

**THE CONTEMPT JUDGE**

Case No.: STL-14-05/PT/CJ
Before: Judge Nicola Lettieri, Contempt Judge
Registrar: Mr Daryl Mundis, Registrar
Date: 20 June 2014
Original language: English
Classification: Public

IN THE CASE AGAINST

**NEW TV S.A.L.
KARMA MOHAMED TAHSIN AL KHAYAT**

**DECISION ON *AMICUS CURIAE* PROSECUTOR'S APPLICATION FOR
PROTECTIVE MEASURES AND NON-DISCLOSURE**

***Amicus Curiae* Prosecutor:**
Mr Kenneth Scott

**Counsel for New TV S.A.L. & Ms
Karma Khayat:**
Mr Karim A.A. Khan
Ms Maya Habli
Ms Shyamala Alagendra
Mr Rodney Dixon



1. By Order of 29 May 2014, I gave the *Amicus Curiae* Prosecutor (“*Amicus*”) until 11 June 2014 to complete disclosure pursuant to Rule 110 (A) (ii) of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ On the final day for such disclosure,² the *Amicus* submitted an “Application for Protective Measures and Non-Disclosure with Annexes”, in which he seeks an order allowing, as exceptions to Rule 110 (A) (ii), certain “measures for the protection of witnesses, potential witnesses and an ongoing investigation”.³ I will deal with each request in turn.

2. However, before addressing the substance of the Application, I note that there was no need to classify it as confidential and *ex parte* in its entirety. The Appeals Chamber of this Tribunal has affirmed, in light of the principle of publicity, that confidential submissions and decisions ““should be kept to a minimum and can only be justified for exceptional reasons, which may include the protection of victims and witnesses and the safeguarding of a continuing investigation [...]””.⁴ The Appeals Chamber highlighted an important difference between maintaining the confidentiality of content contained within a document and keeping confidential the related litigation itself.⁵ Here, there is no need to keep confidential and *ex parte* the fact that *Amicus* seeks various protective measures.⁶ I therefore order *Amicus* to file a public redacted version of his Application.

3. With respect to the merits of the Application, *Amicus* first seeks leave to disclose the statement of one witness in redacted form.⁷ *Amicus* asserts that this statement “touches on a number of different topics and both episodes giving rise to the two current contempt cases [...]. Accordingly, to disclose the entire witness statement would disclose confidential information concerning the Case No. STL-14-06/PT/CJ, to the likely detriment of the Prosecution, victims

¹ STL, *In the case against New TV S.A.L. and Khayat*, STL-14-05/PT/CJ, F0022, Order Granting *Amicus Curiae* Prosecutor’s Request for Extension of Time, 29 May 2014, Disposition.

² I note that it would have been better practice if the *Amicus* had filed his application earlier in order to avoid any delays in the proceedings.

³ STL, *In the case against New TV S.A.L. and Khayat*, STL-14-05/PT/CJ, F0031, Application for Protective Measures and Non-Disclosure with Annexes, Confidential and *Ex Parte*, 11 June 2014 (“Application”), p. 1.

⁴ STL, *In the Matter of El Sayed*, CH/AC/2013/01, Public Redacted Version of Decision on Appeal by the Prosecutor Against Pre-Trial Judge’s Decision of 11 January 2013, Dated 28 March 2013 (“*El Sayed* Decision”), para. 9.

⁵ *El Sayed* Decision, para. 9.

⁶ See ICTY, *Prosecutor v. Delić*, IT-04-83-PT, Decision Regarding the Prosecution Motion for Protective Measures and Delayed Disclosure, 8 November 2006, p. 1.

⁷ Application, para. 5.

and witnesses and public interests in that case”.⁸ He attaches to the Application by confidential and *ex parte* annex a redacted version of the witness statement, which is purportedly identical to that which he has disclosed to the Defence pending resolution of the Application.⁹ The *Amicus* further proposes counterbalancing measures pursuant to Rule 116, which concerns non-disclosure of information ordinarily subject to disclosure under Rule 110.¹⁰

4. It is somewhat unclear from the Application whether *Amicus* seeks to withhold the complete witness statement from the Defence permanently, or only for a time.¹¹ In any case, I find that the requirements of Rule 116 are met: (1) The witness statement would ordinarily have to be disclosed by *Amicus* in its entirety pursuant to Rule 110 (A) (ii). (2) Disclosure of the redacted sections at this stage may prejudice the prosecution and the interests of witnesses in the case STL-14-06 given that these sections refer to confidential information provided by the witness in relation to that other case.¹² (3) I also find that in light of the nature of this information no unfairness to the Accused in this case arises from the proposed redactions. Therefore, no counterbalancing measures are required. The Defence is of course entitled to challenge any such redactions. I finally note that *Amicus* intends to provide the redacted sections of the witness statement to the Defence later, “in sufficient time to allow the Defense adequate preparation concerning the particular evidence”.¹³ I remind *Amicus* that this must be borne in mind when planning for trial, and I expect to be advised well in advance of the steps he intends to undertake to avoid undue prejudice to the Defence.

5. The *Amicus* next seeks, pursuant to Rule 115 (A), “interim non-disclosure” of the identities of three witnesses on the basis that “disclosure of some of the witness statements would expose victims, witnesses and/or their families to risk of serious harm, harassment and intimidation”.¹⁴ The *Amicus* underscores the “general security situation in Lebanon and the issues pertaining to the protection of witnesses who cooperate with the Tribunal”, but also notes the particular sensitivity here where the Accused face allegations of publicizing information in

⁸ *Id.* at para. 5.

⁹ *Id.* at para. 13; Application, Annex B.

¹⁰ Application, para. 15.

¹¹ *Id.* at para. 15 (A).

¹² Application, Annex B.

¹³ *Id.* at para. 15 (A).

¹⁴ *Id.* at paras 14, 6.

connection with purported confidential witnesses.¹⁵ In a confidential and *ex parte* annex, he further describes, for each witness, reasons in support of interim non-disclosure.¹⁶ Finally, he offers to provide to the Defence, as counterbalancing measures, summaries of the information that would be withheld to facilitate their preparation until further disclosures are made.¹⁷

6. Article 16 (2) of the Tribunal's Statute provides that an 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". Rule 115 states, in relevant part:

(A) In exceptional circumstances, the Prosecutor may apply to the Pre-Trial Judge or Trial Chamber to order interim non-disclosure of the identify of a victim or witness who may be in danger or at risk until appropriate protective measures have been implemented.

(B) Subject to Rule 133, the identity of the victim or witness shall be disclosed in sufficient time prior to the trial to allow adequate time for preparation of the defence.

Whether or not exceptional circumstances exist must be determined on a case-by-case basis.

7. Considering the representations provided by *Amicus* for each witness, as well as the particular nature of this case, I am satisfied that exceptional circumstances exist for the three witnesses. Interim non-disclosure of their identities, as well as their statements, is warranted until appropriate protective measures have been implemented. *Amicus* has committed to further disclosures "when the case is closer to trial" and will promptly provide the above-mentioned summaries of the withheld witness statements to give the Defence notice of the evidence to be presented in general.¹⁸ I remind *Amicus* in this respect as well that I expect to be advised well in advance of the steps he intends to undertake to avoid undue prejudice to the Defence.

¹⁵ *Id.* at para. 9.

¹⁶ Application, Annex C.

¹⁷ Application, Annex D; Application, para. 15.

¹⁸ Application, para. 15.

DISPOSITION

FOR THESE REASONS;

PURSUANT to Rules 115 and 116 of the Rules;

I

GRANT the Application; and

ORDER *Amicus* to file a public redacted version of the Application within 14 days of this Decision.

Done in Arabic, English and French, the English version being authoritative.
Dated 20 June 2014
Leidschendam, the Netherlands



Judge Nicola Lettieri
Contempt Judge

