



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: 9 January 2017

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

**DECISION ON VIDEO-CONFERENCE LINK TESTIMONY AND
PROTECTIVE MEASURES FOR OGERO WITNESSES**

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 Guénaél Mettraux &
Mr Geoffrey Roberts

1. The Trial Chamber, on 7 December 2016, declared admissible the consolidated statement of five witnesses—all representatives of relevant departments of OGERO, the Lebanese fixed telecommunications network provider—under Rule 155 of the Special Tribunal’s Rules of Procedure and Evidence, and ordered the attendance for cross-examination of four of them under Rule 156.¹

2. The Prosecution requests protective measures to maintain the confidential identity of these four witnesses, Witnesses PRH709, PRH710, PRH711 and PRH713. The Prosecution submits that the witnesses’ personal identities are irrelevant to the Prosecution’s case because each will testify in his official capacity as a representative of OGERO. Publicly disclosing their identity beyond their official capacity serves limited public interest and would raise privacy concerns for their families who live in Lebanon. Granting protective measures to these witnesses would not prejudice the Accused’s rights because the Defence has notice of the witnesses’ identity and evidence. The witnesses’ particular concerns are described in the confidential statement of Mr Jo van Lierde, a Prosecution investigator, of 15 December 2016.

3. The Prosecution also requests authorisation for Witnesses 709 and 711 to testify by video-conference link from the Special Tribunal’s Beirut Office. Receiving the witnesses’ testimonies via video-conference link is in the interests of justice. They lack the necessary documents to travel to Leidschendam, the Netherlands. It permits greater flexibility and efficiency in arranging their appearances and cross-examination by the Defence, and minimises the impact on their professional commitments. In terms of probative value, reliability and credibility, and respect for the Accused’s rights, testifying via video-conference link are equivalent to in-court testimony. The Prosecution requests the Trial Chamber to maintain the confidentiality of the motion and the response until the witnesses have completed their testimonies, and that of the annex and Mr van Lierde’s statement until the Trial Chamber decides otherwise, either upon the motion of the Prosecution or after having given the Prosecution the opportunity to be heard on this issue.²

4. Defence counsel for the Accused respond in a joint filing. They do not oppose the video-conference link testimony for the witnesses but object to granting protective measures. They submit that privacy concerns of the witnesses as outlined in Mr van Lierde’s statement

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2894, Decision on the Admission of the Consolidated OGERO Statement, 7 December 2016.

² F2911, Prosecution Motion for Video-Conference Link Testimony for PRH709 and PRH711 and for Protective Measures for PRH709, PRH710, PRH711 and PRH713, 16 December 2016 (confidential with confidential annex).

do not justify departing from the public nature of the proceedings, neither does that they will testify in their capacity as OGERO representatives.³

5. Under Rule 136, all proceedings before a Chamber, other than its deliberations, shall be held in public, unless otherwise decided by the Chamber after hearing the Parties. The Trial Chamber must balance against this prevailing principle appropriate measures for the privacy and protection of witnesses, under Rule 133 (A), provided that the measures are consistent with the rights of the accused, including the right to a public hearing specified in Article 16 (2) of the Statute of the Special Tribunal for Lebanon.⁴ The Trial Chamber will grant protective measures case-by-case, on the basis of persuasive evidence.⁵

6. The Trial Chamber has carefully reviewed the supporting statement of Mr van Lierde and the submissions of the Prosecution and the Defence. The Trial Chamber is not convinced that the conditions in Rule 133 (A) are met and the requested protective measures are necessary and justified. The Trial Chamber is not persuaded by the Prosecution's argument that the witnesses' 'official capacity' is a relevant consideration in this regard. The witnesses have not expressed any fears for themselves and have only referred to possibly uncomfortable situations. These concerns are insufficient to override the principle favouring public proceedings. Therefore, the Trial Chamber denies the Prosecution motion for protective measures.

7. Rule 124 allows the Trial Chamber in the interests of justice to receive testimonies via video-conference link at the request of either Party. This request is unopposed by the Defence. Video-conference link enables effective cross-examination, and the Special Tribunal's Beirut Office can facilitate counsel showing documents electronically to the witnesses. The Trial Chamber, therefore, authorises video-conference link testimony for Witnesses 709 and 711.

8. The Trial Chamber orders the Prosecution and Defence counsel to file public redacted version of the motion and the response; it shall maintain the confidentiality of the annex to the motion and Mr van Lierde's statement until it decides otherwise.

³ F2925, Defence Teams' Joint Response to Prosecution Motion for VCL Testimony for PRH709 and PRH711 and for Protective Measures for PRH709, PRH710, PRH711 and PRH713, 22 December 2016 (confidential).

⁴ *See*, for example, oral decision, transcript of 12 December 2016, pp 8-10. Article 16 (2) of the Statute provides that the accused shall be entitled to a fair and public hearing, subject to measures ordered by the Special Tribunal for the protection of victims and witnesses.

⁵ F2467, Decision on Prosecution Motion for Protective Measures for Witness PRH273, 25 February 2016, para. 5.

FOR THESE REASONS, the Trial Chamber:

DENIES the Prosecution motion for protective measures for Witnesses PRH709, PRH710, PRH711 and PRH713;

AUTHORISES Witnesses PRH709 and PRH711 to testify by video-conference link;

ORDERS the Prosecution and Defence counsel to submit public redacted version of their respective filings following the completion of the witnesses' testimonies; and

MAINTAINS the confidentiality of the annex of the Prosecution motion and Mr van Lierde's statement of 15 December 2016 until it decides otherwise.

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

Leidschendam,
The Netherlands
9 January 2017

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

