

**THE CONTEMPT JUDGE**

Case No.: STL-14-05/PT/CJ
Before: Judge Nicola Lettieri, Contempt Judge
Registrar: Mr Daryl Mundis, Registrar
Date: 7 October 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 REQUEST FOR LEAVE TO
AMEND ORDER IN LIEU OF AN INDICTMENT AND SCHEDULING ORDER**

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

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



INTRODUCTION

1. In its decision of 2 October 2014,¹ the Appeals Panel reversed my decision of 24 July 2014,² in which I had ordered that all charges against *New TV S.A.L.*, the corporate Accused in this matter, be excised from the Order in Lieu of an Indictment of 31 January 2014.³ The Appeals Panel reinstated this Order in Lieu of an Indictment. Consequently, I must now decide the *Amicus Curiae* Prosecutor's motion to amend the Order in Lieu of an Indictment.⁴ At the same time, in order to facilitate the disposal of this case, I make a number of scheduling orders.

BACKGROUND

2. On 20 May 2014, pursuant to an oral order,⁵ the *Amicus Curiae* Prosecutor ("*Amicus*") submitted a proposed timeline for pre-trial and trial proceedings.⁶ He requested, *inter alia*, that a final Pre-Trial Conference be held ten days after the filing of the Defence pre-trial brief; that opening statements be given one week after the final Pre-Trial Conference; that the *Amicus*' case follow the opening statements and last approximately two weeks; that a Pre-Defence Conference take place not less than one week prior to the commencement of the Defence case; and that any disclosure pursuant to Rule 112 of the Tribunal's Rules of Procedure and Evidence ("*Rules*") be made twenty days prior to the Pre-Defence Conference.⁷

3. On 29 May 2014, the Defence responded to the proposed timeline with the following amendments: if the Defence does not submit a "no case to answer motion", the Pre-Defence Conference should immediately follow the close of the *Amicus*' case; the Defence case should

¹ STL, *In the case against New TV S.A.L. and Khayat*, STL-14-05/PT/AP/AR126.1, F0012, Decision on Interlocutory Appeal Concerning Personal Jurisdiction in Contempt Proceedings, 2 October 2014 ("Jurisdiction Appeal Decision") para. 93.

² STL, *In the case against New TV S.A.L. and Khayat*, STL-14-05/PT/CJ, F0054, Decision on Motion Challenging Jurisdiction and on Request for Leave to Amend Order in Lieu of an Indictment, 24 July 2014 ("Jurisdiction Decision"). All further references to filings and decisions refer to this case number unless otherwise stated.

³ *In the case against New TV S.A.L. and Khayat*, STL-14-05/I/CJ, F0001, Redacted Version of Decision in Proceedings for Contempt With Orders in Lieu of an Indictment, 31 January 2014.

⁴ See Jurisdiction Appeal Decision, para. 93; Jurisdiction Decision, para. 80.

⁵ STL, *In the case against New TV S.A.L. and Khayat*, STL-14-05, Transcript of 13 May 2014 (T2), 13 May 2014 ("Transcript of 13 May 2014 (T2)"), pp. 21-22 (EN).

⁶ F0015, *Amicus Curiae* Proposed Timeline, Annex A, 20 May 2014 ("Proposed Timeline").

⁷ *Ibid.*

begin one week after the Pre-Defence Conference; and disclosure pursuant to Rule 112 should be made not less than one week prior to commencement of the Defence case.⁸

4. On 12 June 2014, the *Amicus* sought leave to amend the Order in Lieu of an Indictment of 31 January 2014 with respect to the name of the corporate Accused.⁹ He attached several annexes supporting the request. The Defence did not oppose and submitted that the requirements of Rule 71 (B), which provides for granting leave to amend an indictment, had been met.¹⁰

5. However, on 24 July 2014, I declared moot the *Amicus*' Leave to Amend Request when I ruled that the Tribunal lacked personal jurisdiction to hear contempt and obstruction of justice charges against a legal person.¹¹ In the Jurisdiction Decision, I ordered that the charges against the corporate Accused be dismissed. The *Amicus* appealed.¹²

6. On 1 September 2014, with the Interlocutory Appeal pending, the *Amicus* filed his Pre-Trial Brief,¹³ as well as a request for a status conference prior to the final Pre-Trial Conference.¹⁴ He asserted that a status conference would "assist the parties and the Court in identifying the issues for trial, perhaps finding areas for further agreement and how to proceed most effectively and efficiently".¹⁵ In particular, a status conference would facilitate the Parties' efforts to clarify the agreed and disputed issues and the disclosure of expert reports.¹⁶

7. On 15 September 2014, the Defence responded in opposition to the *Amicus*' request for a status conference.¹⁷ With respect to agreed and disputed issues, they submitted that a status conference was not the appropriate forum.¹⁸ As for disclosure of expert reports, the Defence

⁸ F0020, Consolidated Defence Response to Amicus Prosecutor's Request for Extension of Time and *Amicus Curiae* Proposed Timeline, 29 May 2014 ("Timeline Response"), para. 13.

⁹ F0032, Request for Leave to Amend Order in Lieu of an Indictment with Annexes, 12 June 2014 ("Leave to Amend Request").

¹⁰ F0040, Defence Response to Amicus Prosecutor's Request for Leave to Amend Order in Lieu of an Indictment, 26 June 2014 ("Leave to Amend Request"), para. 5.

¹¹ Jurisdiction Decision, para. 79 and p. 34.

¹² STL, *In the case against New TV S.A.L. and Khayat*, STL-14-05/PT/AP/AR126.1, F0001, Interlocutory Appeal Against the Decision on Motion Challenging Jurisdiction, 31 July 2014 ("Interlocutory Appeal").

¹³ F0057, Prosecution Pre-Trial Brief, 1 September 2014.

¹⁴ F0058, Request by *Amicus Curiae* for Status Conference, 1 September 2014 ("Status Conference Request").

¹⁵ Status Conference Request, para. 6.

¹⁶ *Id.* at paras 6-8.

¹⁷ F0059, Defence Response to "Request by *Amicus Curiae* for Status Conference", 15 September 2014 ("Status Conference Request Response").

¹⁸ *Id.* at para. 5.

asserted that the *Amicus* was obligated to make such disclosure as soon as possible and, consequently, there was no need for discussion at a status conference.¹⁹

8. On 22 September 2014, the Defence filed their Pre-Trial Brief, “unequivocally den[ying] the two counts alleged against Ms Karma Mohamed Tahsin al Khayat”.²⁰ They contend, *inter alia*, that the Defence could not “respond in full to the *Amicus*’ alleged case in view of the non-disclosure to date of the un-redacted version of the statement of a critical prosecution witness [...] as well as the statements or reports of the two expert witnesses the *Amicus* intends to call”.²¹

9. Then, on 2 October 2014, the Appeals Panel issued its decision on the *Amicus*’ Interlocutory Appeal. The Appeals Panel granted the appeal and reversed my ruling that the Tribunal lacked jurisdiction to hear contempt and obstruction of justice charges against legal entities.²² Consequently, the Appeals Panel reinstated the Order in Lieu of an Indictment.²³ In doing so, the Appeals Panel explained that, “since the appeal is granted, the matter concerning the *Amicus* Prosecutor’s amendment of the indictment is no longer moot. It is anticipated that it shall be determined before the Contempt Judge, as appropriate”.²⁴

DISCUSSION

I. *Amicus*’ request to amend the Order in Lieu of an Indictment

10. In his request for leave to amend the Order in Lieu of an Indictment, the *Amicus* explains that there is a need to “further formalize the identification of the [corporate Accused] and clarify the various names and versions used”.²⁵ In particular, he states that the “correct corporate entity/name is Al Jadeed [Co. or co.] S.A.L. / NEW T.V. S.A.L. (N.T.V.) (additional name NTV, NTV S.A.L. and/or New TV), sometimes written ‘Al Jadeed S.A.L. (NTV)’ or ‘Al Jadeed S.A.L. New TV’ as registered in the Beirut Commercial Registry under No. 57693”.²⁶ In my view, taking into account the *Amicus*’ submissions and the supporting annexes, as well as the Defence response, there is *prima facie* evidence to support the proposed amendments. Further, I am satisfied that the amendments will not result in improper prejudice to the Accused. Specifically,

¹⁹ *Id.* at para. 4.

²⁰ F0060, Redacted Version of “Defence Pre-Trial Brief”, 22 September 2014 (“Defence Pre-Trial Brief”), para. 4.

²¹ *Id.* at para. 2.

²² Jurisdiction Appeal Decision, paras 90-93.

²³ *Id.* at p. 39.

²⁴ *Id.* at para. 93.

²⁵ Leave to Amend Request, para. 16.

²⁶ *Id.* at para. 5.

they do not contain any new charges. I therefore grant the Leave to Amend Request and order that an amended order in lieu of an indictment be filed within three days of the issuance of this decision.

II. Scheduling

11. In light of the Jurisdiction Appeal Decision, it is also appropriate now to set the schedule for the remainder of the pre-trial process. I note that the Parties agree in principle that the time limits in this contempt case can be shorter than those ordinarily applicable in proceedings for the Tribunal. This order also takes into account the submissions of the Parties on the proposed time line in this case.²⁷

A. Amended pre-trial briefs

12. I am mindful that the Pre-Trial Briefs were submitted in the context of only one Accused. In light of the reinstatement of the charges against the corporate Accused *New TV S.A.L.* it is necessary that these briefs be amended to account for the corporate Accused as well. I order the Amicus to file his brief by 13 October 2014 and the Defence to file theirs by 23 October 2014.

B. Disclosure of witness statements and filing of Rule 155 and 156 motions

13. As the *Amicus* reaffirmed in his status conference request, he intends to call expert witnesses. I order that expert witness statements pursuant to Rule 161, as well as the statements presently covered by my “Decision on *Amicus Curiae* Prosecutor’s Application for Protection Measures and Non-Disclosure”,²⁸ be disclosed, subject to the Rules, in un-redacted form by 13 October 2014, sufficiently in advance of trial to allow the Parties to prepare for trial. I remind the Parties, however, that all disclosure remains subject to my 13 May 2014 Order on protective measures,²⁹ which established basic confidentiality requirements for these proceedings.

14. I also order the *Amicus* to file any request for the admission of evidence pursuant to Rules 155 and 156 by 13 October 2014. The Defence have until 23 October 2014 to respond to such motions.

²⁷ See above paras 2-3.

²⁸ F0045, Decision on *Amicus Curiae* Prosecutor’s Application for Protection Measures and Non-Disclosure, 20 June 2014.

²⁹ Transcript of 13 May 2014 (T2), pp. 9-12 (EN).

C. Pre-trial Conference and start of trial

15. I agree with the Defence that there is currently no reason to hold a status conference prior to the Pre-Trial Conference. I schedule such hearing for 5 November 2014. Subject to the necessary arrangements with the Registry, appearances by the Parties may take place via video-link.

16. With respect to the opening statements of the Parties and the commencement of the presentation of evidence, I currently envisage scheduling these for the week beginning on 24 November 2014. However, this is subject to further submissions from the Parties and confirmation at the Pre-Trial Conference. The Parties are ordered to file any observations in this regard by 23 October 2014.

III. Agreed facts

17. With respect to agreed facts, I note the Defence submission that “the Defence, after careful consideration of all relevant factors, has agreed to certain facts” and will “keep the matter of agreed facts under review”.³⁰ In place of a status conference, I thus encourage the Parties to meet during the month of October, with Chambers legal officers if they deem it appropriate,³¹ to further consider narrowing the issues in dispute and agree, to the extent possible, on the modes of presenting evidence, as well as any other practicalities.

DISPOSITION

FOR THESE REASONS;

PURSUANT to Articles 18 (2) and 21 (1) of the Statute and Rules 60 *bis* (H), 89 (B) and 127 of the Rules;

I

GRANT the “Request for Leave to Amend Order in Lieu of an Indictment with Annexes” of 12 June 2014;

ORDER the following:

³⁰ Status Conference Request Response, para. 5.

³¹ *Cf.* Rule 65 *ter* (D) (v) ICTY RPE.

- The *Amicus Curiae* Prosecutor shall file an amended order in lieu of an indictment by 10 October 2014;
- The *Amicus Curiae* Prosecutor shall file an amended Pre-Trial Brief, as well as any motion for admission into evidence of Rule 155 or Rule 156 written statements, by 13 October 2014;
- Expert statements pursuant to Rule 161, and any witness statements covered by my “Decision on *Amicus Curiae* Prosecutor’s Application for Protective Measures and Non-Disclosure” of 20 June 2014, must be disclosed to the other Party, subject to the Rules, in un-redacted form no later than 13 October 2014;
- The Defence shall file an amended Pre-Trial Brief, if any, by 23 October 2014;
- The Defence shall file any response to an *Amicus Curiae* Prosecutor motion for admission into evidence of Rule 155 or Rule 156 written statements by 23 October 2014;
- The Defence shall file their notice in response to expert witness statements under Rule 161 (B) by 31 October 2014;
- Both Parties shall file by 23 October 2014 their proposals for when the *Amicus Curiae* Prosecutor should call his first witnesses in this case;
- A Pre-Trial Conference pursuant to Rule 127 will be held on 5 November 2014.

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

Dated 7 October 2014

Leidschendam, the Netherlands



Judge Nicola Lettieri
Contempt Judge

