

THE CONTEMPT JUDGE

Case No.: STL-14-05/T/CJ
Before: Judge Nicola Lettieri, Contempt Judge
Registrar: Mr Daryl Mundis, Registrar
Date: 4 June 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 REASONS FOR 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 14 April 2015, I granted in part the *Amicus Curiae* Prosecutor's ("*Amicus*") request, pursuant to Rule 133 of the Tribunal's Rules of Procedure and Evidence ("Rules"), for protective measures in relation to witness AP02.¹ In disposing of the request,² I considered the Parties' submissions and the applicable law.³ However, as I was not fully briefed on the matter until Friday, 10 April 2015 and because witness AP02 was the first witness scheduled to appear on 16 April 2015, I issued my Decision without providing reasons. I noted that a reasoned decision would follow as soon as practicable.⁴ Below are my reasons. I summarize the Parties' submissions as necessary.

DISCUSSION

2. Witness AP02 was to testify about [REDACTED].⁵ The *Amicus* also anticipated that, in giving such testimony, witness AP02 might discuss [REDACTED].⁶ The *Amicus* submitted that, in light of the prevailing situation in Lebanon, the nature of the charges in this case, the likelihood that witness AP02's testimony would reveal [REDACTED], witness AP02's testimony relating to [REDACTED] should be given in closed session.⁷ The Defence opposed a blanket grant of closed session testimony as unnecessary, improperly broad and contrary to the Accused's right to a public trial.⁸

3. I was satisfied that ordering witness AP02 to give all testimony relating to [REDACTED] in private session⁹ was appropriate and consistent with the fair trial rights of the Accused.¹⁰ I

¹ STL, *In the case against New TV S.A.L. and Khayat*, STL-14-05/PT/CJ, F0122, Decision on *Amicus Curiae* Prosecutor's Application for Protective Measures Regarding Witness AP02, Confidential, 14 April 2015 ("Decision"). All further references to filings and decisions refer to this case number unless otherwise stated.

² F0117, Application for Protective Measures Regarding Witness AP02, Public with Confidential Annex, 2 April 2015 ("Application").

³ Decision, paras 3-13.

⁴ *Id.* at paras 12-13.

⁵ *Id.* at para. 8.

⁶ *Id.* at paras 8, 10; Application, Annex A, paras 2-4.

⁷ Decision, paras 7-8.

⁸ Decision, para. 11; F0121, Defence Response to "Application for Protective Measures Regarding Witness AP02", Confidential, 10 April 2015 ("Response"); Response, Confidential Annex A, para. 1.

⁹ Testimony given in private session can only be viewed by persons in the public gallery. These persons cannot hear the testimony, nor can they view the content of documents shown during such testimony. The transcripts of private session testimony are confidential.

¹⁰ See para. 7 below for why I ordered private session testimony instead of closed session testimony.

first determined that the combination of the general security situation in Lebanon [REDACTED] merited protecting them against public disclosure in these proceedings.

4. Moreover, while I have recognized the importance of conducting all proceedings at this Tribunal in a transparent manner and that by nature private sessions are not desirable,¹¹ there was no less restrictive alternative that would effectively protect the individuals' identities against public disclosure. It was apparent from witness AP02's statement and the *Amicus's* submissions that witness AP02's testimony would likely reveal identifying information for certain of these individuals. Consequently, with respect to testimony relating to [REDACTED], measures that did not protect the content from the public would have been inadequate. Further, because I considered that any testimony [REDACTED] carried a significant risk of exposing these individuals, I concluded that even general discussion of [REDACTED] should be held in private session. However, in the interest of transparent proceedings, I ordered that the Parties make submissions proposing public redacted versions of the transcript of witness AP02's private session testimony.¹²

5. Secondly, given that witness AP02's statement had been disclosed to the Defence and that none of the information at issue would be withheld from the Defence in court, I was satisfied that the protective measures were consistent with the Accused's fair trial rights. The measures would have no impact on the ability of the Defence to prepare for and conduct cross-examination or otherwise challenge the *Amicus's* case during trial. Accordingly, I granted the protective measures set out in the Decision.¹³

6. Additionally, the *Amicus* sought a variety of measures to protect witness AP02 against public disclosure of his identity.¹⁴ The *Amicus* asserted that witness AP02 had a Lebanese neighbour in Canada who often visits and communicates with persons in Lebanon. If the neighbour learned about witness AP02's involvement with the Tribunal, the witness might be endangered or harassed.¹⁵ The *Amicus* further noted witness AP02's concern that disclosure of his identity would lead to the exposure of [REDACTED].¹⁶ The Defence opposed such

¹¹ F00119, Decision on *Amicus Curiae* Prosecutor's Application for Protective Measures Regarding Witnesses AP11, AP12 and AP13, Confidential, 7 April 2015, para. 14.

¹² Decision, p. 5.

¹³ *Ibid.*

¹⁴ Decision, paras 9-10.

¹⁵ *Id.* at para. 9.

¹⁶ *Ibid.*

measures, arguing that the *Amicus*'s reasons were insufficient and that he did not show how publicizing witness AP02's identity and position would compromise any of [REDACTED].¹⁷

7. I agreed with the Defence that the protective measures sought were not appropriate and thus rejected the request. Mindful of the overarching principle of transparency, I was not persuaded that, for a former OTP staff member living in Canada, having a Lebanese neighbour closely connected to Lebanon, with no other evidence, justified restricting the public's access to the testimony. Moreover, the *Amicus* did not adequately demonstrate that publicizing witness AP02's identity and position would reveal [REDACTED]. I therefore rejected the protective measures requested in relation to witness AP02's identity.¹⁸ Accordingly, because witness AP02's identity did not need to be kept from the public, I ordered that the aspects of his testimony for which protective measures were appropriate be given in private session rather than closed session. This would allow people in the public gallery to at least observe the proceedings.

DISPOSITION

I PROVIDE MY REASONS FOR HAVING

ORDERED 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];

INSTRUCTED the Parties, in the interest 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; and

¹⁷ *Id.* at para. 11.

¹⁸ *Id.* at p. 6.

DISMISSED the Application in all other respects.

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

Dated 4 June 2015

Leidschendam, the Netherlands



Judge Nicola Lettieri
Contempt Judge

