

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 DECISION ON DEFENCE APPLICATION FOR
PROTECTIVE MEASURES REGARDING WITNESS DT13**

***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 4 May 2015, the Defence requested a variety of protective measures for witness DT13, including closed session during the witness's testimony and giving testimony through video-conference link.¹ The *Amicus Curiae* Prosecutor ("*Amicus*") does not object to the Application.²
2. Having considered the arguments of the Defence, 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 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.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

¹ STL, *In the case against New TV S.A.L. and Khayat*, STL-14-05/T/CJ, F0141, Defence Application for Protective Measures for Witness DT13 and Request for Video-Link Testimony, Confidential with Confidential Annexes, 4 May 2015 ("Application"). All further references to filings and decisions refer to this case number unless otherwise stated.

² Email from *Amicus* to the Legal Officer of 5 May 2015.

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.

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

6. Rule 124 provides that “[a]t the request of either Party, the Pre-Trial Judge or a Chamber may, in the interests of justice, order that testimony be received via video-conference link”.

DISCUSSION

A. The position of the Accused

7. The Defence requests the following measures for the protection of witness DT13: (1) the witness should only be referenced by his pseudonym in public hearings and all public or published documents; (2) redaction of identifying information related to the witness from all public or published documents; (3) closed session for the witness's testimony; and (4) an order that any person, including members of the public, media and third parties, who becomes aware of the identity of the witness and his involvement in these proceedings, shall not disclose such information.⁸

8. The Defence asserts that witness DT13 appears on *Al Jadeed* TV “Witnesses of the International Tribunal” broadcasts of 6 and 7 August 2012. The Defence recalls that I ordered that the broadcasts be played in closed session and that all information on alleged confidential witnesses be mentioned in closed session. Since witness DT13's testimony may involve playing the broadcasts and discussing his features therein, the Defence argues that his testimony should be held in closed session in compliance with my Order. It also contends that witness DT13 is in the same category as other witnesses for whom I granted closed sessions.⁹

9. The Defence avers further that witness DT13 does not wish to testify if his status and identity as a witness are made public.¹⁰ In particular, the witness fears that if his testimony is

⁶ Rule 133 (C) (i) (a)-(e) STL RPE.

⁷ Rule 133 (C) (ii) STL RPE.

⁸ Application, para. 1.

⁹ *Id.* at para. 6.

¹⁰ *Id.* at para. 7.

public, this may have negative implications for his pending legal complaints before the State Shura Council and the Central Inspection Unit.¹¹

10. The Defence argues that there are no less restrictive protective measures available that can effectively protect the identity of witness DT13 from the public. Moreover, it states that the *Amicus* will suffer no prejudice from withholding witness DT13's identity from the public because the *Amicus* has been provided with the statement of the witness.¹²

11. With respect to the request for video-conference link testimony, the Defence avers that permitting the witness to testify via video-conference link from the Tribunal's Beirut office will serve as an additional protective measure by avoiding an extended absence from his home and workplace that might result in a connection being made by a third-party between the witness and the proceedings. Moreover, in the Defence's view, testimony via video-conference link is less disruptive and time consuming for the witness and more resource-efficient. Accordingly, the Defence argues that authorizing witness DT13 to testify via video-conference link is in the interests of justice and there are no countervailing arguments to the contrary.¹³

12. Finally, the Defence argues that the *Amicus* would have the opportunity to cross-examine the witness via video-conference link under the same conditions as the examination-in-chief and would therefore not be prejudiced in utilising this mode of testimony.¹⁴

B. Discussion

1) Protective measures

13. I am not satisfied that the reasons put forward by the Defence, based on the witness statement, justify protective measures.

14. Indeed, the witness explains in his statement that on 12 November 2011 he was sanctioned by his employer for failing to attend a workshop in The Hague that month. The witness challenged this sanction.¹⁵ He claims that he was subsequently transferred to another department far away from his place of residence. He was then ordered to stay at home and not

¹¹ Application, para. 9.

¹² *Id.* at para. 10.

¹³ *Id.* at para. 11.

¹⁴ *Id.* at para. 12.

¹⁵ Annex B to the Application, paras 14-16.

report for duty.¹⁶ During this period, the witness was apparently “summoned” three times by the Tribunal’s Office of the Prosecutor (“OTP”). He states that he was in “a terrible health and emotional condition” because of his situation at work and because he had been “summoned” three times by the Tribunal. He felt like “someone wanted to get [him] out of the Civil Defence”.¹⁷ [REDACTED].¹⁸ The witness alleges that “attacks” on his career continued whenever he objected to “decisions” issued against him.¹⁹ He claims, however, that his employment situation has improved recently but he is still awaiting the result of the lawsuits he filed against his employer.²⁰

15. Moreover, the witness asserts that he does not wish to make a public statement because “being thrust into the limelight again may negatively impact [his] career and the lawsuits [he has] filed”. He fears that making a public statement might “take [him] back to the “Special Tribunal for Lebanon phase”, which had a negative effect on [his] life”.²¹

16. The Defence avers that witness DT13 fears that his testimony before the Tribunal may negatively affect pending domestic proceedings related to his employment.²²

17. I am not persuaded by this argument for two reasons:

A) First, the witness states that he suffered no harm from his appearance in *Al Jadeed* TV’s broadcasts, as it was clear that he had no connection with the “*Hariri*” case.²³

B) Second, as it is clear by the above merely axiomatic allegations, the Defence fails to substantiate how the witness’s contacts with Tribunal staff caused his employment difficulties or any other harm as well as to demonstrate how a public testimony might have a negative impact on his pending domestic proceedings.

18. The Defence argues further that protective measures should be granted because I previously ordered that the *Al Jadeed* TV broadcasts be played in closed session and that all information of persons identified in the broadcasts as alleged confidential Tribunal witnesses be

¹⁶ Annex B to the Application, paras 21-22.

¹⁷ *Id.* at para. 23.

¹⁸ *Id.* at para. 28.

¹⁹ *Id.* at para. 32.

²⁰ *Id.* at para. 33.

²¹ *Id.* at para. 34.

²² *Id.* at para. 8.

²³ *Id.* at paras 29-30.

mentioned in closed session. Moreover, because Witness DT13 is, in the Defence's view, in the same "category" as witnesses AP11, AP12 and AP13, namely, individuals who were featured in the broadcasts for whom protective measures were granted, witness DT13 should be afforded the same protective measures "in keeping with the *status quo*".²⁴

19. I am not persuaded by these arguments. I ordered that the broadcasts be played in court in closed session to avoid the amplification of any negative consequences that these broadcasts may have already had on the concerned individuals.²⁵ I granted protective measures for witnesses AP11, AP12 and AP13 on the grounds that they had purportedly suffered negative consequences from being identified in the broadcasts.²⁶ Witness DT13, claims the opposite—that he suffered no harm from the broadcasts. In order to convince me that protective measures are justified, the Defence needs to demonstrate the existence of a similar situation. In the case at hand, there is no justification for playing the portions of the broadcasts where he features in closed session. Accordingly, I consider that protective measures are not warranted.

2) *Testimony via video-conference link*

20. The Trial Chamber has found that nothing in Rule 124 suggests that testimony via video-conference link is "exceptional".²⁷ In evaluating whether the interests of justice permit testimony via video-conference link, it considered the following criteria: the nature of the evidence; the reported views and personal circumstances of the witnesses; the current situation in Lebanon; the concerns and objections, if any, of the Defence; the expeditiousness of the proceedings; and, the Tribunal's logistical and financial resources.²⁸

21. In view of these criteria, I am satisfied that permitting witness DT13 to testify via video-conference link is in the interests of justice for the following reasons:

A) As regards the reported views and personal circumstances of the witness, his statement shows that his contacts with staff from the Tribunal have caused him great distress, to the extent that he

²⁴ Application, paras 1, 6.

²⁵ F0124, Public Redacted Decision on *Amicus Curiae* Prosecutor's Application for Protective Measures in relation to Prosecution Exhibits, Public, 15 April 2015, para. 19.

²⁶ F0119, Decision on *Amicus Curiae* Prosecutor's Application for Protective Measures regarding Witnesses AP11, AP12 and AP13, Confidential, 7 April 2015, para. 13.

²⁷ STL, The Prosecutor v. Ayyash et al. STL-11-01/T/TC, General Decision on Video-Conference Link Testimony and Reasons for Decision on Video-Conference Link Testimony of Witness PRH128, Public, 25 February 2014, para. 26.

²⁸ *Id.* at para. 27.

has declared his unwillingness to testify publicly in these proceedings. I am satisfied that permitting him to testify from the Tribunal's Beirut office might mitigate this to a degree.

B) As for the views and rights of the opposing party, I note that the *Amicus* does not object to the Application and will have the opportunity to cross-examine the witness in the same conditions as the examination-in-chief. He will therefore suffer no prejudice from this modality of testimony.

C) Permitting witness DT13 to testify via video-conference link from Beirut will contribute to the expeditiousness of the proceedings and will be more resource-efficient. I am therefore granting this measure in the interests of justice.

DISPOSITION

FOR THESE REASONS;

PURSUANT to Articles 16 and 20 of the Tribunal's Statute and Rules 60 *bis*, 124 and 133 of the Rules;

I

GRANT the Application in part;

AUTHORISE witness DT13 to testify before the Tribunal via video-conference link; and

REJECT the request for protective measures for witness DT13.

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

Dated 4 June 2015

Leidschendam, the Netherlands



Judge Nicola Lettieri
Contempt Judge