

**THE CONTEMPT JUDGE**

**Case No.:** STL-14-05/PT/CJ  
**Before:** Judge Nicola Lettieri, Contempt Judge  
**Registrar:** Mr Daryl Mundis, Registrar  
**Date:** 16 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 REGARDING WITNESS AP02**

---

***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 2 April 2015, the *Amicus Curiae* Prosecutor (“*Amicus*”) requested protective measures regarding witness AP02.<sup>1</sup> The Defence responded, opposing the Application.<sup>2</sup>
2. Having considered the Parties’ submissions, I grant the Application in part. As explained below, I will issue a reasoned decision as soon as practicable.

## **APPLICABLE LAW**

3. The Appeals Chamber has affirmed the overarching need for transparency in the Tribunal’s proceedings.<sup>3</sup> 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”.<sup>4</sup> Rule 133 provides for such measures *vis-à-vis* the public.
4. 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.<sup>5</sup> 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

---

<sup>1</sup> STL, *In the case against New TV S.A.L. and Khayat*, STL-14-05/PT/CJ, F0117, Application for Protective Measures Regarding Witness AP02, Public with Confidential Annex, 2 April 2015 (“Application”). All further references to filings and decisions refer to this case number unless otherwise stated.

<sup>2</sup> F0121, Defence Response to “Application for Protective Measures Regarding Witness AP02”, Confidential, 10 April 2015, (“Response”).

<sup>3</sup> 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.

<sup>4</sup> Art. 16 (2) STL St.

<sup>5</sup> Rule 133 (B) STL RPE.

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

## DISCUSSION

### ***A. The position of the Amicus***

6. The *Amicus* seeks various protective measures “to protect Witness AP02 and his/her family, and the interest of the Tribunal and of justice”.<sup>8</sup> The witness is a former investigator with the Tribunal’s Office of the Prosecutor (“OTP”) who is to testify about the *Al Jadeed* TV broadcasts in question, their public availability, the repercussions of the broadcasts and [REDACTED].<sup>9</sup>

7. The *Amicus* notes the Trial Chamber’s recent acknowledgment that the continuing tense political, territorial and security situation in Lebanon can justify protective measures. The *Amicus* contends that there is even more reason for concern in these proceedings, given the nature of the charges. Without the requested measures, he claims, there could be a repeat of the effects alleged in this case.<sup>10</sup>

8. [REDACTED].<sup>11</sup>

9. Finally, the *Amicus* states that witness AP02 has expressed personal security concerns in relation to the disclosure of his identity.<sup>12</sup> [REDACTED].<sup>13</sup>

10. Accordingly, the *Amicus* requests that:

[REDACTED]

[...] (1) Witness AP02 be described only by his pseudonym in public hearings and published documents; (2) identifying information related to the Witness AP02 be redacted from public documents; (3) when testifying before the Tribunal in open session, the publicly broadcasted image and voice of the Witness AP02 be distorted and unrecognizable; and (4) any person, including members of the media and third parties

---

<sup>6</sup> Rule 133 (C) (i) (a)-(e) STL RPE.

<sup>7</sup> Rule 133 (C) (ii) STL RPE.

<sup>8</sup> Application, para. 3.

<sup>9</sup> Application, Annex A, para. 1.

<sup>10</sup> Application, para. 4.

<sup>11</sup> Application, Annex A, para. 3.

<sup>12</sup> *Id.* at para. 6.

<sup>13</sup> *Id.* at para. 5.

who become aware of the identity of the Witness AP02 and his involvement in these proceedings, must not disclose the protected information.<sup>14</sup>

The *Amicus* avers that the requested protective measures will not prejudice the Defence, as witness AP02's identity and statement have been disclosed to the Defence, allowing it fully to prepare for trial and cross-examine the witness.<sup>15</sup>

### ***B. The position of the Accused***

11. The Defence opposes the Application in its entirety.<sup>16</sup> It requests that I only grant closed sessions during witness AP02's testimony, if any, on a case-by-case basis.<sup>17</sup> It submits that "a blanket grant of closed session testimony is unnecessary, improperly broad and would undermine [the Accused's] right to a public trial".<sup>18</sup> Given witness AP02's experience, the Defence considers the witness capable of giving much of his testimony in a manner that does not reveal compromising information.<sup>19</sup> Further, the Defence contends that the *Amicus* has not demonstrated how, [REDACTED], publicizing his identity and position would "compromise the privacy of any individual".<sup>20</sup> Lastly, the Defence argues that the reasons put forth regarding witness AP02's personal security concerns are insufficient for protective measures at an international criminal tribunal.<sup>21</sup>

### ***C. Discussion***

12. Given that I was not fully briefed on this matter until Friday, 10 April 2015, that witness AP02 is the first witness scheduled to appear on 16 April 2015<sup>22</sup> and that it is therefore imperative to make a prompt determination as to the requested protective measures, I am issuing this Decision with a reasoned decision to follow as soon as practicable.

13. Having considered the Parties' submissions, I am granting the Application in part with regards to the information pertaining to [REDACTED], as set out in the Disposition.

---

<sup>14</sup> *Id.* at paras 7-8.

<sup>15</sup> Application, para. 7.

<sup>16</sup> Response, Confidential Annex A, para. 5.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Id.* at para. 1.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Id.* at para. 2.

<sup>21</sup> *Id.* at para. 4.

<sup>22</sup> F0110, Updated Prosecution Witness List, Confidential, 19 March 2015.

I reject the *Amicus*'s request with respect to withholding from the public the identity of witness AP02.

***D. Confidentiality***

14. Certain submissions in this matter were filed confidentially. Though there is indeed information in the filings that should remain confidential, they should be made public with appropriate redactions. I therefore order the Parties to file, as appropriate, public redacted versions of their submissions. I encourage the Parties to verify their redactions with one another before filing their redacted submissions. A public redacted version of this Decision will also be issued.

**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 information relating to [REDACTED] will be given in private session;
- All documents and material shown in court containing information in relation to [REDACTED] will not be broadcast to the public, unless otherwise ordered; and
- All future reference to the information provided during [REDACTED] will not mention [REDACTED], or any identifying information of [REDACTED];

**INSTRUCT** the Parties, in the interests of transparent proceedings, to make submissions proposing public redacted versions of the transcript of witness AP02's private session testimony, as well as of related documents and material shown in court during such testimony;

**INFORM** the Parties that I will issue a reasoned decision as soon as practicable;

**ORDER** the Parties to file public redacted versions of the submissions related to this Decision;  
and

**DISMISS** the Application in all other respects.

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

Dated 16 April 2015

Leidschendam, the Netherlands



---

Judge Nicola Lettieri  
Contempt Judge

