

BEFORE 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: 1 October 2014

Filing Party: Legal Representative of Participating Victims

Original language: English

Classification: Public

PROSECUTOR

v.

SALIM JAMIL AYYASH
MUSTAFA AMINE BADREDDINE
HASSAN HABIB MERHI
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA

**REQUEST OF LEGAL REPRESENTATIVE FOR VICTIMS FOR RESCINDING
PROTECTIVE MEASURES GRANTED TO ONE PARTICIPATING VICTIM**

Office of the Prosecutor:

Mr Norman Farrell

Defence Office:

Mr François Roux

**Legal Representatives of
Participating Victims:**

Mr Peter Haynes, Mr Mohammad F. Mattar
& Ms Nada Abdelsater-Abusamra

Counsel for Mr Salim Jamil Ayyash:

Mr Eugene O’Sullivan, Mr Emile Aoun &
Mr Thomas Hannis

Counsel for Mr Mustafa Amine Badreddine:

Mr Antoine Korkmaz, Mr John Jones &
Mr Iain Edwards

Counsel for Mr Hassan Habib Merhi:

Mr Mohamed Aouini, Ms Dorothee Le Fraper du
Hellen & Mr Khalil Jad

Counsel for Mr Hussein Hassan Oneissi:

Mr Vincent Courcelle-Labrousse, Mr Yasser
Hassan & Mr Philippe Laroche

Counsel for Mr Assad Hassan Sabra:

Mr David Young, Mr Guénaél Mettraux &
Mr Geoffrey Roberts



1. Pursuant to Article 17 of the Statute of the Special Tribunal for Lebanon (“Statute”) and Rule 133 of the Rules of Procedure and Evidence (“RPE”), the Legal Representative of Victims (“LRV”) hereby requests the Trial Chamber to rescind the protective measures granted to one participating victim (“VPP”).
2. The LRV respectfully requests all Parties to submit the relevant responses as soon as possible, so as to expedite the decision-making process.

I. Procedural background

3. On 8 May 2012, the Pre-Trial Judge granted the application of V010 to become a victim participating in the proceedings.¹
4. On 29 October 2012, the LRV, upon instructions from its clients and further to the individual risk assessments carried out by the Victims and Witnesses Unit (“VWU”), requested the Pre-Trial Judge to grant anonymity as a protective measure to, *inter alia*, V010.² The Pre-Trial Judge denied that request.³ As a result, the LRV reapplied for confidentiality as a protective measure for V010 (among others).⁴ On 15 August 2013, the Pre-Trial Judge granted V010 confidentiality as a protective measure.⁵

II. Applicable law

5. The Pre-Trial Judge applied Rule 133(A) in granting confidentiality as a protective measure to 34 victims participating in the proceedings during the pre-trial phase, including V010.⁶

¹ *Prosecutor v. Ayyash et al.*, Case No. STL-11-01-PT/PTJ, *Decision on Victims’ Participation in the Proceedings*, 8 May 2012.

² *Prosecutor v. Ayyash et al.*, Case No. STL-11-01-PT/PTJ, *First Motion of the Legal Representative of Victims for Protective Measures (Anonymity) of Seventeen Victims Participating in the Proceedings*, 29 October 2012.

³ *Prosecutor v. Ayyash et al.*, Case No. STL-11-01-PT/PTJ, *Decision on the Legal Representative of Victims’ First, Second and Third Motions for Protective Measures for Victims Participating in the Proceedings*, 19 December 2012.

⁴ *Prosecutor v. Ayyash et al.*, Case No. STL-11-01-PT/PTJ, *Fourth Motion of the Legal Representative of Victims for Protective Measures (Confidentiality) of 22 Victims Participating in the Proceedings*, 6 June 2013.

⁵ *Prosecutor v. Ayyash et al.*, Case No. STL-11-01-PT/PTJ, *Décision portant sur la Quatrième Requête du Représentant Légal des Victimes aux Fins d’assurer la Protection de 22 Victimes Participant a la Procédure*, 15 August 2013.

⁶ *Supra* notes 1, 3, and 5.

6. Rule 133(A) provides that the Trial Chamber may, *proprio motu* or at the request of a Party, the victim or witness concerned, the Victims' Participation Unit or the Victims and Witnesses Unit, order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused.
7. When it comes to victims participating in the proceedings, their personal interests, safeguarded by Article 17 of the Statute, should play a crucial role in deciding the appropriateness of a particular protective measure.⁷
8. As regards the conditions under which such measures should be granted or varied, Rule 133 requires that the measures be "appropriate", "consistent with the right of the accused" (paragraph (A)), and that a Party requesting such measures should first obtain the consent of the person in respect of whom the protective measures are sought (paragraph (B)).⁸
9. Taking in consideration the requirements of Rule 133 and also relevant case-law,⁹ the LRV submits that the following legal criteria should be considered when granting, varying or rescinding protective measures:
 - (i) *Appropriateness* (necessity) of protective measures (the measure must be responsive to the nature and source of the particular threat and appropriate for the victims' privacy and protection as well as based on the consent of the person requesting it), and

⁷ International legal texts confirm this approach. The United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* provides that judicial and administrative processes should be responsive to victims' needs by taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation (UN *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, 29 November 1985, para. 6(d)).

⁸ The requirement of consent is confirmed by both international and national jurisprudence. See, for instance: *The Prosecutor v. Pauline Nyiramasuhuko et al*, Joint Case No. ICTR-98-42-T, *Decision on the Prosecution Urgent Ex-Parte Motion to Rescind Protective Measures for Witnesses EV, RT and RV*. 10 May 2011, para. 8. See also: *Loi fédérale sur l'aide aux victimes d'infractions* (Loi sur l'aide aux victimes, LAVI, L'Assemblée fédérale de la Confédération Suisse) du 23 mars 2007 (Etat le 1er janvier 2011, Art. 11 (Obligation de garder le secret) ; Belgium Penal Code of 8 June 1867 (updated 1 January 2012), Art. 378bis ; Title 13 - Criminal Code, Arizona Revised Statute, State of Arizona Legislature (United States), § 13-4430 (A).

⁹ *The Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06, *Trial Chamber I Decision on the Prosecution and Defence Applications for Leave to Appeal the Trial Chamber's "Decision on Disclosure Issues, Responsibilities for Protective Measures and other Procedural Matters*, 16 December 2008, paras. 27-28; *The Prosecutor v. Jean-Pierre Bemba Gombo Bemba*, Case No. ICC-01/05 -01/08, *Trial Chamber III Decision Defining the Status of 54 Victims Who Participated at the Pre-Trial Stage, and Inviting the Parties' Observations on Applications for Participation by 86 Applicants*, 22 February 2010, paras. 25-26.

(ii) *Proportionality* of protective measures (the rights of the accused are restricted only as far as necessary and the particular protective measure is sufficient to ensure the involvement of the victim or witness in the proceedings).¹⁰

10. Furthermore, relevant case-law also provides that protective measures should be granted and varied on a case-by-case basis and “blanket measures” should not be undertaken.¹¹

III. The Request of V010

11. V010 wishes to renounce the protective measures granted by the Pre-Trial Judge, as the victim considers that the circumstances that prompted the initial request are not applicable anymore. The victim initially requested protective measures due to the political atmosphere of the location in which the victim lived as well as the past activities of politically affiliated groups in that area. According to V010, although the political association of the location is unchanged, the threat towards the victim has decreased and V010 does not feel the need to remain a confidential victim anymore.

12. The attached confidential annex contains the written consent of V010 to rescind the protective measures granted by the Pre-Trial Judge.

IV. Relief sought

13. By reason of the foregoing, the LRV seeks

- the rescinding of protective measures granted to V01 by the Trial Chamber, and
- the permission of the Trial Chamber for the LRV to reclassify the identity of the victim from confidential to public, as requested in the confidential annex.

¹⁰ *Prosecutor v. Ayyash et al.*, Case No. STL-11-01-PT/PTJ, *First Motion of the Legal Representative of Victims for Protective Measures (Anonymity) of Seventeen Victims Participating in the Proceedings*, 29 October 2012, para. 17; *Decision on the Legal Representative of Victims’ Resubmission of Eight Requests for Protective Measures (Confidentiality)*, 14 March 2013, para. 23.

¹¹ *Prosecutor v. Tadic*, Case No. IT-94-T, *Decision on the Defence Motion to Summon and Protect Defence Witnesses, and on the Giving of Evidence by Video-Link*, para. 25. See also, *Prosecutor v. Brdanin and Talic*, Case No. IT-99-36-PT, *Decision on Prosecutor’s Motion for the Protection of Victims and Witnesses*, 3 July 2000, paras. 20, 23. Although this case law refers to protective measures concerning witnesses, the same rationale can be applied regarding the variation of protective measures for victims.

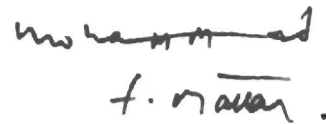
Respectfully submitted on this 1st of October 2014,



Peter Haynes
Lead Legal Representative of Victims



Nada Abdelsater-Abusamra



Mohammad F. Mattar

Co-Legal Representatives of Victims

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