating to Salim Jamil Ayyash and Hassan Habib Merhi and to Admit One Exhibit' of 31 January 2017, 1 February 2017.

² F2965, Decision on the Prosecution Motion for the Admission of 36 Documentary Exhibits and Four Witness Statements, 31 January 2017.

³ F2981, Prosecution Motion for Protective Measures for PRH535, PRH270, PRH511, PRH281, PRH299, PRH464, PRH474 and PRH520, 9 February 2017 (public with confidential annex).

⁴ Provisional transcript of 13 February 2017, p. 113.

measures. They argue that Witness 520's relationship to Mr Ayyash and the nature of his evidence do not justify the Prosecution's request.⁵

5. The Trial Chamber has carefully reviewed the Prosecution's motion, the confidential annex, the confidential statements and the Ayyash Defence response. The Defence does not object to granting protective measures in respect of seven of these witnesses, and the Trial Chamber is satisfied that the conditions set out in Rule 133 are met. The requested protective measures are necessary and justified for these witnesses.

6. Rule 133 (B) requires that a Party requesting protective measures shall seek to obtain the consent of the person for whom protective measures are sought. The Prosecution sought the consent of Witness 520, and submitted a number of reasons that in combination—despite his hesitant non-objection—support the granting of protective measures for the witness for now. The Trial Chamber is satisfied that the Prosecution has demonstrated an objective case for granting the witness protective measures, at least provisionally. However, the Trial Chamber wishes to obtain further information and therefore orders the Special Tribunal's Victims and Witnesses Unit, under Rule 50 (B) (iv), to conduct a risk assessment regarding any security concerns related to Witness 520 to ascertain whether protective measures should continue to apply, and file a report in due course. The Trial Chamber will therefore provisionally grant the protective measures sought in relation to Witness 520. It may reverse this decision upon reviewing the report of the Victims and Witnesses Unit. If it does not, this order will become final.

7. The Trial Chamber will maintain the confidentiality of the annex and the statements of the Prosecution investigators pending further order.

FOR THESE REASONS, the Trial Chamber:

GRANTS the protective measures requested for Witnesses PRH535, PRH270, PRH511, PRH281, PRH299, PRH464 and PRH474;

PROVISIONALLY GRANTS the protective measures requested for Witness PRH520, on the terms set out in paragraph 6 above;

⁵ F2986, Ayyash Defence Response to Prosecution Motion for Protective Measures for PRH535, PRH270, PRH511, PRH281, PH299, PRH464, PH474 and PRH520, 14 February 2017 (confidential).

ORDERS that:

- the identities of the witnesses must remain confidential;
- the witnesses be referred to by pseudonym in all public hearings and published documents;
- any documents that are disclosed to the public shall be redacted to protect the witnesses' identities and information which may identify them as witnesses at trial;
- 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;

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

ORDERS the Special Tribunal's Victims and Witnesses Unit to assess any security concerns in relation to Witness PRH520 and file a report on its findings; and

MAINTAINS the confidentiality of the Prosecution investigators' statements and the annex to the Prosecution motion until it decides otherwise.

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

Leidschendam,
The Netherlands
15 February 2017

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

⁶ Punishable by a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 euros, or both.

