

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: 18 July 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 PRH049 AND PRH447**

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 Dorothee Le Fraper
du Hellen & Mr Jad Yusef 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 Robert
Ms Sarah Bafadhel

1. The Prosecution requests protective measures for Witnesses PRH049 and PRH447, under Rule 133 of the Special Tribunal's Rules of Procedure and Evidence, to maintain their confidential identities.¹ The Trial Chamber has declared the witnesses' statements admissible, under Rule 155, without requiring them to attend court.²

2. A Party tendering a witness statement into evidence, in this case the Prosecution, must read onto the court record, in a public hearing, a summary of the statement.³ The Prosecution submits that publicly disclosing the witnesses' identities would raise security concerns for them and their families and may negatively impact their livelihood. The witnesses' evidence relate to a former accused, Mr Mustafa Amine Badreddine, which has previously led the Trial Chamber to grant protective measures to witnesses. Both witnesses live and work in Lebanon, their security concerns should, therefore, be considered in the context of the reportedly tense political and security situation prevailing in the country. The Prosecution has sought the witnesses' consent to the protective measures, and submitted their particular circumstances through confidential statements of Prosecution investigators.⁴ The Defence has notice of the witnesses' identities and evidence which enables it to respond to the Prosecution's case.⁵ Defence counsel did not oppose the Prosecution motion.⁶

3. The Trial Chamber has carefully reviewed the Prosecution's submission and the information contained in the Prosecution investigators' confidential statements detailing the witnesses' concerns. The Trial Chamber is satisfied that the conditions set out in Rule 133 are met. The requested protective measures are appropriate and justified for these witnesses, with one exception, namely the measure of distortion and altering of the witnesses' publicly broadcasted images and voice. The witnesses are not required to appear for cross-examination, therefore, this measure is unnecessary. The Trial Chamber is also satisfied that the measures will not affect the fair trial rights of the Accused.

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F3129, Prosecution Motion for Protective Measures for PRH049 and PRH447, 9 May 2017 ('Prosecution motion').

² F3229, Decision on Prosecution Motion to Admit 18 Documentary Exhibits and Three Witness Statements under Rules 154 and 155, relating to Named Co-conspirator Mustafa Amine Badreddine, 14 July 2017, paras 31-34, disposition.

³ 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, para. 30.

⁴ Witness 049's concerns are included in the witness statements of a Prosecution investigator, dated 9 April 2015, and Mr Erich Karnberger (Witness PRH312), dated 9 May 2017. Witness 447's circumstances are described in the witness statement of Mr Gregory Purser (Witness PRH448), dated 8 May 2017.

⁵ Prosecution motion, paras 1-9.

⁶ Emails from Defence on 10 and 11 May 2017 to the Trial Chamber's legal officer.

FOR THESE REASONS, the Trial Chamber:

GRANTS the following protective measures for Witnesses PRH049 and PRH447;

ORDERS that:

- the identities of the witnesses must remain confidential;
- the witnesses be referred to by pseudonyms 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*;⁷ and

MAINTAINS the confidentiality of the Prosecution investigators' statements until it decides otherwise.

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

Leidschendam,
The Netherlands
18 July 2017

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

⁷ Punishable by a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 euros, or both.

