

THE CONTEMPT JUDGE

Case No.: STL-14-05/PT/CJ
Before: Judge Nicola Lettieri, Contempt Judge
Registrar: Mr Daryl Mundis, Registrar
Date: 15 April 2015
Original language: English
Classification: Public

IN THE CASE AGAINST

AL JADEED [CO.] S.A.L./ NEW T.V. S.A.L. (N.T.V.)
KARMA MOHAMED TAHSIN AL KHAYAT

**PUBLIC REDACTED DECISION ON *AMICUS CURIAE* PROSECUTOR'S
APPLICATION FOR PROTECTIVE MEASURES IN RELATION TO
PROSECUTION EXHIBITS**

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

**Counsel for *Al Jadeed* [CO.] S.A.L./
NEW T.V. S.A.L. (N.T.V.) and
Ms Karma Khayat:**
Mr Karim A.A. Khan
Mr Rodney Dixon
Ms Shyamala Alagendra



INTRODUCTION

1. On 25 March 2015, the *Amicus Curiae* Prosecutor (“*Amicus*”) requested protective measures for various exhibits.¹ The Defence responded, opposing the Application in part.²
2. Having considered the Parties’ arguments, for the reasons provided below, I grant the Application in part.

APPLICABLE LAW

3. The Appeals Chamber has affirmed the overarching need for transparency in the Tribunal’s proceedings.³ All accused are entitled to a “fair and public hearing” under Articles 16 (2) and 20 (4) of the Tribunal’s Statute and Rule 136 of the Tribunal’s Rules of Procedure and Evidence (“Rules”). However, this entitlement is “subject to measures ordered [...] for the protection of victims and witnesses”.⁴
4. Rule 133 provides for such measures *vis-à-vis* the public. Rule 133 (A) states that I, “may, *proprio motu* or at the request of a Party [...], order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused”. Any Party requesting such measures shall seek the consent of the person(s) for whom the measures are sought.⁵ I will determine whether protective measures are both appropriate and consistent with the rights of the Accused on a case-by-case basis.
5. Appropriate measures may include those intended to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a witness, or of persons related to or associated with a victim or witness, such as expunging names and identifying information from the Tribunal’s public records; non-disclosure to the public of any records identifying the victim or witness; applying image- or voice-altering devices; giving testimony through closed circuit

¹ STL, *In the case against New TV S.A.L. and Khayat*, STL-14-05/PT/CJ, F0111, Application for Protective Measures in Relation to Prosecution Exhibits, Public with Confidential Annex, 25 March 2015 (“Application”). All further references to filings and decisions refer to this case number unless otherwise stated.

² F0118, Defence Response to “Application for Protective Measures in Relation to Prosecution Exhibits”, 2 April 2015 (“Response”).

³ See STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC, F0171, Corrected Version of Decision on the Pre-Trial Judge’s Request Pursuant to Rule 68(G), 29 March 2012, para. 12.

⁴ Art. 16 (2) STL St.

⁵ Rule 133 (B) STL RPE.

television or video-conference link; and assignment of a pseudonym.⁶ Another appropriate measure may be closed sessions.⁷

DISCUSSION

A. The position of the Amicus

6. The *Amicus* seeks protective measures in regards to specific exhibits concerning two groups of persons—(1) persons employed by the Tribunal and (2) persons alleged to be confidential Tribunal witnesses by the Accused and *Al Akhbar*.⁸

7. The *Amicus* asserts that certain exhibits are “confidential, non-official and/or internal Tribunal documents, such as email communications or internal reports, containing private and identifying information of actual or former employees of the Tribunal”.⁹ He contends that these documents are not intended to be public and some identifying and/or contact information is not relevant to these proceedings. Such information should be redacted to protect the privacy of current or former Tribunal employees and prevent possible harassment and/or security risks.¹⁰ Accordingly, the *Amicus* requests authorization to redact from these exhibits “all names, email addresses or other internet accounts, and telephone numbers of actual or former employees of the Tribunal”, except for “the names of those individuals [he] intends to call to testify [and] the names of senior STL officials who are public figures and whose involvement in these matters is known or reasonably presumed”.¹¹

8. The *Amicus* further requests authorization to redact “all names and signatures of persons employed by the Tribunal appearing on Witness Statements (the interviewers and other persons present [...] except for the Witness if not otherwise protected and the *Amicus Curiae*), and on the transcripts of suspect interviews”.¹²

9. With respect to persons alleged to be confidential Tribunal witnesses, the *Amicus* submits that many of these individuals have expressed “very serious concerns for their safety and well-being and/or have suffered serious repercussions as a consequence of these media

⁶ Rule 133 (C) (i) (a)-(e) STL RPE.

⁷ Rule 133 (C) (ii) STL RPE.

⁸ Application, paras 6-18.

⁹ Application, para. 6.

¹⁰ *Id.* at para. 7.

¹¹ *Id.* at para. 9.

¹² *Id.* at para. 11.

publications”.¹³ Persons allegedly exposed in the broadcasts in question have been widely recognized on basis of the broadcasts and additional public disclosure as part of this case would “reinstate and amplify their concerns and the serious repercussions that they have already suffered”.¹⁴ Given this, and also in light of the “continuing tense political, territorial and security situation” in Lebanon, the *Amicus* requests that:

(1) all parts of *Al Jadeed* broadcasts of 5 to 10 August 2012 during which are exposed alleged confidential Tribunal witnesses be played in closed sessions and be redacted from the transcripts of these broadcasts; (2) [...] all identifying information of these *Al Jadeed* alleged witnesses, as detailed in paragraph 15, be mentioned in closed sessions and redacted from public records; and (3) [...] all identifying information of alleged confidential Tribunal witnesses be redacted from *Al Akhbar* articles of 15 and 19 January 2013 and the National New Agency article.¹⁵

In a confidential annex, the *Amicus* provides proposed redactions relating to alleged confidential Tribunal witnesses.¹⁶ He avers that the redactions sought in the Application will not prejudice the Defence, as all of the information has been disclosed, allowing its full preparation.¹⁷

B. The position of the Accused

10. The Defence objects to the Application only in part. Regarding Tribunal personnel, it does not oppose (1) redactions of e-mail addresses or other internet accounts, and telephone numbers of all current and former Tribunal employees appearing in the exhibits cited at paragraph 10 of the Application;¹⁸ or, for the same exhibits, to (2) redactions of names of non-senior current and former Tribunal officials who are neither public officials nor witnesses in this case;¹⁹ The Defence, however, opposes redactions to the names of any former or current Tribunal staff members who are not included in the above groups.²⁰ It further opposes redactions, as described in the Application, of the names and signatures of Tribunal personnel appearing in

¹³ Application, para 15.

¹⁴ *Ibid.*

¹⁵ *Id.* at para. 18.

¹⁶ *Ibid.*; Application, Annex A.

¹⁷ Application, para. 5.

¹⁸ Response, para. 10. Indeed, the Defence requests that, if granted, such protective measures should be extended to the same information for any third-parties appearing in the identified exhibits. Response, para. 10. The *Amicus* agrees with this request. Email from Legal Officer, *Amicus Curiae* Team, to Legal Officers, Contempt Judge, and the Defence, 13 April 2015.

¹⁹ Response, para. 10. The Defence, however, reserves the right to request the lifting of such measures, if granted, in the event any of these persons or issues relating to them become relevant to the proceedings. *Ibid.*

²⁰ *Ibid.*

the witness statements and suspect interviews.²¹ It submits that “such persons participating in the interviews of witnesses whose testimony is being relied upon in this case may be directly relevant to the issues in dispute” and that the *Amicus* has not presented any specific reasons for each individual as to why their names should be kept from the public.²²

11. The Defence objects to the *Amicus*'s first two requests regarding identifying information of alleged confidential Tribunal witnesses, but does not oppose redaction of such information from the *Al Akhbar* articles or that of the National News Agency.²³ It asserts that the “supposed negative consequences the *Amicus*' alleges [...] are, of course, matters in dispute between the parties and shall be the subject of adversarial trial proceedings”.²⁴

C. Discussion

Persons employed by the Tribunal

12. The Parties agree that the names of actual and former non-senior employees of the Tribunal who are not public figures and who the *Amicus* does not intend to call as witnesses, as well as their personal and contact information, should be redacted from the specified exhibits. I am satisfied that this information is not relevant to the proceedings. Moreover, these individuals' right to privacy in the discharge of their functions at the Tribunal needs to be protected. I authorize the *Amicus* to redact this information from the exhibits listed in paragraph 10 of the Application. In light of the Parties' agreement,²⁵ I also authorize the *Amicus* to redact the same information for any third-parties appearing in these exhibits.

13. The Defence objects to the redaction of the names of non-senior actual or former employees of the Tribunal who are public figures.²⁶ I find that, owing to the nature of the functions that these officials discharge or have discharged at the Tribunal, they may expect their names and functional titles to be known to the public. The redaction of this information is therefore not warranted. However, other personal and contact information pertaining to these officials is irrelevant to the proceedings and should be kept private and redacted from the exhibits referred to in paragraph 10 of the Application.

²¹ Response, para. 10.

²² *Id.* at para. 6.

²³ *Id.* at para. 10.

²⁴ *Id.* at para. 8.

²⁵ See above fn. 18.

²⁶ Response, para. 10.

14. The Defence objects to any redaction of names and signatures of persons employed by the Tribunal appearing on witness statements and on the transcripts of suspect interviews which may be relied upon in the case on the grounds that such information may be relevant to the issues in dispute. The Defence argues that the *Amicus* has not substantiated his request that the names of these individuals be kept from the public.²⁷

15. I recall in this regard the practice of the Tribunal's Trial Chamber to redact the names of employees of the Tribunal, such as courtroom interpreters, from the transcripts of the *Ayyash et al.* trial,²⁸ as well as the Tribunal's Practice Direction forbidding the disclosure of the names of employees of the Tribunal in documents filed before it.²⁹

16. I note that the Defence has not specified how the "persons participating in the interviews of witnesses whose testimony is being relied upon in this case may be directly relevant to the issues in dispute".³⁰ The *Amicus* has disclosed the witness statements and records of suspect interviews to the Defence without the redactions the *Amicus* seeks here. Consequently, the Defence will suffer no prejudice from the redaction of the names and signatures of Tribunal officials from these documents.

17. In view of the above, I authorize the redaction of all names and signatures of persons employed by the Tribunal appearing on witness statements and suspect interviews referred to in paragraph 12 of the Application, except for the witness and/or suspect if not otherwise protected and the *Amicus Curiae* at that time.

Confidential witness information

18. The Defence does not object to the redaction of all identifying information of alleged confidential Tribunal witnesses from the *Al Akhbar* reports of 15 and 19 January 2013 and the National News Agency article.³¹ It objects however to the withholding from the public identifying information of alleged confidential Tribunal witnesses contained in *Al Jadeed TV's* broadcasts of 5 to 10 August 2012. It argues that the supposed negative consequences of the

²⁷ Response, para. 6.

²⁸ Email from Legal Officer, Trial Chamber to Legal Officer, Contempt Judge, 14 April 2015.

²⁹ Practice Direction on Filing of Documents Before the Special Tribunal for Lebanon, STL/PD/2010/01/Rev.2, 14 June 2013, Article 4 (3).

³⁰ Response, para. 6.

³¹ *Id.* at para. 9.

broadcasts are matters in dispute in this case and should be subject to adversarial trial proceedings.³²

19. I acknowledge that the effects of the disclosure of supposed identifying information of purported confidential Tribunal witnesses are at the core of this trial. However, I agree with the *Amicus* that public exposure of this material during the proceedings, given the prevailing security situation in Lebanon and the particular nature of this case, would amplify any negative consequences that the broadcasts may have already had on the concerned individuals.

20. The public broadcast of this material in court would also be contrary to the purpose of the 10 August 2012 Order of the Pre-Trial Judge in the *Ayyash et al.* case [REDACTED].³³

21. I also note that the non-disclosure to the public of this material during the trial will not infringe upon the right of the Accused to adversarial proceedings. The issues in dispute in this case will be fully presented at trial and the Defence will have the opportunity to test all the evidence adduced by the *Amicus*.

22. Moreover, to guarantee the publicity of the proceedings, at the close of the trial, I will order the lifting of any protective measure which I deem no longer necessary for the protection of witnesses of the Tribunal or victims.

23. I therefore order that all parts of *Al Jadeed* TV's broadcasts in question which relate to alleged confidential Tribunal witnesses be played in closed session and that the relevant portions of the courtroom transcripts be redacted accordingly. Any identifying information pertaining to these alleged witnesses shall be mentioned only in closed session. I also order that all identifying information of alleged confidential witnesses be redacted from the *Al Akhbar* articles of 15 and 19 January 2013 and the National News Agency article.

³² Response, para. 8.

³³ STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/PTJ, F0372, Order for Immediate Removal of Disseminated Material and Cessation of Dissemination, Confidential and Ex Parte, 10 August 2012.

DISPOSITION

FOR THESE REASONS;

PURSUANT to Articles 16 and 20 of the Tribunal's Statute and Rules 60 *bis* and 133 of the Rules;

I

GRANT the Application in part;

ORDER the following:

- All names, email addresses or other internet accounts, and telephone numbers of actual or former employees of the Tribunal, except 1) the names of those individuals who the *Amicus* intends to call to testify and 2) the names of Tribunal officials, senior or non-senior, who are public figures, shall be redacted from the exhibits listed in paragraph 10 of the Application;
- All names, email addresses or other internet accounts, and telephone numbers of third parties shall be redacted from the exhibits listed in paragraph 10 of the Application;
- All information of actual or former Tribunal employees who are or were public figures, other than their names and functional titles, shall be redacted from the exhibits listed in paragraph 10 of the Application;
- All names and signatures of persons employed by the Tribunal appearing on witness statements and suspect interviews referred to in paragraph 12 of the Application, except for the witness and/or suspect if not otherwise protected and the *Amicus Curiae* at that time, shall be redacted;
- All parts of the *Al Jadeed* TV broadcasts of 5 to 10 August 2012 during which are exposed alleged confidential Tribunal witnesses shall be played in closed session and shall be redacted from the transcripts of these broadcasts as detailed in Annex A to the Application;
- All identifying information of the persons identified in the *Al Jadeed* TV broadcasts of 5 to 10 August 2012 as alleged confidential Tribunal witnesses shall be mentioned in closed sessions and redacted from public records;

- All identifying information of alleged confidential Tribunal witnesses shall be redacted from the *Al Akhbar* articles of 15 and 19 January 2013 and the National News Agency Article as detailed in Annex A to the Application and mentioned in closed session.

and

DISMISS the Application in all other respects.

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

Dated 15 April 2015

Leidschendam, the Netherlands



Judge Nicola Lettieri
Contempt Judge

