



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE CONTEMPT JUDGE

Case No.: STL-14-06/PT/CJ
Before: Judge Nicola Lettieri, Contempt Judge
Registrar: Mr Daryl Mundis, Registrar
Date: 26 August 2014
Original language: English
Classification: Public

IN THE CASE AGAINST

AKHBAR BEIRUT S.A.L.
IBRAHIM MOHAMED ALI AL AMIN

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

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

**Counsel for *Akhbar Beirut* S.A.L. and Mr
Ibrahim Mohamed Ali Al Amin:**
Mr Antonios Abou Kasm



1. On 1 August 2014, the *Amicus Curiae* Prosecutor (“*Amicus*”) filed an application for protective measures and the non-disclosure of witness information,¹ in which he seeks an order allowing, as exceptions to Rule 110 (A) (ii) of the Rules of Procedure and Evidence (“Rules”), certain “measures for the protection of witnesses, potential witnesses and an ongoing investigation”.² The Assigned Counsel for the Accused filed a response on 6 August 2014 requesting the dismissal of the application.³

SUBMISSIONS

2. The *Amicus* seeks, pursuant to Rule 115 (A) “interim non-disclosure” of the identities and witness statements of four 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”.⁴ The *Amicus* underscores the “general security situation in Lebanon and the issues pertaining to the protection of witnesses who cooperate with the Tribunal”,⁵ and that even the Accused Mr. al Amin confirmed that “his involvement with the Tribunal exposes him and his family to ‘grave dangers’”.⁶ Furthermore, the *Amicus* notes the particular sensitivity in this case, where the Accused face allegations of publicizing information in connection with purported confidential witnesses.⁷ In a confidential and *ex parte* annex, he further describes, for each witness, reasons in support of interim non-disclosure.⁸

3. As counterbalancing measures, the *Amicus* offers to provide the Defence with summaries of the witness statement information that would be withheld for three of the witnesses, in order to facilitate the Defence preparation until further disclosures are made.⁹ For the fourth witness, *Amicus* seeks leave to disclose the statement in redacted form.¹⁰ He indicates that further

¹ STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/CJ, F0045, Application for Protective Measures and Non-Disclosure with Annexes, 1 August 2014 (“Application”). All further references to filings and decisions relate to this case number unless otherwise stated.

² Application, p. 1.

³ F0049, Response from Assigned Counsel to the “Application for Protective Measures and Non-Disclosure” Filed on 1 August 2014 by the *Amicus Curiae* Prosecutor, 6 August 2014 (“Response”).

⁴ Application, para 5.

⁵ *Id.* at para. 7.

⁶ *Id.* at para. 8.

⁷ See *Id.* at para. 9.

⁸ Application, Annex B.

⁹ Application, Annex D; Application, para. 16 (B).

¹⁰ Application, para. 16 (A).

disclosures will be made closer to trial and when “other protective measures are in place”.¹¹ He attaches to the Application confidential and *ex parte* annexes containing a redacted version of the witness statement and the summaries of the other three statements.¹²

4. Defence Counsel responds that the *Amicus* Application is “particularly general and succinct”, and that Counsel cannot respond to the imprecise submissions.¹³ He argues that more details supporting each request should have been included,¹⁴ and that it is not sufficient to generally allude to the danger a witness might face.¹⁵ Secondly, Counsel recalls guiding principles for disclosure, including that non-disclosure should be an exceptional measure determined on a case-by-case basis, and that ensuring the rights of the accused must be a primary consideration.¹⁶

DISCUSSION

5. 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 governs the interim non-disclosure of the “identity” of a witness or victim, and 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 identity of a victim or witness who may be in danger or at risk until appropriate protective measures have been implemented.

[...]

(C) 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.

¹¹ *Id.* at para. 16 (A), (B).

¹² *Id.* at para. 16 (A), (B); Application, Annex C.

¹³ Response, paras 10-13.

¹⁴ *Id.* at para. 12.

¹⁵ *Id.* at para. 13.

¹⁶ *Id.* at paras 14-22.

It is established that exceptional circumstances must be determined on a case-by-case basis.¹⁷

The rights of the Accused must be balanced against the interests of the witnesses, and this balance depends on the circumstances of each case and each individual.¹⁸

6. Here, I consider that exceptional circumstances warranting interim non-disclosure of the identities of the four witnesses exist, based on the reasons articulated by the *Amicus* above,¹⁹ in particular the great potential of risk to them if their names be disclosed at this stage. I have also taken into account the individual reasons for each witness that the *Amicus* provided in a confidential and *ex parte* annex.²⁰ I therefore order the interim non-disclosure of the identities of the witnesses. With respect to three witness statements, I order their non-disclosure until appropriate protective measures have been implemented. In this context, I welcome *Amicus*' offer to provide to the Defence a summary of the information contained in these statements.²¹ I also note his assurance that further disclosures will be made "when the case is closer to trial and other protective measures are in place."²² With respect to the fourth witness statement, I order the disclosure of this statement in its redacted form.

7. I note the Defence argument that the Application contained too little information and that the Defence could not properly respond to the requests.²³ However, I consider that the Application contained sufficient information to which the Defence could respond generally, which it did. When the protective measures sought are for non-disclosure of the identity of a witness to the Defence, that application for protective measures must necessarily be somewhat vague and unspecific, as its objective is to protect sensitive witness information.²⁴ Defence counsel may respond generally to an application and specifically on points of law. As highlighted previously, details and specific information relating to the individual witnesses was

¹⁷ See e.g., STL, *In the case against New TV S.A.L. and Karma Mohamed Tahsin Al Khayat*, STL-14-05-PT/CJ, F0045, Decision on *Amicus Curiae* Prosecutor's Application for Protective Measures and Non-Disclosure, 20 June 2014, para. 6; *Prosecutor v. Ayyash et al.*, STL-11-01/PT/PTJ, F0594, Decision on the Prosecution Request Seeking Interim Protective Measures for the Expert Witnesses, 13 December 2012, para. 27 ("*Ayyash et al.* Decision").

¹⁸ *Ayyash et al.* Decision, para. 27.

¹⁹ See above para. 2.

²⁰ Application, Annex B.

²¹ Application, para. 16, Annex D.

²² Application, para. 16.

²³ Response, paras 10-13.

²⁴ See e.g., ICC, *Prosecutor v. Germain Katanga*, ICC-01/04-01/07-475, Judgment on the Appeal of the Prosecutor against the Decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Request for Authorization tot Redact Witness Statements", 13 May 2008, para. 73 (b).

contained in a confidential and *ex parte* annex to the Application.²⁵ I have thus considered each witness in full.

8. I also order *Amicus* Prosecutor to complete disclosure under Rule 110 (A) (ii) as soon as practicable, but not later than 5 September 2014.

DISPOSITION

FOR THESE REASONS;

PURSUANT to Rules 110, 115 and 133 of the Rules;

I

GRANT the Application;

ORDER *Amicus* to complete all Rule 110 (A) (ii) disclosure as soon as practicable but not later than 5 September 2014.

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

Dated 26 August 2014

Leidschendam, the Netherlands



Judge Nicola Lettieri
Contempt Judge



²⁵ See ICTY, *The Prosecutor v. Gotovina*, IT-01-45-PT, Decision on Prosecution Motion for Non-Disclosure to Public of Materials Disclosed Pursuant to Rules 66 and 68, 14 July 2006, pp. 4-5. The Chamber considered that the Prosecution had formulated the request for protective measures in general terms without detailed reasons relating to specific and identified material. However, this is distinguished from this case where the *Amicus* has provided this specific information in a confidential and *ex parte* annex due to the nature of the application.