

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE CONTEMPT JUDGE

Case No.: STL-14-05/T/CJ

Before: Judge Nicola Lettieri, Contempt Judge

Registrar: Mr Daryl Mundis, Registrar

Date: 18 September 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 VERSION OF JUDGMENT

***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



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INTRODUCTION

1. This case concerns a series of television Episodes broadcast in Lebanon in August 2012 on purported confidential Tribunal witnesses, and the Episodes' subsequent availability online. *Al Jadeed* TV and Ms Karma Khayat are alleged to have been responsible both for the broadcasts and for leaving the Episodes online. Ms Khayat characterizes these Episodes as investigative journalism; and it is claimed in the Episodes that they address *alleged* leaks coming from inside the Tribunal. For this conduct, *Al Jadeed* TV and Ms Khayat are charged with interfering with the Tribunal's administration of justice. In various ways, this is an unconventional contempt case. It implicates media expression and supposed limits to that expression under the law; it involves a count—count 1—never before charged in an international court; and most notably, it is the first in the history of international justice in which a legal person is accused of a crime.

2. Having completed the trial and after careful deliberation, I now issue the judgment in this case, along with reasons. First, I summarize the charges, as set out in the Amended Order in Lieu of Indictment.

3. *Al Jadeed* TV is a private television broadcasting company, based in Beirut, Lebanon, that broadcasts general interest programmes, including news bulletins. It also publishes the content of its broadcasts on its official website, as well as on its own YouTube channel.¹

4. Ms Karma Mohamed Tahsin al Khayat, born in 1983, in Saida, Lebanon, was at all times relevant to the Amended Order in Lieu of Indictment Deputy Head of News and Political Programs and a shareholder of *Al Jadeed* TV.²

5. The Amended Order in Lieu of Indictment charges *Al Jadeed* TV and Ms Khayat with two counts of contempt, pursuant to Rule 60 *bis* (A) and Rule 60 *bis* (A) (iii) respectively, for knowingly and wilfully interfering with the administration of justice by:

- a) broadcasting and/or publishing information on purported confidential witnesses in the *Ayyash et al.* case, thereby undermining public confidence in the Tribunal's ability to protect the confidentiality of information about, or provided by, witnesses or potential witnesses; and

¹ Table of Agreed Facts, pp. 1, 3; Amended Order in Lieu of Indictment, p. 1.

² Table of Agreed Facts, p. 1; Amended Order in Lieu of Indictment, p. 1.

b) failing to remove from *Al Jadeed* TV's website and its YouTube channel information on purported confidential witnesses in the *Ayyash et al.* case, thereby violating the 10 August 2012 Order.³

6. Ms Khayat allegedly had the authority to decide on behalf of *Al Jadeed* TV which reports would be broadcast by *Al Jadeed* TV and transferred to its website and YouTube channel, and also had the authority to remove this content from *Al Jadeed* TV's online platforms.⁴

7. The Amended Order in Lieu of Indictment alleges that during the period from February to August 2012 Ms Khayat tasked Mr Rami Al Amin, one of *Al Jadeed* TV's reporters, to investigate and prepare a report on purported confidential witnesses in the *Ayyash et al.* case. Mr Al Amin's investigative report was broadcast on *Al Jadeed* TV on 6, 7, 9 and 10 August 2012 in the form of five Episodes containing information on purported confidential witnesses in the *Ayyash et al.* case ("Episodes").⁵

8. The Episodes were allegedly also transferred to *Al Jadeed* TV's website, where they remained at least until 4 December 2012, and to *Al Jadeed* TV's YouTube channel, where they remained accessible to the public at least until 31 January 2014.⁶

9. The Amended Order in Lieu of Indictment further alleges that, on 7 August 2012, the Registrar sent a Notice of Cease and Desist to Ms Khayat by email, demanding that "*Al Jadeed* TV, its principals, employees, agents and affiliates immediately cease and desist from publicizing, in any means, the segments of [the interviews with purported confidential witnesses]". The Letter was subsequently served on *Al Jadeed* TV on 8 August 2012.⁷

10. On 10 August 2012, the Pre-Trial Judge ordered "*Al-Jadeed* TV, its principals, employees, agents and affiliates immediately to remove any confidential information or material allegedly related to witnesses before the Tribunal, from their websites and from any other resource accessible to the public". The 10 August 2012 Order was served on *Al Jadeed* TV on 14 August 2012.⁸

³ Amended Order in Lieu of Indictment, p. 3.

⁴ *Id.* at p. 1

⁵ *Id.* at p. 2.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

11. The Amended Order in Lieu of Indictment further states that Ms Khayat failed to remove the Episodes from *Al Jadeed* TV's website and YouTube channel, while she had the authority on behalf of *Al Jadeed* TV to do so.⁹

12. Additionally, Ms Khayat allegedly knew that broadcasting the Episodes on *Al Jadeed* TV and publishing them on *Al Jadeed* TV's website and/or YouTube channel would undermine the public confidence in the Tribunal's ability to protect the confidentiality of information about, or provided by, witnesses and potential witnesses.¹⁰

13. Finally, Ms Khayat allegedly knew that the failure to remove the Episodes from *Al Jadeed* TV's website and/or YouTube channel violated the 10 August 2012 Order.¹¹

PROCEDURAL HISTORY

I. The Indictment

14. On 31 January 2014, Judge David Baragwanath, as the Contempt Judge, issued the Contempt Decision, which included the Order in Lieu of Indictment against Ms Karma Mohamed Tahsin Al Khayat and *New TV* S.A.L., a legal person.¹²

II. Contempt Judge and Parties

15. Upon issuing the Order in Lieu of Indictment, Judge Baragwanath recused himself from the case.¹³ I was subsequently designated as Contempt Judge by order of the President.¹⁴ Soon thereafter, in light of the resignation of the original *Amicus*, the Registrar appointed a new *Amicus*, Mr Kenneth Scott, to prosecute the contempt allegations.¹⁵

16. Following the issuance of summons to appear¹⁶ and the lifting of confidentiality of the Order in Lieu of Indictment,¹⁷ Mr Karim A.A. Khan was appointed as counsel for the two Accused,¹⁸ and Ms Shyamala Alagendra and Ms Maya Habli were appointed as co-counsel.¹⁹

⁹ Amended Order in Lieu of Indictment, p. 2.

¹⁰ *Id.* at p. 3.

¹¹ *Ibid.*

¹² Decision in Proceedings for Contempt; Order in Lieu of Indictment.

¹³ Decision in Proceedings for Contempt, paras 68-74.

¹⁴ Order Designating Contempt Judge.

¹⁵ Registrar Decision Appointing Replacement *Amicus Curiae* .

¹⁶ Summons to Appear (*New TV* S.A.L.); Summons to Appear (Ms Karma Khayat).

¹⁷ Order Lifting Confidentiality.

¹⁸ Appointment of Counsel.

¹⁹ Appointment of Co-Counsel.

III. Initial Appearance

17. On 13 May 2014, the Accused made their initial appearance. For the purposes of the initial appearance, *Al Jadeed* T.V.'s general manager, Mr Dimitri Khodr, appeared on behalf of the corporate Accused. Each Accused entered pleas of not guilty on both counts.²⁰

IV. Jurisdiction

18. On 16 June 2014, pursuant to Rule 90 (A) (i), the Defence challenged the jurisdiction of the Tribunal over legal persons.²¹ It requested that I dismiss the charges against *New TV* S.A.L. for lack of jurisdiction. The *Amicus* opposed the motion.²²

19. On 24 July 2014, I granted the Jurisdiction Motion and ordered that the charges against *New TV* S.A.L. be dismissed. While I affirmed the Tribunal's inherent jurisdiction to prosecute contempt, I held that Rule 60 *bis* applies to natural persons only, given that there is no basis in the Rule for extending the Tribunal's jurisdiction to legal persons. I noted that the Rule, just like the Statute, does not contemplate corporate liability explicitly and then found, in light of the Tribunal's principles of interpretation, that the Rule could not be said implicitly to allow prosecution of legal persons. I determined that the spirit of the Statute, given its terms—especially its understanding of “person”—, supports an interpretation limiting personal jurisdiction in contempt cases to natural persons. I stated that, in the criminal field, where the legislators do not explicitly foresee corporate liability, it is impermissible to proceed by analogy. Further, I could not discern a consensus in *domestic* criminal systems or a general principle of international criminal law, international treaty or customary law supporting corporate liability or an interpretation of “person” that encompasses corporations. I added that, if there is any ambiguity in Rule 60 *bis*, the interpretation most favourable to the Accused is one limiting jurisdiction to natural persons.²³ I certified the following issue for appeal: whether the Tribunal in exercising its inherent jurisdiction to hold contempt proceedings pursuant to Rule 60 *bis* has the power to charge legal persons with contempt.²⁴

²⁰ 20140513_STL-14-05_I_T1_OFF_PUB_EN_1-21, 13 May 2014, p. 20; 20140513_STL-14-05_I_T2_OFF_PUB_EN_1-23, 13 May 2014, p. 7. All further references to transcripts in this Judgment will use an abbreviated number.

²¹ Defence Preliminary Motion Challenging Jurisdiction.

²² Response to “Defence Preliminary Motion Challenging Jurisdiction; Response to Defence Request for Leave to Reply to “Response to ‘Defence Preliminary Motion Challenging Jurisdiction’”.

²³ Jurisdiction Decision.

²⁴ *Id.* at p. 83.

20. On 31 July 2014, the *Amicus* appealed the Jurisdiction Decision.²⁵ He argued that the Tribunal's inherent jurisdiction is not limited by the Statute or Rule 60 *bis*, and that jurisdiction over legal persons accords with the *ratio* underlying inherent jurisdiction over contempt, along with the spirit of the Statute, developments in national law and international trends.²⁶ The Defence opposed the Jurisdiction Appeal.²⁷

21. On 2 October 2014, the Appeals Panel granted the Jurisdiction Appeal and reinstated the original Order in Lieu of Indictment.²⁸ The Appeals Panel ruled that the term "person" in Rule 60 *bis* was ambiguous and that an interpretation encompassing legal persons is supported by the spirit of the Statute, together with the principles of interpretation laid down in customary international law, evolving international standards on human rights, general principles of international criminal law and procedure and, as appropriate, the Lebanese Code of Criminal Procedure.²⁹ The Appeals Panel found that the "ordinary meaning of the term 'person'" in a legal context can include both natural and legal persons.³⁰ Further, in its examination, the Appeals Panel emphasized developing international standards on corporate accountability and trends in national laws.³¹

V. Amendment of Indictment

22. On 12 June 2014, the *Amicus* requested that I amend the Order in Lieu of Indictment to correct the name of the corporate Accused.³² The Defence did not oppose the request.³³ Subsequent to the Appeals Panel's reinstatement of the corporate Accused, I granted the request³⁴ and, on 17 October 2014, issued the Amended Order in Lieu of Indictment. The corporate Accused became and has remained *Al Jadeed* [Co.] S.A.L./New T.V. S.A.L. (N.T.V.).³⁵

²⁵ *Amicus* Jurisdiction Appeal.

²⁶ *Id.* at paras 10, 14, 27.

²⁷ Defence Response to *Amicus* Jurisdiction Appeal.

²⁸ Jurisdiction Appeal Decision.

²⁹ *Ibid.*

³⁰ *Id.* at para. 36.

³¹ *Id.* at paras 45-60.

³² *Amicus* Request for Leave to Amend Order in Lieu of Indictment.

³³ Defence Response to *Amicus* Request for Leave to Amend Order in Lieu of Indictment.

³⁴ Decision on *Amicus* Request for Leave to Amend Order in Lieu of Indictment.

³⁵ Amended Order in Lieu of Indictment.

VI. Pre-Trial Phase

23. On 4 September 2014, the *Amicus* filed his Pre-Trial Brief, including his witness and exhibit lists,³⁶ which he amended on 13 October 2014.³⁷ The Defence filed its Pre-Trial Brief on 22 September 2014,³⁸ which it amended on 23 October 2014.³⁹

24. I convened a Pre-Trial Conference with the Parties on 3 November 2014.⁴⁰

25. During the pre-trial phase, the *Amicus* engaged in significant disclosure and the Parties submitted motions concerning, *inter alia*, disclosure, amendments to the witness and exhibit lists, admission of evidence from the bar table, the form of witness testimony and protective measures.

26. On 15 April 2015, the Defence submitted an authorization from the corporate Accused permitting Ms Khayat to appear on its behalf during trial proceedings.⁴¹

VII. Trial

27. The Parties gave their opening statements on 16 April 2015. Ms Khayat also made a statement.⁴²

28. On the same day, the *Amicus* began his case. In total, he called eight *viva voce* witnesses, including one expert, Dr Anne-Marie de Brouwer. Pursuant to protective measures I had ordered, several witnesses gave testimony in either closed or private session.⁴³ The *Amicus* closed his case on 22 April 2015.⁴⁴ I admitted a total of 181 *Amicus* exhibits.

29. On 29 April 2015, prior to the commencement of its case, the Defence engaged in significant disclosure and submitted its witness and exhibit lists.⁴⁵

30. On 12 May 2015, the Defence began its case.⁴⁶ In total, it called four *viva voce* witnesses, one of whom testified via video-conference link from the Tribunal's Beirut

³⁶ *Amicus* Pre-Trial Brief.

³⁷ *Amicus* Amended Pre-Trial Brief.

³⁸ Defence Pre-Trial Brief.

³⁹ Defence Amended Pre-Trial Brief.

⁴⁰ T4, 3 November 2014.

⁴¹ Defence Submission of Company Representation Authorization.

⁴² T5, 16 April 2015.

⁴³ Decision on *Amicus* Application for Protective Measures Regarding Witnesses AP11, AP12 and AP13; Decision on *Amicus* Application for Protective Measures Regarding Witness AP02;

⁴⁴ T10, 22 April 2015.

⁴⁵ Defence Witness and Exhibit Lists.

⁴⁶ T11, 12 May 2015.

office.⁴⁷ The Defence closed its case on 15 May 2015, subject to a ruling on a motion for admission of documentary evidence.⁴⁸ I admitted a total of 136 Defence exhibits.

VIII. Final Trial Briefs and Closing Arguments

31. The Parties filed their final trial briefs on 8 June 2015.⁴⁹

32. On 18 and 19 June 2015, I heard the Parties' closing arguments, along with a rebuttal by the *Amicus* and a rejoinder by the Defence. Ms Khayat gave a statement following the Defence rejoinder.⁵⁰ I subsequently adjourned the hearing for deliberation.

APPLICABLE LAW

33. Contempt of the Tribunal is described in Rule 60 *bis* (A), which provides:

(A) The Tribunal, in the exercise of its inherent power, may hold in contempt those who knowingly and wilfully interfere with its administration of justice, upon assertion of the Tribunal's jurisdiction according to the Statute. This includes, but is not limited to, the power to hold in contempt any person who:

(i) being a person who is questioned by or on behalf of a Party in circumstances not covered by Rule 152, knowingly and wilfully makes a statement which the person knows is false and which the persons knows may be used as evidence in proceedings before the Tribunal, provided that the statement is accompanied by a formal acknowledgment by the person being questioned that he has been made aware about the potential criminal consequences of making a false statement;

(ii) being a witness before a Judge or Chamber refuses or fails to answer a question without reasonable excuse including the situation described in Rule 150(F);

(iii) discloses information relating to proceedings in knowing violation of an order of a Judge or Chamber;

(iv) without reasonable excuse fails to comply with an order to appear or produce documents before a Judge or Chamber

(v) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Judge or Chamber, or a potential witness;

(vi) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber; or

⁴⁷ Decision on Defence Application For Protective Measures Regarding Witness DT13; T13, 14 May 2015.

⁴⁸ Defence Bar Table Motion.

⁴⁹ *Amicus* Final Trial Brief; Defence Final Trial Brief.

⁵⁰ T15, 19 June 2015, pp. 41-48.

(vii) threatens, intimidates, engages in serious public defamation of, by statements that are untrue and the publication of which is inconsistent with freedom of expression as laid down in international human rights standards, offers a bribe to, or otherwise seeks to coerce, a Judge or any other officer of the Tribunal.

34. The Tribunal possesses inherent jurisdiction to prosecute the crime of contempt.⁵¹ Such jurisdiction derives from the Tribunal's inherent power, as a judicial institution, to ensure that the exercise of its statutory jurisdiction is not frustrated and that its basic judicial functions are safeguarded.⁵² Rule 60 *bis* expresses the Tribunal's contempt jurisdiction, but because this jurisdiction is inherent, its scope is not confined by the Rule's terms.⁵³

35. The Accused are charged with two counts; the first under Rule 60 *bis* (A), the second under Rule 60 *bis* (A) (iii). Below, I recite the counts as well as the applicable *actus reus* and *mens rea* for each. I also summarize the Parties positions, particularly with respect to the elements where there are disputes or divergent characterisations.

36. Of course, the *Amicus* must prove each element of an offence beyond reasonable doubt in order for a conviction.⁵⁴

I. Count 1

37. In Count 1, under Rule 60 *bis* (A), the Accused are charged with knowingly and wilfully interfering with the administration of justice by broadcasting and/or publishing information on purported confidential witnesses in the *Ayyash et al.* case, thereby undermining public confidence in the Tribunal's ability to protect the confidentiality of information about, or provided by, witnesses or potential witnesses.⁵⁵

38. This count does not fall under one of the specific types of conduct listed in Rule 60 *bis* (A) (i)-(vii). However, as I have held and the Appeal Panel confirmed, Rule 60 *bis* (A) explicitly contemplates prosecution for conduct beyond that which is listed.⁵⁶ Any conduct charged under Rule 60 *bis* (A) must, if proven, amount to a knowing and wilful

⁵¹ Jurisdiction Appeal Decision, para. 32.

⁵² *Id.* at para. 32; Jurisdiction Decision, para. 31.

⁵³ Jurisdiction Appeal Decision, para. 32.

⁵⁴ See Rule 148 (A) STL RPE; see also ICTY, *Prosecutor v. Jović*, IT-95-14 & IT-95-14/2-R77, Judgement, 30 August 2006 (“*Jović* Contempt Trial Judgement”), para. 14; ICTY, *Prosecutor v. Marijačić & Rebić*, IT-95-14-R77.2, Judgement, 10 March 2006 (“*Marijačić* Contempt Trial Judgement”), para. 16.

⁵⁵ Amended Order in Lieu of Indictment.

⁵⁶ See Rule 60 *bis* (A) STL RPE; STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/CJ, F0069, Decision on Motion Challenging Jurisdiction, 6 November 2014, para. 20; STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/AP/AR126.1, F0004, Decision on Interlocutory Appeal Concerning Personal Jurisdiction in Contempt Proceedings, 23 January 2015 (“*Akhbar* Jurisdiction Appeal Decision”), para. 55.

interference with the Tribunal's administration of justice. The particular *actus reus* and *mens rea* will depend on the charge in each case.⁵⁷

39. I must first address the Defence assertion that this count is without legal basis.⁵⁸ The Defence submits that the count should be dismissed because it alleges conduct which, even if proved, does not amount to contempt.⁵⁹ It contends that there is no legal authority for the charge and that "seeking to characterise media reporting in this way as contempt is wholly disproportionate and does not strike an apposite balance 'between the rights of the free press and the need to protect the integrity of judicial proceedings'".⁶⁰ According to the Defence, moreover, the Order in Lieu of Indictment and the *Amicus* improperly rely on precedent concerning violation of court orders relating to specifically identified witnesses in proceedings.⁶¹ The *Amicus* argues that the freedom of the media is not unlimited and that these limitations are also recognized in Lebanon.⁶²

40. As affirmed above, Rule 60 *bis* (A) encompasses an array of conduct. In response to the Defence's assertion, I observe that there need not be legal precedent matching the exact behaviour charged in a given case. Here, the only requirement is that the conduct charged *can* amount to knowing and wilful interference with the administration of justice. I consider, in principle, that the disclosure of information on purported confidential witnesses can undermine public confidence in the Tribunal's ability to protect the confidentiality of information about, or provided by, witnesses or potential witnesses, and that such undermining can interfere with the administration of justice. Indeed, while the disclosure of information on purported confidential witnesses does not necessarily interfere with the administration of justice, it *could* do so, if certain effects and a culpable state of mind are proved. Undoubtedly, maintaining public confidence in courts' authority and their ability to administer justice is essential to protecting their proper functioning; such that even the right to criticize is not limitless.⁶³ I thus conclude that, if certain conditions are met, proof that

⁵⁷ See, e.g., ICTY, *Prosecutor v. Aleksovski*, IT-95-14/1-AR77, Judgment on Appeal by Anto Nobile Against Finding of Contempt, 30 May 2001 ("*Nobile* Contempt Appeal Judgement"), paras 39-42.

⁵⁸ Defence Final Trial Brief, paras 20-24.

⁵⁹ *Id.* at para. 24.

⁶⁰ *Id.* at para. 21.

⁶¹ *Id.* at para. 23.

⁶² *Amicus* Final Trial Brief, paras 1-4.

⁶³ See ECtHR, *Case of Worm v. Austria*, Application 22714/93, Judgment, 29 August 1997, para. 50 ("[T]he limits of permissible comment may not extend to statements which are likely to prejudice, whether intentionally or not, the chances of a person receiving a fair trial or to undermine the confidence of the public in the role of the courts in the administration of justice."); *Marijačić* Contempt Trial Judgement, para. 50 ("Any deliberate conduct which creates a real risk that confidence in the Tribunal's ability to grant effective protective measures would be undermined amounts to a serious interference with the administration of justice. Public confidence in the effectiveness of such orders is absolutely vital to the success of the work of the Tribunal."). In my view, the

public confidence in the Tribunal has been undermined, in the sense articulated below, is sufficient to prove interference with the administration of justice. Before setting out the requirements—the *actus reus* and *mens rea*—I must assess the Defence submission with respect to the freedom of the press.⁶⁴

41. There is no doubt that this count engages the freedom of the press.⁶⁵ However, its implication in this case is properly addressed only if and after the *Amicus* has proved the elements of the count. Should these elements (*actus reus* and *mens rea*) be proved beyond reasonable doubt, then I am required to consider whether the Accused's conduct was justified, accounting for both the freedom of the press and the need to ensure the integrity of the Tribunal's proceedings. The journalistic profession may not be used as an impenetrable shield; where different legitimate interests are involved, they must be weighed in light of the priorities in a democratic society. In sum, the freedom of the press does not relate to the legal foundation of the charge but, if anything, to the possible justification of the conduct. For the above reasons, I reject the Defence's contention that this count has no legal basis.

42. With respect to the applicable *actus reus* for count 1, the *Amicus* submits that he must prove that the Accused (a) broadcast and/or published, or caused to be broadcast or published, information on purported confidential witnesses in the *Ayyash et al.* case and (b) that such broadcast or publication created a real risk that public confidence in the Tribunal would be undermined, including, *inter alia*, its ability to grant and enforce protective measures and confidentiality.⁶⁶ To the contrary, the Defence contends that the *Amicus* must demonstrate actual interference with public confidence.⁶⁷ Further, the Defence argues that the *Amicus* improperly characterizes the language of the count to broaden the alleged effects.⁶⁸

43. In order to satisfy the *actus reus* for this count, the prosecution must first prove that the Accused actually broadcast and/or published information on purported confidential witnesses in the *Ayyash et al.* case. Exactly what or how much information is sufficient will depend on the circumstances. However, I consider that the disclosed information must at least be significant enough that the relevant individual is reasonably identifiable in the circumstances.

reasoning with respect to the public's confidence in a court's ability to grant effective protective measures applies as well to protecting confidentiality.

⁶⁴ Defence Final Trial Brief, para. 21.

⁶⁵ Jurisdiction Decision, paras 36-40.

⁶⁶ *Amicus* Final Trial Brief, pp. 23-25.

⁶⁷ Defence Final Trial Brief, para. 25.

⁶⁸ *Id.* at para. 25.

44. In addition, the prosecution must show that such broadcast and/or publication created a likelihood of undermining public confidence in the Tribunal's ability to protect the confidentiality of information about, or provided by, witnesses or potential witnesses. Contrary to the Defence's submission, the prosecution need not demonstrate that public confidence was in fact undermined. Like intimidation of or interference with a witness or potential witness, where "likelihood" is the applicable standard⁶⁹, broadcasting and/or publishing information on purported confidential witnesses is a crime of "concrete danger", and thus does not require proof of a particular result. The Defence seeks to draw a distinction between these two scenarios.⁷⁰ However these two types of acts are discouraged for the same reason: they tend to obstruct justice.⁷¹ The potential harm from such conduct is sufficiently serious that just creating a concrete danger may justify a criminal sanction

45. On the other hand, unlike violating a court order—the very act of which amounts to an interference with the administration of justice⁷²—disclosing information on purported confidential witnesses does not automatically constitute contempt. Indeed, I cannot find that public confidence has been undermined just on the basis of "common sense", uncorroborated by evidentiary proof. Not every disclosure of this kind of information would create such likelihood. It is easy to imagine scenarios where the disclosed information would be so disconnected from the relevant context, or even reality, as to have no impact whatsoever on the administration of justice. Moreover, "common sense" reasoning and generalized conjectures have no place in criminal proceedings, which require proof beyond reasonable doubt.

46. Accordingly, in this case the conduct must, when it occurred, have been of sufficient gravity to create, objectively, the likelihood of undermining the public confidence in the Tribunal's ability to protect the confidentiality of information about, or provided by, witnesses or potential witnesses. Such likelihood cannot be proved in subjective terms (for example, on the basis of the personal feelings of a small number of people). Under the required objective test, likelihood can only be proved through ascertainable facts. Whether or

⁶⁹ See, e.g., ICTY, *Prosecutor v. Haraqija & Morina*, IT-04-84-R77.4, Judgement on Allegations of Contempt, 17 December 2008 ("*Haraqija* Contempt Trial Judgement"), paras 18-19; ICTY, *Prosecutor v. Margetić*, IT-95-14-R77.6, Judgement on Allegations of Contempt, 7 February 2007 ("*Margetić* Contempt Trial Judgement"), para. 64.

⁷⁰ See Defence Final Trial Brief, para. 25 (b).

⁷¹ See above fn. 69; see also *Nobilo* Contempt Appeal Judgement, para. 36; ICTY, *Prosecutor v. Tadić*, IT-94-1-A-R77, Judgment on Allegations of Contempt Against Prior Counsel, Milan Vujin, 31 January 2000, para. 18.

⁷² See, e.g., ICTY, *In the Case Against Florence Hartmann*, IT-02-54-R77.5-A, Judgement, 19 July 2011, ("*Hartmann* Contempt Appeal Judgement"), para. 107.

not the Accused's conduct in fact caused harm can be relevant to, but is not dispositive of, the existence or degree of objective likelihood at the relevant time.⁷³

47. Regarding the applicable *mens rea*, the *Amicus* considers that he must prove the Accused acted deliberately and that they knew, should have known or were recklessly indifferent to the real risk that their conduct would undermine public confidence in the Tribunal.⁷⁴ Contrastingly, the Defence claims the *Amicus* must show the Accused acted with the specific intent to interfere with the administration of justice.⁷⁵

48. In view of the Parties' arguments, I observe that the *mens rea* required for a violation of Rule 60 *bis* (A) is *knowing and wilful* interference with the Tribunal's administration of justice. In particular, with respect to the Defence's argument, I do not consider that, on a plain reading of the text and in line with relevant case-law,⁷⁶ "knowing and wilful" is a mere stand-in for "specific intent". As noted above,⁷⁷ contempt concerns different types of conduct, and these different types require different states of mind.⁷⁸

49. Indeed, there are forms of contempt expressly recognized in Rule 60 *bis* (A) (i)-(vii) which clearly do not require specific intent, but rather, for example, deliberate conduct with actual knowledge⁷⁹ that or wilful blindness⁸⁰ to the fact that such conduct is a violation.⁸¹ Wilful blindness can be considered equally culpable as actual knowledge and sufficient to prove knowledge.⁸² In such cases, the prosecution need not separately prove a specific intent to interfere with the administration of justice.⁸³ I find no basis in the law to conclude that Rule 60 *bis* (A), which articulates the general *mens rea* for interference with the

⁷³ Cf. United Kingdom, House of Lords, *Attorney General v. Guardian Newspapers Ltd. (No. 2)*, [1988] UKHL 6 (13 October 1988), para. 29.

⁷⁴ *Amicus* Final Trial Brief, paras 41-42.

⁷⁵ Defence Final Trial Brief, para. 24. I note that "specific intent" can generally be defined as the subjective desire that the prohibited result will occur.

⁷⁶ See below fn. 81.

⁷⁷ See above para. 40.

⁷⁸ See *Nobilo* Contempt Appeal Judgement, para. 40.

⁷⁹ "Actual knowledge" is direct and clear awareness of a fact or understanding a fact as true.

⁸⁰ "Wilful blindness" is a term used to describe the state of mind of an individual who seeks to avoid civil or criminal liability for a wrongful act by intentionally being unaware of facts that would render him or her liable (for instance, a drug smuggler who deliberately fails to find out about the exact contents of drug packages). In other words, this type of *mens rea* occurs when a person deliberately engineers a situation to be ignorant of material facts.

⁸¹ See Rule 60 *bis* (A) STL RPE; see, e.g., *Hartmann* Contempt Appeal Judgement, para. 128; *Nobilo* Contempt Appeal Judgement, paras 45, 54; ICTY, *In the Contempt Case of Milan Tupajić*, IT-95-5/18-R77.2, Public Redacted Version of "Judgement on Allegations of Contempt" Issued on 24 February 2012, 24 February 2012, para 16; ICTY, *Contempt Proceedings Against Dragan Jokić*, IT-05-88-R77.1, Public Redacted Version of Judgement on Allegations of Contempt, 27 March 2009, paras 32-36.

⁸² See *Nobilo* Contempt Appeal Judgement, para. 43.

⁸³ See above fn. 81.

administration of justice, requires a higher degree of culpability than the specific conducts listed underneath as constituting such interference *per se*.

50. The essential question is what state of mind renders the conduct in question sufficiently culpable to constitute a knowing and wilful interference with the administration of justice.⁸⁴ I find that, in this context, what is required for the prosecution is to establish that the Accused (1) deliberately broadcast and/or published information on purported confidential witnesses, and (2) in doing so they knew that their conduct was objectively likely to undermine public confidence in the Tribunal's ability to protect the confidentiality of information about, or provided by, witnesses or potential witnesses. Actual knowledge that the conduct created such likelihood, which can be inferred from a variety of circumstances, suffices, as does wilful blindness. For wilful blindness, the prosecution must first show that the Accused had a suspicion or realization of the likelihood.⁸⁵ In addition, the Accused must have refrained from finding out about the likelihood, so as to be able to deny knowledge of it.⁸⁶ In my view, however, basic recklessness⁸⁷ representing a lower degree of culpability, cannot amount to the "knowing and wilful" conduct required for contempt.

II. Count 2

51. In Count 2, under Rule 60 *bis* (A) (iii), the Accused are charged with knowingly and wilfully interfering with the administration of justice by failing to remove from *Al Jadeed* TV's website and *Al Jadeed* TV's YouTube channel information on purported confidential witnesses in the *Ayyash et al.* case, thereby violating the Order issued by the Pre-Trial Judge in the *Ayyash et al.* case on 10 August 2012.⁸⁸

52. The *actus reus* of this form of contempt is the disclosure of information relating to proceedings before the Tribunal, where such disclosure breaches an order of a Judge or Chamber.⁸⁹ When the order concerns the removal of information that has already been disclosed, a failure to remove the information constitutes disclosure. In such case, the

⁸⁴ See *Nobilo* Contempt Appeal Judgement, paras 39-45.

⁸⁵ See *id.* at para. 51; *Marijačić* Contempt Trial Judgement, para. 18.

⁸⁶ See *Nobilo* Contempt Appeal Judgement, paras 43, 45, 52, 54; ICTY, *Prosecutor v. Brđanin*, IT-99-36-R77, Decision on Motion for Acquittal Pursuant to Rule 98 *bis*, 19 March 2004, para. 38.

⁸⁷ Recklessness is one of the four types of *mens rea* (intent, knowledge, recklessness and criminal negligence). It generally describes the state of mind of an accused who is actually aware of the potential harm of his or her planned actions, but who acts anyway, exposing a particular individual or unknown victim to the risk of suffering the foreseen harm but not actually desiring the harm (for instance, the knife thrower whose throw goes awry and kills his assistant).

⁸⁸ Amended Order in Lieu of Indictment.

⁸⁹ See, e.g., ICTY, *Prosecutor v. Jović*, IT-95-14 & 14/2-R77-A, Judgement, 15 March 2007 ("*Jović* Contempt Appeal Judgement"), para. 30; ICTY, *In the Matter of Vojislav Šešelj*, IT-03-67-R77.4, Public Redacted Version of Judgement Issued on 28 June 2012, 28 June 2012, para. 41.

prosecution must show that the Accused was in a position to remove or cause the removal of the information. In addition, the order must be objectively breached.⁹⁰ In the event of a breach, the prosecution need not prove actual interference with the Tribunal's administration of justice. A violation of a court order *per se* suffices.⁹¹

53. With respect to the applicable *mens rea*, the *Amicus* submits that he must prove the Accused (a) knew about, should have known about or were recklessly indifferent to the existence of the relevant order and (b) knowingly and wilfully violated such order. He asserts that the deliberate disobedience of a court order is *per se* wilful and knowing interference with the administration of justice.⁹² Further, mere awareness of an order is sufficient to impute knowledge of its contents.⁹³ To the contrary, the Defence argues that the *Amicus* must prove both (a) knowledge of the order and its contents and (b) wilful intent to violate the order.⁹⁴ The Defence disagrees with the *Amicus* that an accused can be convicted for reckless indifference to the existence of an order. The *Amicus* needs to demonstrate either "actual knowledge" of or "wilful blindness" to the order's existence. "Actual knowledge" requires proof an accused knew the disclosure was made in clear violation of an existing order. "Wilful blindness" requires proof the Accused had an actual suspicion or realization that an order existed, and wilfully ignored it.⁹⁵

54. I will generally follow the persuasive and well-established case-law of the ICTY with respect to the same provision, consistent with the tenor of "knowing and wilful". To satisfy the *mens rea*, the prosecution must prove that the Accused had knowledge that the disclosure was in violation of an order.⁹⁶ Where the prosecution demonstrates knowledge of the existence of an order, a finding that the Accused intended to violate it would almost necessarily follow.⁹⁷ In such case, it is sufficient for the prosecution to establish that the act which constituted the violation was deliberate and not accidental.⁹⁸ Proof of actual

⁹⁰ See, e.g., ICTY, *Prosecutor v. Šešelj*, IT-03-67-R77.3, Public Redacted Version of "Judgement" Issued on 31 October 2011, 31 October 2011 ("Šešelj Contempt Trial Judgement 2"), para. 31; ICTY, *In the Case Against Florence Hartmann*, IT-02-54-R77.5, Judgement on Allegations of Contempt, 14 September 2009, para. 21; *Marijačić* Trial Judgement, para. 17.

⁹¹ See, e.g., *Hartmann* Contempt Appeal Judgement, paras 53, 107; *Jović* Contempt Appeal Judgement, para. 30.

⁹² *Amicus* Final Trial Brief, para. 52.

⁹³ *Id.* at para. 58.

⁹⁴ Defence Final Trial Brief, para. 63.

⁹⁵ *Id.* at para. 63.

⁹⁶ See, e.g. *Hartmann* Contempt Appeal Judgement, para. 127; ICTY, *In the Case Against Vojislav Šešelj*, IT-03-67-R77.2-A, Public Redacted Version of Judgement, 19 May 2010, para. 26; *Jović* Contempt Appeal Judgement, para. 27.

⁹⁷ See, e.g., *Hartmann* Contempt Appeal Judgement, para. 128; *Nobilo* Contempt Appeal Judgement, para. 54.

⁹⁸ *Ibid.*

knowledge of the order, which can be inferred from a variety of circumstances,⁹⁹ satisfies this element, as does proof of wilful blindness.¹⁰⁰ For wilful blindness, the prosecution must first show that the Accused had a suspicion or realization of the order's existence.¹⁰¹ In addition, the Accused must have refrained from finding out whether it did exist, so as to be able to deny knowledge of it.¹⁰² Mere negligence in failing to ascertain whether an order had been made is of an insufficiently culpable nature to constitute contempt.¹⁰³ In my view, under a proper understanding of the expression "knowing violation of an order", the same is true for basic recklessness.

III. Corporate Liability

55. *Al Jadeed TV*, a legal person, is charged with both counts. Reversing my Jurisdiction Decision, the Appeals Panel found that the Tribunal has personal jurisdiction to prosecute legal persons under Rule 60 *bis*. Consequently, this case became the first in the history of international criminal justice with a corporate accused. The Appeals Panel, however, provided no clear guidance as to the applicable material elements in attributing liability to legal persons charged with contempt before this Tribunal, including with respect to the relationship between the modes of responsibility in the Statute and corporate accused. Because of and despite this, I must identify these elements, recognizing that, as explained below, no international model of corporate criminal liability has emerged.¹⁰⁴

56. The *Amicus* acknowledges that "while the Appeals Panel affirmed the liability of a legal person for contempt, it did not specify the details of such liability"¹⁰⁵. The *Amicus* sets out elements for attributing the acts or omissions of a "corporation's principals, employees, agents and/or affiliates" to the corporation that he submits are "common to nearly every model of corporate liability, including that in Lebanon".¹⁰⁶ In his view, such persons must have (1) acted within the scope of their employment; (2) had authority on behalf of the corporation; and (3) acted on behalf of the corporation. Purely private acts and acts outside the scope of a person's agency would not be attributable to the corporation.¹⁰⁷ The *Amicus*

⁹⁹ See, e.g., *Šešelj* Contempt Trial Judgement 2, para. 32; ICTY, *Prosecutor v. Jović*, IT-95-14 & IT-95-14/2-R77, Judgement, 30 August 2006, para. 20; *Marijačić* Contempt Trial Judgement, para. 18.

¹⁰⁰ See, e.g., *Hartmann* Contempt Appeal Judgement, para. 128; *Nobilo* Contempt Appeal Judgement, para. 45; *Šešelj* Contempt Trial Judgement 2, para. 32.

¹⁰¹ See above fn. 85.

¹⁰² See above fn. 86.

¹⁰³ See, e.g., *Nobilo* Contempt Appeal Judgement, para. 45; *Šešelj* Contempt Trial Judgement 2, para. 32.

¹⁰⁴ The *Amicus* himself recognizes that this would be the "first case against a legal entity before an international tribunal". *Amicus* Final Trial Brief, fn. 183.

¹⁰⁵ *Amicus* Final Trial Brief, para. 60.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Id.* at paras 59-60.

suggests that an additional requirement might be that a natural person be identified and/or convicted before the corporation can be convicted. However, the *Amicus* argues that this element should not be adopted in international law.¹⁰⁸ In addition, the *Amicus* asserts that applying these elements would not violate the principle of *nullum crimen sine lege*, emphasizing that the Accused is not required to know all details of a crime.¹⁰⁹

57. The Defence submits that the *Amicus* has not established the elements of corporate liability under international law and therefore those he proposes violate the principle of *nullum crimen sine lege*.¹¹⁰ The *Amicus*, in the Defence's view, derives such elements exclusively from national laws without demonstrating the required consensus. He has not shown that any "trends" had crystallized as elements under international law. In light of this, there is no legal basis to find that any elements existed during the relevant period and were foreseeable. Consequently, the corporate Accused cannot have had knowledge of the applicable elements prior to its acts, let alone with sufficient specificity and clarity. Relatedly, without such elements, the Contempt Judge cannot properly engage in interpretation.¹¹¹

58. I first observe that, contrary to the suggestion of the Defence, I am responsible for determining and applying the law in this case with respect to attributing corporate liability. This derives from the principle of *iura novit curia* ("the court knows the law"), which is commonly recognized in international law.¹¹² Because the Appeals Panel determined that the Tribunal has jurisdiction to prosecute a corporation for contempt under Rule 60 *bis*, thus crystallizing the Tribunal's jurisdiction, it is for the judge to identify the applicable law for attribution and the proper elements.

59. But what is this law? Neither the Statute nor the Rules provides an answer. Article 2 of the Statute ("Applicable criminal law") establishes that certain provisions of the Lebanese Criminal Code, including those on criminal participation, form the Tribunal's applicable criminal law for prosecuting the criminal acts referred to in Article 1. But Article 1 ("Jurisdiction of the Special Tribunal") plainly does not contemplate contempt, which is grounded in the Tribunal's inherent jurisdiction. Moreover, Article 2 does not include among the applicable provisions of the Lebanese Criminal Code any provision on contempt or

¹⁰⁸ *Id.* at paras 61-66.

¹⁰⁹ *Id.* at para. 60, fn. 183.

¹¹⁰ Defence Final Trial Brief, para. 4.

¹¹¹ *Id.* at paras 5-17.

¹¹² See ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment, I.C.J. Reports 14 (1986), para. 28-29; ICTY, *Prosecutor v. Milutinović et al.*, IT-99-37-AR72, Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction – Joint Criminal Enterprise, 21 May 2003, Separate Opinion of Judge Shahabuddeen, para. 23.

obstruction of justice. In addition, the scope of Article 3 (“Individual criminal responsibility”) is explicitly limited to the crimes set forth in Article 2. Finally, Rule 60 *bis*—from which the Tribunal’s jurisdiction over the corporate Accused arises—is silent on the attribution of corporate liability, and the interpretative guidance envisaged in the only other relevant Rule—Rule 3—is unclear as to this topic.

60. Rule 3 details how to interpret other Rules. It lists the sources of interpretation in order of precedence—the principles of interpretation laid down in customary international law; international standards on human rights; the general principles of international criminal law and procedure; and, as appropriate, the Lebanese Code of Criminal Procedure. The Rule is at least relevant here because I am, in a sense, interpreting Rule 60 *bis*. This is because in light of the Appeals Panel’s Jurisdiction Decision—which concluded that Rule 60 *bis* permits corporate criminal liability for contempt—and the absence in the Statute and the Rules of the material elements for attributing such liability or reference to the source thereof, Rule 60 *bis* must be read as implicitly including these elements. Discerning what these implied elements are can be characterized as interpreting Rule 60 *bis*. It would thus seem reasonable to look to Rule 3 for interpretative guidance. However, in my view, because interpreting Rule 60 *bis* in this case requires not the interpretation of a word or provision in a conventional sense, but rather that I articulate the elements of substantive criminal law (as opposed to procedural law), I cannot rely solely on Rule 3.

61. It is thus necessary to look beyond the Tribunal’s governing documents. In doing so, I recognize that there is no relevant international convention with respect to the elements of corporate liability, nor international custom or general principles of law (there is indeed nothing approaching a universal model or a consensus across national systems) on which I can rely.

62. In this respect, the *Amicus* argues that the elements he proposes are “common to nearly every model of corporate liability, including that of Lebanon”.¹¹³ In support, he refers to his Amended Pre-Trial Brief.¹¹⁴ There, however, he more accurately describes the international picture: “States vary in their approaches to [...] prosecutions [of corporations], and what emerges from these variations is not a single approach, but a series of principles and trends.”¹¹⁵ In that same brief, he identifies such principles or trends. For none of these does

¹¹³ *Amicus* Final Trial Brief, para. 60.

¹¹⁴ *Id.* at para. 59, fn. 181.

¹¹⁵ *Amicus* Amended Pre-Trial Brief, para. 22.

he demonstrate commonality across even a particularly large number of countries.¹¹⁶ For each he cites at most a handful of national practices. And indeed he points to different groupings of countries for various principles or trends.¹¹⁷ It is thus impossible to conclude from the *Amicus*'s submissions that there exist principles or trends, let alone elements, across nearly every model of corporate liability. Moreover, in any event, I do not consider that “principles or trends” can justifiably define the material elements of crimes.

63. Surveying national systems, the Appeals Panel merely found a “trend criminalizing the acts of legal entities”.¹¹⁸ It further noted that “the practice concerning criminal liability of corporations and the penalties associated therewith varies in national systems”.¹¹⁹ Indeed, state practice varies significantly, particularly with respect to the crimes for which corporations can be held responsible and the range of natural persons whose conduct can be attributed to the corporation.¹²⁰ Regarding the latter, the *Amicus* proposes that the natural person can be any “principal[], employee[], agent[] and/or affiliate[]” with “authority on behalf of” the corporation.¹²¹ But, even assuming that all relevant national systems require some level of authority, no consensus exists—or near consensus for that matter—around where the line is to be drawn or from where such authority must derive.¹²² Critically, I observe that when comparing national systems, one must guard against relying narrowly on terminological commonalities. Doing so risks ignoring or discounting particular qualifications imposed in the various countries elsewhere in statutory provisions or case-law.¹²³

¹¹⁶ See *id.* at paras 23-30,

¹¹⁷ *Ibid.*

¹¹⁸ Jurisdiction Appeal Decision, para. 60.

¹¹⁹ *Id.* at para. 58.

¹²⁰ See Clifford Chance, Briefings, *Corporate Criminal Liability*, March 2015 (“Corporate Criminal Liability”) (available at www.cliffordchance.com/briefings/2015/03/corporate_criminalliability.html); Brodowski *et al.*, *Regulating Corporate Criminal Liability* (Springer International Publishing 2014) (“Regulating Corporate Criminal Liability”), pp. 4, 57-60; Mark Pieth and Radha Ivory, *Corporate Criminal Liability: Emergence, Convergence, and Risk* (Springer International Publishing 2011) (“Corporate Criminal Liability: Emergence, Convergence, and Risk”), pp.13-53; Allens Arthur Robinson, Report Prepared for the United Nations Special Representative of the Secretary General on Human Rights and Business, “*Corporate Culture*” As a Basis for the *Criminal Liability of Corporations*, February 2008 (“AAR Report”), pp. 4-6, 10-60; Sara Sun Beale & Adam G. Safwat, “What Developments in Western Europe Tell Us about American Critiques of Corporate Criminal Liability”, 8 *Buffalo Criminal Law Review* 89 (February 2005) (“Developments in Western Europe”), pp. 110-126,136-138; Cristina De Maglie, “Models of Corporate Criminal Liability in Comparative Law”, 4 *Washington University Global Studies Law Review* 547 (January 2005) (“Models of Corporate Criminal Liability”), pp. 547-555.

¹²¹ *Amicus* Final Trial Brief, para. 59.

¹²² See above fn. 120.

¹²³ For instance, Article 121-2 of the French Penal Code establishes that a moral person is criminally liable for infractions committed on its behalf by its organs or representatives. In applying this law, however, the Criminal Chamber of the *Cour de Cassation* does not have a consistent jurisprudence with respect to the need to identify the particular organ or representative responsible for the imputed infraction. For instance, in a decision of 18 June 2013, the Criminal Chamber of the *Cour de Cassation* found that the identification of the organ or

64. One need not look beyond the most notable so-called “common law” systems to see important differences. To take one example, between the United Kingdom and the United States there is significant divergence regarding the type of position or scope of decision-making authority a natural person must have in order for his/her criminal acts to be attributable to the corporation.¹²⁴ This in part follows from doctrinal differences reflected by the “identification” approach adopted for common law crimes in the U.K. and the “strict vicarious liability” approach under U.S. federal law.¹²⁵ In short, the U.K.’s approach is in general more restrictive. Commonwealth countries generally fall somewhere between these two on the spectrum.¹²⁶

65. Looking at civil law systems, France for example, generally limits corporate liability to criminal acts done by certain “representatives” or “organs” of the corporation.¹²⁷ These defined categories, and their development in case-law, are distinct from the practices of both the U.K. and the U.S., as well as from those of other civil law countries. For instance, Poland and Hungary permit attribution of the conduct of a much wider-range of actors than France, whereas Portugal and Spain can be said to be in between.¹²⁸ Additionally, in various systems, it is not always necessary to prove the *mens rea* for a natural person or even that a specific natural person committed the offence.¹²⁹

66. These are just a few Euro-centric illustrations indicating that there is no international consensus around an important component of attributing liability. I regard that, even if there are identifiable trends, no comparative analysis that honestly accounts for the complexities within and the diversity among states could conceivably produce common material elements. Any attempt at synthesis of these systems would be highly selective and simplistic at best.

representative was not necessary to impute an infraction to a particular company because, absent a delegation of authority, the crime in question could only have been committed on behalf of the corporation by its president (France, *Cass. crim.* 18 June 2013, n°12-85.917; *JurisData* n°2013-013165; *Bull. crim.* 2013, n°144). However, on 19 June 2013, the court overturned a ruling of the *cour d’appel* on the grounds that it had not sufficiently motivated its finding that the crime imputed to a company had been committed by one of its organs or representatives (France, *Cass. crim.*, 19 June 2013, n°12-82.827; *JurisData* n°2013-012436; *Bull. crim.* 2013, n°148). And this relates to just one out of the many systems that allow corporate criminal liability!

¹²⁴ See Corporate Criminal Liability, pp. 10, 44; Regulating Corporate Criminal Liability, p. 58; Corporate Criminal Liability: Emergence, Convergence, and Risk, pp. 22-24.

¹²⁵ See Corporate Criminal Liability, pp. 10, 44; Corporate Criminal Liability: Emergence, Convergence, and Risk, pp. 22-24, 63-71, 97-99, 115-124; AAR Report, pp. 18, 29-30.

¹²⁶ See Corporate Criminal Liability: Emergence, Convergence, and Risk, pp. 24-25; AAR Report, p. 24.

¹²⁷ See Corporate Criminal Liability, p. 19; Corporate Criminal Liability: Emergence, Convergence, and Risk, pp. 30, 158-161; Models of Corporate Criminal Liability, p. 554.

¹²⁸ See Corporate Criminal Liability, pp. 19, 28, 36; Corporate Criminal Liability: Emergence, Convergence, and Risk, pp. 32-35, 281-282, 318-321.

¹²⁹ See Corporate Criminal Liability, pp. 14, 39; Corporate Criminal Liability: Emergence, Convergence, and Risk, pp. 25-26, 33-35; AAR Report. Here I do not even explore many of the other structural and practice-based differences in national models, including with respect to the *mens rea* required and the kind of crimes to which corporate liability attaches (*see above* fn. 120).

Such a course would result in a hodgepodge of elements that among other things could not reasonably have been foreseeable by the Accused at the time of the alleged acts and conduct.¹³⁰

67. In light of the above and for the following reasons, I conclude that it is most appropriate in the circumstances to look to Lebanese law on corporate liability. First, when interpreting Rule 60 *bis* to determine whether the Tribunal could prosecute legal persons for contempt, rather than look to Lebanon's Code of Criminal Procedure as provided for in Rule 3 (A), the Appeals Panel examined the Lebanese Criminal Code. It stated that, "in this particular context, where a rule is declarative of the Tribunal's inherent power over the crime of contempt, it is relevant to draw upon the Lebanese Criminal Code which lists substantive criminal offences".¹³¹ The Appeals Panel added that, "it [is] relevant to consider the fact that legal persons can be criminally liable under Lebanese Criminal Law as an interpretative consideration".¹³² While I recognize that the circumstances are different—the Appeals Panel was interpreting a specific term—I consider instructive in this context that, facing uncertainty with respect to substantive law found in the Rules, little if any guidance from the Statute and no express basis for considering Lebanese substantive criminal law, the Appeals Panel determined the Lebanese Criminal Code to be a relevant source in interpreting Rule 60 *bis* in regard to applicable substantive criminal law.

68. Relatedly, the Appeals Panel relied on the existence of corporate criminal liability under Lebanese law to find that a Lebanese corporation could foresee being prosecuted for contempt under Rule 60 *bis*.¹³³ In its decisions, the Appeals Panel highlighted the "unique link between [Lebanese law] and this Tribunal" and the Tribunal's "hybrid nature".¹³⁴ I thus find significant that the corporate Accused is domiciled in and substantially operates in Lebanon. As it was foreseeable from Lebanese domestic law that certain conduct might give rise to corporate liability, I consider that looking to the material elements of the pertinent Lebanese law would not violate the rights of the Accused; particularly in the absence of contrary provisions in the Tribunal's Statute or Rules. Finally, I am mindful that, in addition to being the domicile of the corporate Accused, Lebanon is where the alleged acts and conduct in this case occurred and more broadly is at the heart of the Tribunal's mandate.

¹³⁰ Cf. STL, STL-11-01/1, F0010, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, 16 February 2011, para. 137.

¹³¹ Jurisdiction Appeal Decision, para. 68.

¹³² *Id.* at para. 69.

¹³³ Jurisdiction Appeal Decision, para. 71; *Akhbar* Jurisdiction Appeal Decision, para. 59.

¹³⁴ *Akhbar* Jurisdiction Appeal Decision, para. 68; Jurisdiction Appeal Decision, para. 59.

69. The applicable provision of Lebanese law is Article 210 of the Lebanese Criminal Code. The second paragraph sets out the conditions in which a legal person can be held liable for a crime. It states that “legal persons shall be criminally responsible for the activities of their directors, members of the administration, representatives and employees[/workers] when such activities are undertaken on behalf of or using the means of such legal persons”.¹³⁵

70. Lebanon’s Court of Cassation has interpreted “representatives” and “employees/workers” under Article 210 as follows:

[Employees/workers] as used in the aforementioned Article 210 is meant to refer to the legal body’s agent, that is, the person who acts in its name based on the relevant powers granted him by this body; this interpretation is required by the original, French, text of this Article, in which reference is made to the word “agent”, that is, the representative of the legal person; therefore the Arabized text of Article 210 of the Penal Code cannot mean that, in assigning responsibility to the legal body, it places a mere employee in the position of those who are qualified to represent it, such as its director, its board of directors, and representatives who have been authorized by the legal person to act in its name. This is supported by the text of Article 210 itself, which states that in order for criminal responsibility to be assigned to a legal person, the act in question must have been committed in its name, a condition which is not fulfilled in the case of an employee who has not been given explicit authorization to act in the name of this legal person.¹³⁶

71. The Court of Cassation has further held that the prosecution must identify and establish the responsibility of a specific natural person before attributing responsibility to the relevant corporation.¹³⁷ However, the case-law indicates that conviction of the natural person is not required to establish the criminal liability of the legal person.¹³⁸ Accordingly, in this respect, I must merely be satisfied that the identified natural person, capable of representing the corporation, committed the criminal conduct with the requisite state of mind.

72. Thus, inferring from Lebanese law, in order for the corporate Accused to be held criminally responsible for either count, the prosecution must: (1) establish the criminal responsibility of a specific natural person; (2) demonstrate that, at the relevant time, such natural person was a director, member of the administration, representative (someone authorized by the legal person to act in its name) or an employee/worker (who must have

¹³⁵ Art. 210 Lebanon, *Lebanese Criminal Code* (STL revised English translation).

¹³⁶ Lebanon, Court of Cassation, Criminal Chamber 6, Decision No. 60/2010, 9 March 2010 (published in Almarjaa-Cassandre) (STL unrevised English translation); see e.g., Lebanon, Court of Cassation, Criminal Chamber 6, Decision No. 157/2004, 3 June 2004, p. 1033 (published in Almarjaa-Cassandre).

¹³⁷ See Lebanon, Court of Cassation, Criminal Chamber 6, Decision No. 4/2007, 11 January 2007, p. 939 (published in Almarjaa-Cassandre); Lebanon, Court of Cassation, Criminal Chamber 3, Decision No. 163/2004, 19 May 2004 (published in Sader, *Criminal Decisions*, 2004).

¹³⁸ See, e.g., Lebanon, Court of Cassation, Criminal Chamber 3, Decision No. 34/2011, 12 January 2011 (published in Almarjaa-Cassandre) (“[H]olding the company criminally accountable does not preclude punishment of the natural person who committed the act.” (STL unrevised English translation)).

been provided by the legal body with explicit authorization to act in its name) of the corporate Accused; and (3) prove that the natural person's criminal conduct was done either (a) on behalf of or (b) using the means of the corporate Accused.

FINDINGS

I. Count 1

A. *Actus Reus*

73. In order to satisfy the *actus reus* for this count, the *Amicus* must first prove that the Accused actually disclosed information on purported confidential witnesses in the *Ayyash et al.* case. He then must show that, at the time when it occurred, such disclosure was objectively likely to undermine public confidence in the Tribunal's ability to protect the confidentiality of information about, or provided by, witnesses or potential witnesses.

1. Disclosure of information on purported confidential witnesses of the Tribunal

74. The evidence shows that from 6 to 10 August 2012, *Al Jadeed* TV aired five Episodes with the title "The Witnesses of the International Tribunal".¹³⁹ These Episodes are described by *Al Jadeed* TV's newscaster as revealing the identities of witnesses of the Tribunal and containing their statements.¹⁴⁰ The newscaster states that these witnesses are on a confidential list from the Tribunal's "Witness Protection Program".¹⁴¹

75. The *Amicus* argues that the information disclosed in the Episodes, such as the individuals' initials, voices, professions, work places, town or other geographic location, as well the backgrounds visible in the broadcasts, could easily lead to the identification of the persons concerned.¹⁴² In the *Amicus*'s view, this was especially true here given the small geographic areas where "everybody knows everything about everybody".¹⁴³ The *Amicus* submits that these circumstances led to the identification of the four purported Tribunal witnesses featured in the broadcasts who testified in this case—AP13, AP12, AP11 and Mr Afif Choiab.¹⁴⁴

¹³⁹ Comeau; T6, 16 April 2015, p. 4; Lodge, T8, 17 April 2015, p. 12; AP12, T9, 21 April 2015, pp 10-11; P00045 (confidential); P00046 (confidential); P00047 (confidential); P00055 (confidential); P00071 (confidential); P00076 (confidential); P00077 (confidential); P00078 (confidential); P00126 (confidential), p. 17; P00164 (confidential); P 00165 (confidential).

¹⁴⁰ P00046 (confidential), p. 1.

¹⁴¹ P00049 (confidential), p. 1.

¹⁴² *Amicus* Final Trial Brief, para. 25; T14, 18 June 2015, p. 15.

¹⁴³ *Amicus* Final Trial Brief, para. 25-26.

¹⁴⁴ *Id.* at para. 26.

76. The Defence recalls Mr Comeau's assertion that it was difficult even for the OTP to identify the 11 individuals featured in the broadcasts. This task required the assistance of an analyst and an investigator.¹⁴⁵ The Defence argues further that Witness AP12 was mentioned for a few seconds, his name or initials were not disclosed; neither his image nor his work place was displayed and his voice could not be heard.¹⁴⁶ The Defence avers that Mr Choiab was not identified by any member of the public as a result of the broadcasts.¹⁴⁷

77. I make the following findings with respect to the four individuals featured in the broadcasts who testified in this case:

a) AP13

78. Witness AP13 is a [REDACTED] based in [REDACTED]. *Al Jadeed* TV's reporter Mr Rami Al Amin intentionally [REDACTED] in this area and subsequently called the witness for assistance. Mr Al Amin video-taped his interaction with the witness. The footage was aired in the [REDACTED] Episode of the *Al Jadeed* TV series and he is presented as one of the witnesses of the Tribunal. In this Episode, Mr Al Amin mentioned [REDACTED]. Mr Al Amin explained that Witness AP13 was [REDACTED]. In the video, Witness AP13's face was pixelated and his name was not disclosed but his voice could be heard undistorted.¹⁴⁸

79. Witness AP13 testified that he first came to know about his appearance in the broadcast when a friend called him to ask: "What [is] happening, your name is on the news bulletin."¹⁴⁹ This phone call was followed by many others that the witness received at his home from acquaintances and family members who recognized him in the episode.¹⁵⁰ People who recognized the witness's voice, [REDACTED] and his general appearance and demeanour from the broadcast started asking him about the Tribunal.¹⁵¹ The witness explained that he was [REDACTED] identified by Mr Al Amin because of [REDACTED].¹⁵²

80. In light of this evidence, I am satisfied that the broadcasts allowed for the identification of Witness AP13.

¹⁴⁵ T14, 18 June 2015, p. 43.

¹⁴⁶ Defence Final Trial Brief, para. 47.

¹⁴⁷ *Id.* at para. 55; T14, 18 June 2015, p. 42.

¹⁴⁸ P00047 (confidential); P00050 (confidential); P00049 (confidential), p. 1; P00164 (confidential); Comeau, T7, 17 April 2015, p. 31.

¹⁴⁹ AP13, T8, 20 April 2015, p. 56.

¹⁵⁰ AP13, T8, 20 April 2015, pp. 56, 72-73, 77, 79.

¹⁵¹ AP13, T8, 20 April 2015, p. 74.

¹⁵² AP13, T8, 20 April 2015, p. 74.

b) AP12

81. Witness AP12 is [REDACTED]. He was mentioned in the [REDACTED] Episode as one of the Tribunal's witnesses. [REDACTED].¹⁵³ He was said to have provided the Tribunal with information [REDACTED].¹⁵⁴

82. Witness AP12 testified that, after the airing of the Episodes, he received many phone calls at home in the evening and early in the morning. "People were calling, questioning me [REDACTED]" he stated.¹⁵⁵ Some friends told him that [REDACTED] and that he was referred to as "one of the international tribunal's witnesses".¹⁵⁶ Some [REDACTED] informed him that in the broadcast they talked [REDACTED] about him.¹⁵⁷

83. The witness explained that [REDACTED].¹⁵⁸ [REDACTED].¹⁵⁹ According to the witness, the information provided by *Al Jadeed* TV was enough to allow people to identify him.¹⁶⁰

84. In light of this evidence, I am satisfied that the broadcasts also allowed for the identification of Witness AP12.

c) AP11

85. Witness AP11 [REDACTED]. He appeared in the [REDACTED] Episode. He was introduced [REDACTED] in the *Ayyash et al.* case.¹⁶¹ His name was not mentioned,¹⁶² but his initials were disclosed¹⁶³ and he was described as [REDACTED].¹⁶⁴ When *Al Jadeed* TV's reporter Rami Al Amin visited the witness [REDACTED], he video-taped the witness [REDACTED] while asking questions about his alleged testimony before the Tribunal. During this interview, [REDACTED].¹⁶⁵ In the broadcast, the witness's face was

¹⁵³ P00073 (confidential); P00071, p. 1; P00069; AP12, T9, 21 April 2015, p. 11 (closed session). [REDACTED], see AP12, T9, 21 April 2015, pp. 10 (closed session), 23 (closed session).

¹⁵⁴ P00073 (confidential); P00071 (confidential).

¹⁵⁵ AP12, T9, 21 April 2015, p. 15 (closed session).

¹⁵⁶ AP12, T9, 21 April 2015, pp. 23-24 (closed session).

¹⁵⁷ AP12, T9, 21 April 2015, pp. 69-70 (closed session).

¹⁵⁸ AP12, T9, 21 April 2015, p. 10 (closed session).

¹⁵⁹ AP12, T9, 21 April 2015, pp. 22-23 (closed session), 52-53 (closed session); D00042; D00043.

¹⁶⁰ AP12, T9, 21 April 2015, p. 23 (closed session), 27 (closed session).

¹⁶¹ P00050 (confidential); P00055 (confidential); P00165 (confidential); P00053 (confidential), pp 2, 3.

¹⁶² Comeau, T7, 17 April 2015, p. 31 (closed session).

¹⁶³ AP11, T10, 22 April 2015, pp. 5-7 (closed session); P00166 (confidential); P00167 (confidential), p. 1; Comeau, T6, 16 April 2015, p. 36 (private session).

¹⁶⁴ P00053 (confidential), p. 1.

¹⁶⁵ P00053 (confidential), p. 2.

blurred¹⁶⁶ but the rest of his body was visible and his voice was not distorted. [REDACTED].¹⁶⁷

86. Witness AP11 testified that he first got to know about his appearance in the broadcast when a friend called him and asked: “[REDACTED] Your picture was on TV.”¹⁶⁸ He stated that several persons called him after that and others came to see him because they were afraid of talking to him on the phone.¹⁶⁹

87. In light of this evidence, I am satisfied that the broadcasts also allowed for the identification of Witness AP11.

d) Afif Choiab

88. Mr Afif Choiab works for the Lebanese Civil Defence Office. He appeared in the third episode of the broadcasts and was presented as a witness of the Tribunal.¹⁷⁰ He was introduced as a firefighter in charge of the civil defence in the southern area. *Al Jadeed* TV journalist Firas Hatoum filmed him in his office with a hidden camera.¹⁷¹ In the broadcast, the witness’s image was pixelated but his voice was not altered.¹⁷² His name was not disclosed.¹⁷³ After the broadcast, an acquaintance told Mr Choiab that “the regional center of Nabatiyeh” appeared on New T.V.¹⁷⁴ Other persons had recognized his office from the inside.¹⁷⁵ According to the witness, nobody recognized him in the episode.¹⁷⁶

89. Given this evidence, I am not satisfied that the broadcasts permitted the identification of Mr Choiab.

e) Other individuals featured in the Episodes

90. The Defence argues that because the seven remaining individuals featured in the broadcasts did not testify in the trial, there is no evidence that their identities were disclosed as a result of the broadcasts.¹⁷⁷ As indicated above, the *Amicus* has submitted the footage of

¹⁶⁶ Comeau, T7, 17 April 2015, p. 31 (closed session).

¹⁶⁷ AP11, T9, 21 April 2015, p. 151 (closed session).

¹⁶⁸ AP11, T9, 21 April 2015, pp. 74 (closed session), 79 (closed session).

¹⁶⁹ AP11, T9, 21 April 2015, pp. 79-80 (closed session).

¹⁷⁰ P00050 (confidential); P00055 (confidential); P00049 (confidential) p. 3; P00054 (confidential), p. 2.

¹⁷¹ Choiab, T13, 14 May 2015, pp. 41 (private session), 50.

¹⁷² Choiab, T13, 14 May 2015, p. 64 (private session).

¹⁷³ Comeau, T7, 17 April 2015, p. 31 (closed session).

¹⁷⁴ Choiab, T13, 14 May 2015, pp. 38, 55-56.

¹⁷⁵ Choiab, T13, 14 May 2015, p. 39.

¹⁷⁶ Choiab, T13, 14 May 2015, pp. 38-39.

¹⁷⁷ Defence Final Trial Brief, para. 53.

all five Episodes. However, lacking additional evidence, I agree with the Defence that I cannot conclude that their identities were disclosed.

91. In sum, I find that the information provided in the broadcasts permitted the identification of Witnesses AP11, AP12 and AP13.

2. Effect of the disclosure on the public's confidence in the Tribunal's ability to protect confidential information

92. The *Amicus* argues that the conduct of the Accused created a “real risk” to the administration of justice. He refers to Judge Baragwanath’s finding that, as a matter of common sense, intentionally broadcasting information on purported confidential witnesses potentially constituted such interference.¹⁷⁸ According to the *Amicus*, this assertion is corroborated by expert witness Dr Anne-Marie de Brouwer’s conclusion that “disclosure of identifying information of alleged and actual victims/witnesses has significant effects on them, the public and its understanding and perceptions of the international criminal tribunals as well as on the tribunals’ administration of justice”.¹⁷⁹ In the *Amicus*’s view, in Lebanon, a “close knit” society experiencing “political, territorial and religious fragmentation and a permanent state of security alert”, being called a “witness against Hezbollah” can have serious negative repercussions.¹⁸⁰ The risk created by the broadcasts was indeed recognized by witness Ms Véronique Bernard, senior security officer at the Tribunal’s Beirut office at that time.¹⁸¹ Moreover, the fact that many Tribunal witnesses are granted protective measures indicates the risk.¹⁸² The *Amicus* further submits that, though it is not necessary to demonstrate actual harm, the evidence proves that various individuals featured in the *Al Jadeed* TV Episodes suffered significant consequences.¹⁸³ Finally, the *Amicus* contends that the disclosures, whether true or not, could only have a negative effect on the public’s confidence in the Tribunal, especially its ability to protect victims and witnesses.¹⁸⁴

93. The Defence responds that the *Amicus* failed to prove that the broadcast or publication of the Episodes had actually interfered or posed a real risk of interference with the Tribunal’s administration of justice.¹⁸⁵ It argues that there is no evidence that the broadcasts had any

¹⁷⁸ *Amicus* Final Trial Brief, para. 34.

¹⁷⁹ *Id.* at para. 35.

¹⁸⁰ *Id.* at para. 36.

¹⁸¹ *Id.* at para. 38.

¹⁸² *Id.* at para. 37.

¹⁸³ *Id.* at para. 39.

¹⁸⁴ *Id.* at para. 40.

¹⁸⁵ Defence Final Trial Brief, para. 32.

impact on witnesses in the *Ayyash et al.* case and that no one lodged any complaints with, pursued legal action before, or otherwise contacted the STL or the Lebanese authorities about the broadcasts.¹⁸⁶ According to the Defence, Mr Comeau's evidence with respect to the concerns raised by the individuals [REDACTED] after the airing of the Episodes amounts to uncorroborated, inconsistent and partially refuted hearsay and cannot be relied upon.¹⁸⁷ In the Defence's view, the evidence given by Witnesses AP11, AP12 and AP13 does not support the *Amicus's* case, as they neither were nor are actual or potential *Ayyash et al.* witnesses and none were endangered due to the broadcasts or publications.¹⁸⁸ Further, Mr Choib's public testimony undermines the *Amicus's* assertion that the broadcasts endangered the individuals whose identities were purportedly disclosed.¹⁸⁹

94. I reviewed the relevant evidence in light of the Parties' arguments.

a) John Allen Comeau

95. Mr Comeau testified that [REDACTED].¹⁹⁰ These two or three individuals raised concerns for their safety and the safety of their families.¹⁹¹ In particular, Mr Comeau recalled [REDACTED] Mr Choib and Witness AP13. Mr Choib indicated that he felt at risk after being exposed by the media, that he was experiencing extreme anxiety and that he would not be cooperating with the STL in the future.¹⁹² Witness AP13 [REDACTED] that he was concerned that his security had been jeopardized in particular because [REDACTED] felt he could be exposed to danger following the disclosure of his identity in the broadcasts.¹⁹³

b) AP13

96. In a telephone conversation, Witness AP13 understood *Al Jadeed* TV's reporter Mr Al Amin [REDACTED].¹⁹⁴ According to the witness "when somebody tells you [REDACTED] [i]t's something that terrorizes you".¹⁹⁵ After appearing on the broadcast, the

¹⁸⁶ Defence Final Trial Brief, paras 33-38.

¹⁸⁷ *Id.* at paras 39-41.

¹⁸⁸ *Id.* at paras 42-52.

¹⁸⁹ *Id.* at paras 55-58.

¹⁹⁰ Comeau, T6, 16 April 2015, p. 30 (private session); T7, 17 April 2015, pp 60-61 (private session).

¹⁹¹ Comeau, T7, 17 April 2015, p. 96.

¹⁹² Comeau, T6, 16 April 2015, pp. 35, 36-38 (private session).

¹⁹³ Comeau, T6, 16 April 2015, p. 40 (private session).

¹⁹⁴ AP13, T8, 20 April 2015, pp. 65 (closed session), 124-132 (closed session).

¹⁹⁵ AP13, T8, 20 April 2015, p. 66 (closed session).

witness claimed to [REDACTED] and forbid his children from going out at night.¹⁹⁶ [REDACTED].¹⁹⁷ When challenged by the Defence, [REDACTED].¹⁹⁸

97. Witness AP13 further testified that he had received no actual threats after appearing on the broadcasts.¹⁹⁹ [REDACTED].²⁰⁰

c) AP12

98. Witness AP12 testified that, a few weeks after appearing in the broadcasts, he received 15 to 20 phone calls at his home late at night and early in the morning.²⁰¹ People asked [REDACTED].²⁰² He declared that some time after the broadcasts, a man [REDACTED].²⁰³ [REDACTED].²⁰⁴ [REDACTED].²⁰⁵ The witness did not explain whether these events were related to the broadcasts.

99. The witness explained that, in Lebanon, whoever cooperates with the Tribunal is considered a traitor. For this reason, after the broadcasts, the witness and his family felt in danger and [REDACTED].²⁰⁶ However, the witness also declared that he never received actual threats.²⁰⁷ He also asserted that he had never experienced the above-described type of incidents before the broadcasts²⁰⁸ and stated that he could not confirm that the phone calls were linked to his appearance in the broadcasts.²⁰⁹ Witness AP12 declared that he suffered the consequences of having collaborated with the Tribunal which is “something that [he] should not have done” and now [his] family [was] paying the price.”²¹⁰ However, the witness later states that while he was upset by the broadcast of the Episodes and that his life had been endangered, he had not been scared by the broadcast.²¹¹

¹⁹⁶ AP13, T8, 20 April 2015, p. 74 (closed session).

¹⁹⁷ AP13, T8, 20 April 2015, pp. 76-77 (closed session); Comeau, T6, 16 April 2015, pp. 40-41 (private session).

¹⁹⁸ AP13, T8, 20 April 2015, p. 115 (closed session).

¹⁹⁹ AP13, T8, 20 April 2015, p. 79 (closed session)

²⁰⁰ AP13, T8, 20 April 2015 p. 87 (closed session).

²⁰¹ AP12, T9, 21 April 2015, pp. 15 (closed session), 24 (closed session), 41 (closed session), 49 (closed session), 69 (closed session).

²⁰² AP12, T9, 21 April 2015, pp. 15 (closed session).

²⁰³ AP12, T9, 21 April 2015, p. 26 (closed session).

²⁰⁴ AP12, T9, 21 April 2015, p. 26 (closed session).

²⁰⁵ AP12, T9, 21 April 2015, pp. 27 (closed session), 34 (closed session).

²⁰⁶ AP12, T9, 21 April 2015, p. 24 (closed session).

²⁰⁷ AP12, T9, 21 April 2015, p. 26 (closed session).

²⁰⁸ AP12, T9, 21 April 2015, p. 71 (closed session).

²⁰⁹ AP12, T9, 21 April 2015, pp. 50-51 (closed session).

²¹⁰ AP12, T9, p. 26.

²¹¹ AP12, T9, p. 39.

d) AP11

100. Witness AP11 testified that being exposed by the broadcasts had affected him and his family and that he now had to lock his home door.²¹² He declared that his whole life had changed and that no-one trusted him anymore since the broadcasts. However, he clarified that the reason why people distrusted him [REDACTED] not because he was an alleged witness of the STL.²¹³

101. Witness AP11 also stated that he was forced [REDACTED].²¹⁴ However, he later clarified that he [REDACTED] before the broadcasts aired.²¹⁵

e) Afif Choaib

102. Mr Choaib's testimony contained numerous inconsistencies and contradictions.

103. For instance, while he initially [REDACTED] that he had been put at risk by being exposed by the media,²¹⁶ he testified repeatedly that his cooperation with the Tribunal became public through leaks coming from the STL.²¹⁷ He later explained that his relationship with the Tribunal became known to his colleagues because his testimony was requested through his supervisors. With respect to this request, he testified that, "everyone at the Directorate General of the Civil Defence were aware of that before [he] even knew about it". He went on to say that Lebanon is a small and community-driven society and nothing is secret.²¹⁸

104. With respect to the consequences that his contacts with the Tribunal had on his career and personal well-being, the witness failed to provide clear answers. Instead, he gave lengthy, confusing explanations. He suggested that people were aggressive towards him because, after the "the leaks coming from the STL", the Lebanese media had portrayed those cooperating with the STL as "false witnesses".²¹⁹ However, at no point was the witness able to substantiate that he was perceived as a "false witness" in his professional environment or elsewhere, or that he had been intimidated or threatened in any way. He also complained that

²¹² AP11, T9, 21 April 2015, p. 81 (closed session).

²¹³ AP11, T9, 21 April 2015, pp. 90-91 (closed session).

²¹⁴ AP11, T9, 21 April 2015, p. 81 (closed session).

²¹⁵ AP11, T9, 21 April 2015, pp. 90 (closed session), 92-93 (closed session).

²¹⁶ Comeau, T6, 16 April 2015, pp. 39, 43 (private session).

²¹⁷ Choaib, T13, 14 May 2015, pp. 46-48, 55, 69, 74-76.

²¹⁸ Choaib, T13, 14 May 2015, p. 71.

²¹⁹ Choaib, T13, 14 May 2015, pp. 47-48, 55, 69, 71.

his public testimony in this trial would have a negative impact in a series of lawsuits he had filed against his employer but he was also unable to substantiate this claim.²²⁰

105. As a result of these inconsistencies, I do not deem the testimony of Mr Choiab reliable.

f) Expert witness Anne-Marie de Brouwer

106. In my decision of 27 March 2015, I found that, though Dr de Brouwer's extensive training and experience had no direct connection to Lebanon, the application of such training and experience to the Lebanese context and to the facts in dispute might assist in the determination of this case.²²¹

107. Dr de Brouwer testified primarily about her conclusions on the effects of disclosure of purported confidential witness information in the context of other international criminal tribunals. However, I am not satisfied that Dr de Brouwer's examination of the impacts of the disclosure of confidential information in proceedings before other international criminal tribunals was sufficiently comprehensive to allow for general conclusions applicable to the case at hand. For instance, while she cited in her report the *Haradinaj* case before the ICTY as an example of how the disclosure of confidential witness information can interfere with the administration of justice, the cross-examination by the Defence revealed that she had not thoroughly reviewed the first trial judgment in that case and was unfamiliar with the decision on appeals and the re-trial process in that case.²²²

108. Dr de Brouwer also testified that the consequences of the disclosure of purported confidential witness information are case-specific and depend on multiple factors such as the geographical, political, ethnic, and religious circumstances of each case.²²³ However, her evidence did not address the effects of disclosures in Lebanon or in the region. She clarified that she had not applied her general findings from international practice to the Lebanese context.²²⁴ Consequently, I am not persuaded that her conclusions on the effects of disclosure of purported confidential witness information are applicable to this case.

109. In sum, Dr de Brouwer's general scholarly expertise does not assist in the specific circumstances of this case. I am therefore not persuaded that her evidence has sufficient

²²⁰ Choib, T13, 14 May 2015, pp. 70-71, 76-79.

²²¹ Expert Decision, para. 12.

²²² De Brouwer, T10, 22 April 2015, pp. 65-70.

²²³ De Brouwer, T10, 22 April 2015, pp. 38-40.

²²⁴ De Brouwer, T10, 22 April 2015, p. 78.

probative value with respect to the alleged impact of the disclosure of purportedly confidential information at issue.

g) Documentary evidence

110. The *Amicus* tendered a number of exhibits pertaining to reactions, by Lebanese media outlets and others, to alleged disclosures of purported confidential Tribunal witnesses, including those at issue here. He did so to demonstrate the effects of the Accused's acts and conduct.²²⁵ I admitted these exhibits because I determined that they could provide informative context on the effects that the disclosures in this case may have had on the public's confidence in the Tribunal's ability to protect confidentiality.²²⁶

111. I note that, while referring to the disclosure of confidential information by several Lebanese and international media outlets, some of these reports do not mention the impact that such disclosures had or could have had on actual or prospective Tribunal witnesses or even on the Lebanese public's perception of the Tribunal.²²⁷

112. The *Amicus* tendered several articles by Youkal Net. In his view, Youkal Net's report of 10 August 2012²²⁸ proves that disclosures of purported confidential witnesses' identities or information may deter witnesses from testifying before the STL.²²⁹ The article reports that some individuals whose identities were disclosed by the newspaper *Al Akhbar* as "false witnesses of the STL" were threatened by Hezbollah after the publication of the article.

113. Another Youkal Net report of 8 April 2014 states that, through its affiliated media, i.e. *Al Akhbar*, Hezbollah will threaten to kill the witnesses in the "Hariri Tribunal".²³⁰ A report of 9 December 2014 states that the disclosures by *Al Akhbar* and *Al Jadeed* TV led to the non-appearance of witnesses before the Tribunal.²³¹ In an article of 10 March 2013, Youkal Net purports to quote the New York Times in stating that "reports from Lebanon" revealed that several witnesses whose identities were disclosed decided not to testify, while others left

²²⁵ Decision on *Amicus* Bar Table Motion, para. 18.

²²⁶ Decision on *Amicus* Bar Table Motion, para. 19. The admitted exhibits are: P00083 (confidential), P00084 (confidential), P00085 (confidential), P00086 (confidential), P00087 (confidential), P00088 (confidential), P00089 (confidential), P00090 (confidential), P00091 (confidential), P00092 (confidential), P00093 (confidential), P00094 (confidential), P00100 (confidential), P00101 (confidential), P00104 (confidential), P00109 (confidential), P00112 (confidential), P00150 (confidential).

²²⁷ P00083 (confidential), P00084 (confidential), P00087 (confidential), P00089 (confidential), P00091 (confidential), P00092 (confidential), P00093 (confidential), P00094 (confidential), P00100 (confidential), P00109 (confidential), P00112 (confidential), P00150 (confidential).

²²⁸ P00082 (confidential).

²²⁹ *Amicus* Final Trial Brief, para. 40.

²³⁰ P00088 (confidential).

²³¹ P00104 (confidential).

Lebanon.²³² The *Amicus* has not tendered the report from the New York Times referred to in this exhibit.

114. An article by Elnashra dated 16 January 2013²³³ cites a statement by the Lebanese Minister of Justice that “the leaks are sowing doubt in some people’s minds and are scaring some witnesses”.

115. An article by Now dated 17 January 2013²³⁴ reports on the disclosure by the newspaper *Al Akhbar* of a list of purported witnesses in the *Ayyash et al.* case. The article quotes a Lebanese lawyer by the name of Marwan Saqr stating that the *Al Akhbar* publication is an attempt to intimidate the witnesses who may decide to recant their testimonies, which would in turn sabotage the work of the Tribunal.

116. A report by Shia Watch dated 29 April 2013 discusses the disclosure of purported confidential witness information by an unknown website.²³⁵ According to this article, “a commentator” declared that incidents such as this “would scare away all the witnesses”. It also states that the intention of the disclosure was to intimidate witnesses and that it had achieved this outcome “immediately and effectively”.

117. I note that none of these articles provide any information on the individuals concerned and quote no source of information. None of these reports were presented to any witness in court who might have testified to the truth of their content. Moreover, the information provided in these exhibits is not corroborated by any other evidence in the record. Accordingly, I find that these exhibits have no probative value with respect to the impact of the *Al Jadeed* TV broadcasts on the public’s confidence in the Tribunal’s ability to protect confidential information.

118. The *Amicus* also introduced into evidence a complaint submitted to the Tribunal by 13 individuals purportedly identified as Tribunal witnesses by *Al Akhbar* in April 2013.²³⁶ These individuals claimed that the publication of their names had put them at risk. The plaintiffs based their complaint on statements made by the spokesperson and a judge of the Tribunal

²³² P00090 (confidential).

²³³ P00085 (confidential).

²³⁴ P00086 (confidential).

²³⁵ P00101 (confidential).

²³⁶ P00151 (confidential).

that these disclosures could have placed the individuals concerned at risk and that such behaviour could discourage witnesses from testifying.²³⁷

119. According to this document, the plaintiffs requested that their statements be removed from the trial record and their names not be included in the Prosecutor's list of witnesses in the main trial.²³⁸ However, concerns reported by the alleged victims of disclosures are based on conjectures formulated by third persons. As a result, I find that this exhibit has no probative value with respect to the impact of the disclosures in this case of purported confidential witness information on the public's confidence in the Tribunal's ability to protect its witnesses.

h) Conclusion

120. In light of this evidence, I am not persuaded that the *Amicus* proved beyond reasonable doubt that the disclosure of identifying information of purported confidential witnesses was objectively likely to undermine public confidence in the Tribunal's ability to protect the confidentiality of information about, or provided by, witnesses or potential witnesses.

121. As discussed above, while proof of actual harm is not required, it may be relevant in deciding whether the conduct of the Accused created such likelihood. However the evidence submitted by the *Amicus* to this effect does not show that the individuals concerned suffered any harm from the disclosures.

122. As I explained above, I do not find Mr Choib's testimony reliable *per se*.²³⁹ With respect to Mr Comeau, he testified of the concerns [REDACTED]. His hearsay testimony is reliable as it is corroborated by the testimony of certain of these individuals in court. Indeed, Witness AP12 (and Witness AP13 expressed similar fears) declared that he was scared after being identified as witness of the Tribunal because being perceived a witness against Hezbollah in Lebanon may entail negative consequences.²⁴⁰ However, neither witness provided information that they received threats or were harmed in any way after the airing of the Episodes. Witness AP13 expressed fear of [REDACTED] but clarified that he had actually received no threats. Witness AP12 reported some incidents that occurred after the airing of the broadcasts but provided no information that would link those incidents with the

²³⁷ P00151 (confidential), pp. 5, 7.

²³⁸ P00151 (confidential), p.18.

²³⁹ See above paras 102-105.

²⁴⁰ See above paras 96, 99.

broadcasts. He also declared that he had received no threats. I also find that it is clear from Witness AP11's testimony that any consequence that he may have suffered from the airing of the episode in which he appears stems from [REDACTED] rather than to his being portrayed as a witness of the Tribunal.

123. I thus conclude that the concerns reported by these witnesses were not based on ascertainable facts that could objectively be linked to the disclosure of their identities and their alleged status as witnesses of the Tribunal by *Al Jadeed* TV.

124. I can also draw no conclusions with respect to whether the broadcasts had any impact on the witnesses' confidence in the Tribunal's ability to protect confidential information. Indeed, Witnesses AP11 and AP13 did not clarify whether or not their own confidence in the Tribunal's ability to protect such information had been undermined after the airing of the Episodes. Witness AP12 declared that he should never have collaborated with the Tribunal. While this statement suggests that his confidence in the Tribunal had been undermined, he also stated that he had not been scared by the broadcast of the Episodes, which suggests the opposite. Finally, while Mr Choib declared that he would, if called, testify before the Tribunal,²⁴¹ I recall that I found his testimony unreliable.²⁴²

125. As a result, I cannot infer from the witnesses' testimony that the broadcast of the Episodes created the likelihood of undermining the public's confidence in the Tribunal.

126. Additionally, I determined that I cannot rely on the documentary evidence pertaining to the effects of the disclosures. I also found that Dr de Brouwer's generic expert testimony was not reliable. As a result, there is no evidence on the record on the effects of the *Al Jadeed* TV's disclosures on the public in general.

127. The *Amicus* has not proved the second element of the *actus reus* for this count. As a result, I must dismiss this charge and consequently do not need to enter findings with respect to the *means rea* and *a fortiori* to freedom of press for this count.

²⁴¹ Choib, T13, p. 46.

²⁴² See above paras 102-105.

II. Count 2

A. *Actus Reus*

128. To satisfy the *actus reus* for this count, the *Amicus* must prove that the Accused violated the 10 August 2012 Order by failing to remove the information on purported confidential witnesses from *Al Jadeed* TV's online platforms.

1. The 10 August 2012 Order

129. On 10 August 2012, the Pre-Trial Judge issued a confidential and *ex parte* order directing *Al Jadeed* TV to cease the dissemination of all material alleged to be related to confidential Tribunal witnesses.²⁴³

2. Publication of the Episodes after 10 August 2012

130. The *Amicus* contends that the Accused violated the Registrar's 7 August 2012 Cease-and-Desist Letter and the 10 August 2012 Order by not removing the material alleged to be related to confidential witnesses of the Tribunal from all of *Al Jadeed* TV's public platforms.²⁴⁴ According to the *Amicus*, the Episodes were placed on *Al Jadeed* TV's website, YouTube channel and Facebook page and remained there until at least 25 April 2013, 15 January 2014 and 26 September 2012, respectively.²⁴⁵

131. The Defence responds that the *Amicus* failed to prove the dates on which the material was available on *Al Jadeed* TV's public platforms, relying on three arguments.²⁴⁶

132. First, the annex to the *Amicus*'s witness John Allen Comeau's statement, showing the dates on which the Episodes were available on *Al Jadeed* TV's online platforms,²⁴⁷ cannot be relied on, as Mr Comeau did not create it and did not provide any underlying information for the document apart from screenshots of *Al Jadeed* TV's Facebook page taken in 2012, which reveal an 'error message' that the materials in questions were in fact not available.²⁴⁸ Moreover, there is no "visual record" in evidence verifying the allegations contained in the

²⁴³ P00079.

²⁴⁴ *Amicus* Final Trial Brief, paras 49, 51.

²⁴⁵ *Id.* at para. 49.

²⁴⁶ Defence Final Trial Brief, para. 66.

²⁴⁷ P00159.

²⁴⁸ Defence Final Trial Brief, para. 67.

annex to Mr Comeau's statement, which fatally undermines the reliability and probative value of the annex, standing on its own with no other evidence.²⁴⁹

133. Second, the availability of the Episodes online is a contested issue, which the *Amicus* could have addressed by calling Mr Bertrand Gagnon, a former member of the *Amicus* Investigator's team who was expected to testify, but the *Amicus* chose not to do so.²⁵⁰

134. Last, Mr Comeau's testimony is uncorroborated and untested hearsay evidence that was obtained in circumstances that seriously diminish its reliability. While the Defence acknowledges that hearsay evidence is admissible before international criminal tribunals, it refers to relevant case-law which militates against relying upon only hearsay evidence without further substantiation.²⁵¹

135. Mr Comeau testified that a language assistant of the OTP who "responded" to him monitored and recorded the availability of the Episodes on the three *Al Jadeed* TV's platforms: its website, Facebook page and YouTube channel.²⁵² According to these records, the Episodes were available on *Al Jadeed* TV's website until 25 April 2013,²⁵³ on its Facebook page until 26 September 2012²⁵⁴ and on its YouTube channel until 26 September 2013.²⁵⁵ Mr Comeau later clarified that this language assistant was not under his supervision and that he was "made aware of [the monitoring][...] until such time as [he] went on to other tasks".²⁵⁶ The dates indicated in the record were the last dates known to him on which the Episodes were available online.²⁵⁷

136. In general terms, I find that Mr Comeau did not have close knowledge of the process of recording the availability of the Episodes on *Al Jadeed* TV's platforms. I note in particular his statement that the recording of this information was performed by a language assistant in the OTP; that this language assistant was not under his supervision and that he was not involved in this process but was merely "made aware" of the results. As a result, I do not find Mr Comeau's hearsay testimony on this matter sufficiently reliable where not corroborated by other evidence in the record.

²⁴⁹ Defence Final Trial Brief, para. 68; T15, 19 June 2015, p. 26.

²⁵⁰ Defence Final Trial Brief, para. 69.

²⁵¹ *Id.* at paras 70-72; T14, 18 June 2015, pp. 52-54; T15, 19 June 2015, p. 23.

²⁵² Comeau, T6, 19 April 2015, pp 46-47; T7, 17 April 2015, pp. 56-58, 78-79; P00159 (public with confidential annex).

²⁵³ Comeau, T6, 19 April 2015, p. 49; P00159, p. 2.

²⁵⁴ Comeau, T6, 19 April 2015, p. 52. P00158; P00159, p. 2.

²⁵⁵ P00159, p. 2.

²⁵⁶ Comeau, T7, 17 April 2015, p. 79.

²⁵⁷ Comeau, T6, 16 April 2015, pp. 51-52.

137. In a letter dated 28 August 2012, the Registrar informed the Prosecutor-General of the Court of Cassation that on 27 August 2012 the Episodes were still available on *Al Jadeed TV* TV's online platforms despite the service of the 10 August 2012 Order on *Al Jadeed TV* and requested his assistance to ensure the discontinuation of the broadcasts.²⁵⁸ The *Amicus* has not provided any foundation for or corroboration of the assertions contained in the Registrar's Letter of 28 August 2012. I therefore cannot rely on this hearsay evidence to enter a finding with respect to the availability of the Episodes online up to 27 August 2012.

138. With respect to *Al Jadeed TV*'s YouTube channel, Mr Comeau added that a staff member of the *Amicus*, Mr Bertrand Gagnon had informed him over the phone that the Episodes were available on that platform until 15 January 2014.²⁵⁹ In the course of the cross-examination by the Defence, Mr Comeau stated several times that he had spoken with Mr Stephane Bourgon, the former *Amicus Curiae* Investigator, in 2013 and 2015 on the issue of the availability of the Episodes on *Al Jadeed TV*'s YouTube channel.²⁶⁰ He clarified that he had last spoken to Mr Bourgon the night prior to his testimony in this case.²⁶¹ However, he later stated that it was Mr Gagnon, a scheduled *Amicus* witness in this case, to whom he had spoken, not Mr Bourgon.²⁶² Mr Comeau explained that he had made an error with respect to the name of the person in question.²⁶³ He later clarified that he did not have first-hand information that the Episodes were available until January 2014 because he was at the time no longer employed by the Tribunal.²⁶⁴ Following Mr Comeau's testimony, the *Amicus* decided to not call Mr Gagnon to testify as initially scheduled.²⁶⁵

139. Mr Comeau's testimony on the availability of the Episodes on *Al Jadeed TV*'s YouTube channel until January 2014 amounts to hearsay evidence. This information was provided to the witness over the telephone by a third person, Mr Gagnon, who was himself a witness scheduled to testify for the *Amicus* in this case. However, following Mr Comeau's testimony, the *Amicus* decided not to call Mr Gagnon who could have corroborated Mr Comeau's account. I find that, absent further corroborating evidence Mr Comeau's hearsay testimony is not sufficiently reliable. Lacking any other evidence on the record of the

²⁵⁸ P00063 (confidential).

²⁵⁹ Comeau, T6, 16 April 2015, p. 49.

²⁶⁰ Comeau, T6, 16 April 2015, pp. 57-58, 59-61 (private session), 62-69, 75-78.

²⁶¹ Comeau, T6, 16 April 2015, p. 61 (private session).

²⁶² Comeau, T6, 16 April 2015, pp. 75-78.

²⁶³ Comeau, T6, 16 April 2015, p. 77.

²⁶⁴ Comeau, T7, 17 April 2015, pp. 72-73.

²⁶⁵ Comeau, T7, 17 April 2015, p. 174.

availability of the Episodes on *Al Jadeed* TV's YouTube channel, I conclude that the *Amicus* has not proven that the Episodes were available on this platform beyond 10 August 2012.

140. With respect to *Al Jadeed* TV's Facebook page, the *Amicus* introduced into the record several screenshots of the page showing a disclaimer indicating that the content is no longer available.²⁶⁶ I had rejected the admission of this item from the bar table on the grounds that further explanation at trial by a person who could speak to the documents' content was appropriate to inform my decision on its reliability and avoid potential unfair prejudice.²⁶⁷ The *Amicus* introduced this item at trial through witness John Allen Comeau.²⁶⁸ However, as discussed above, Mr Comeau was not personally involved in the monitoring of *Al Jadeed* TV's online content at the time. As a result, I am not satisfied that Mr Comeau was the appropriate witness to provide the necessary explanation as to the content of this document and the circumstances in which it was obtained. I therefore cannot assign any probative value to it. Consequently, I find that the *Amicus* has not proven that the Episodes were available on *Al Jadeed* TV's Facebook page after the 10 August 2012 Order.

141. With respect to *Al Jadeed* TV's website, I note that the *Amicus* also introduced into the record the video recording and the transcript of *Al Jadeed* TV reporter Rami Al Amin's suspect interview of 2 October 2013.²⁶⁹ During the interview, Mr Al Amin, who had been involved in the production of the Episodes, declared that, on that date the Episodes were still online on *Al Jadeed* TV's website.²⁷⁰

142. I am satisfied that Mr Al Amin's suspect interview is sufficiently reliable. The interview was video-taped, Mr Al Amin was informed of the content of the charges for which he was being investigated and of his rights as a suspect. Throughout the interview, he was assisted by counsel and by an interpreter.²⁷¹ His answer on this point was clear and without hesitation. Additionally, this exhibit corroborates in part Mr Comeau's evidence on this matter. Accordingly, I find that this evidence allows me to conclude beyond reasonable doubt that the Episodes were available on *Al Jadeed* TV's website at least until 2 October 2013, the date of Mr Al Amin's suspect interview.

²⁶⁶ P00158 (confidential).

²⁶⁷ Decision on *Amicus* Bar Table Motion, para. 39.

²⁶⁸ Comeau, T6, 16 April 2015, p. 53.

²⁶⁹ P00122 (confidential), P00123 (confidential), P00124 (confidential), P00125 (confidential); P00126 (confidential).

²⁷⁰ P00126 (confidential), p. 44-45, 74-75.

²⁷¹ P00126 (confidential), p. 1-12.

143. In this regard, I note that my finding on the availability of the Episodes on *Al Jadeed* TV's website goes beyond the dates mentioned in the factual allegations of the Order in lieu of Indictment with respect to *Al Jadeed* TV's website. The Amended Order in Lieu of Indictment states that the Episodes were available on *Al Jadeed* TV's website until at least 4 December 2012 and on its YouTube channel until at least the date of issuance of the Order: 31 January 2014. In his submissions, the *Amicus* argued that the evidence proved the availability of the Episodes on *Al Jadeed* TV's website until at least 25 April 2013, seemingly implying the possibility that they may have been online until a later date.²⁷²

144. However, this does not bar me from making findings on the relevant dates based on the evidence that I have heard. Indeed, the charge against the Accused as defined in count 2 of the Order is the failure to remove the Episodes from *Al Jadeed* TV's online platforms, including its website, in violation of the 10 August 2012 Order. The count does not set any timeframe. Besides, the type of platform concerned and the exact duration online are not essential to the charge but if anything, are relevant to the gravity of the conduct. Accordingly, the Accused were given sufficient notice that they were indicted for failing to remove the Episodes from public access through *Al Jadeed* TV's online platforms. I am thus satisfied that my finding that the Episodes were posted on *Al Jadeed* TV's website until at least 2 October 2013 does not infringe on the Accused's rights to be informed of the charges against them.

3. Findings with respect to Karma Khayat

145. In light of the evidence, I will determine whether the *Amicus* has proved beyond reasonable doubt that the Ms Khayat failed to remove information pertaining to purported confidential witnesses of the Tribunal from *Al Jadeed* TV's online platforms in violation of the 10 August 2012 Order.

146. I recall that in his suspect interview of 3 October 2013, Mr Ibrahim Dsouki, Head of *Al Jadeed* TV's online department, declared that *Al Jadeed* TV's "news management" was responsible for "what goes on the website". He explained further that "everything that is being broadcasted on television is published on the website, so [the news management] have the decision of what is being broadcasted on TV and consequently what is being published on

²⁷² *Amicus* Final Trial Brief, para. 49.

the website”.²⁷³ He confirmed that he took his instructions from both Ms Khayat, “deputy manager of news” and Ms Al Bassam who were responsible for the news.²⁷⁴

147. In her suspect interview, Ms Khayat declared that she assumed “the direct responsibility” for the investigation and the production of the Episodes.²⁷⁵ She explained that Ms Al Bassam “kn[ew] that th[e] story [would] be reported on [a certain date] regarding this issue”. However, Ms Khayat pointed out that “the final output of the report [was her] part”.²⁷⁶ With respect to the online broadcasting of political content, Ms Khayat explained that Mr Dsouki, Head of the Online Department, coordinates with her and with Ms Al Bassam.²⁷⁷

148. In light of this evidence, I am satisfied that Ms Khayat was part of the management of the news department at *Al Jadeed* TV and in that capacity was responsible for producing and broadcasting the Episodes. Since all the content broadcast on *Al Jadeed* TV is automatically published online, Ms Khayat was equally responsible for the publication of the Episodes on *Al Jadeed* TV’s online platforms, including its website. Consequently, Ms Khayat had the ability to remove the information on purported confidential witnesses of the Tribunal from *Al Jadeed* TV’s website but failed to do so at least until 2 October 2013.

149. The *Amicus* has therefore proved the *actus reus* element for this count with respect to Ms Khayat.

B. Mens rea

150. The element of *mens rea* for this count is satisfied if the *Amicus* demonstrates that the Accused either had knowledge of the existence of the 10 August 2012 Order or was wilfully blind to its existence and deliberately failed to remove the Episodes from *Al Jadeed* TV’s online platforms.

1. Arguments of the Parties

a) The position of the Amicus

151. The *Amicus* submits that both *Al Jadeed* TV and Ms Khayat knew or should have known of the Order, and that mere awareness of the Order is sufficient to impute knowledge of its contents.²⁷⁸ In the *Amicus*’s view, actual knowledge of both Accused follows from the

²⁷³ P00131 (confidential) (second transcript), pp. 9-11.

²⁷⁴ P00131 (confidential) (second transcript), p. 12.

²⁷⁵ P00173 (confidential), pp. 54, 70.

²⁷⁶ P00173 (confidential), p. 54.

²⁷⁷ P00173 (confidential), pp. 72-73.

²⁷⁸ *Amicus* Final Trial Brief, paras 52-58.

fact that they had every reason to believe that additional Tribunal action would follow their total dismissal of the Cease-and-Desist Letter, which was delivered to them on 8 August 2012.²⁷⁹ With the knowledge that additional action would likely follow from the Tribunal, *Al Jadeed* TV made every effort to evade service of the 10 August 2012 Order.²⁸⁰ The *Amicus* submits that, in so doing, the Accused deliberately disobeyed the Order, which is *per se* a wilful and knowing interference with the administration of justice and contempt of court.²⁸¹

b) *The position of the Accused*

152. The Defence responds that the *Amicus* failed to prove beyond reasonable doubt that Ms Khayat had knowledge of the existence of the 10 August 2012 Order until her suspect interview on 2 October 2013²⁸² and that *Al Jadeed* TV, by and through its principals, officers, managers, employees, agents, representatives and/or affiliates, knew of, or was recklessly indifferent to, the existence of the Order.²⁸³

153. It avers that the service of the 10 August 2012 Order was effected in violation of Article 147 of the Lebanese Code of Criminal Procedure, which renders it unenforceable and contributed to the Accused's lack of knowledge regarding the existence and contents of the Order,²⁸⁴ that Ms Bernard's attempt to deliver the Order on 11 August 2012 does not demonstrate any wilful blindness or reckless indifference on the part of *Al Jadeed* TV²⁸⁵ and that the *Amicus* failed to prove that Ms Al-Bassam could properly and lawfully receive service on behalf of the company.²⁸⁶ The Defence further submits that it is reasonable that on 14 August 2012 Ms Al-Bassam thought the Lebanese authorities were re-serving the Cease-and-Desist Letter, previously sent to *Al Jadeed* TV, but disputed by *Al Jadeed* TV for its improper notification.²⁸⁷

154. The Defence further argues that had they received the 10 August 2012 Order, the Accused would have taken immediate action as they did following the receipt of the Cease-and-Desist Letter.²⁸⁸

²⁷⁹ *Amicus* Final Trial Brief, para. 54.

²⁸⁰ *Id.* at para. 55.

²⁸¹ *Id.* at para. 52.

²⁸² Defence Final Trial Brief, para. 73; T14, 18 June 2015, pp. 41, 49, 55; T14, 18 June 2015, p. 19.

²⁸³ Defence Final Trial Brief, para. 76.

²⁸⁴ *Id.* at paras 77-79; T14, 18 June 2015, pp. 50-51.

²⁸⁵ Defence Final Trial Brief, para. 80.

²⁸⁶ *Id.* at para. 81.

²⁸⁷ *Id.* at paras 83, 85.

²⁸⁸ *Id.* at para. 74.

2. Discussion

155. The Parties' arguments as regards the Accused's *mens rea* revolve around two distinct events—the notification of the Registrar's Cease-and-Desist Letter, and the service of the 10 August 2012 Order. I will first review the evidence with respect to these two events, which will inform my analysis of whether the Accused had knowledge of the 10 August 2012 Order, which is required for a finding that they had the necessary *mens rea*.

a) Evidence presented with respect to the Accused's knowledge of the Cease-and-Desist Letter

156. On 7 August 2012, Mr Marten Youssef, Spokesperson of the Tribunal, forwarded the Cease-and-Desist Letter to Ms Khayat by email.²⁸⁹ In his Letter, the Registrar requested *Al Jadeed* TV to cease the publication of the Episodes.²⁹⁰ During her suspect interview on 2 October 2013, Ms Khayat confirmed that she had received this email.²⁹¹

157. On 8 August 2012, *Al Jadeed* TV employee Mr Ibrahim Dsouki signed four acknowledgments of receipt of the Cease-and-Desist Letter delivered by Ms Véronique Bernard, senior security officer of the Tribunal, at *Al Jadeed* TV's headquarters.²⁹² The four addressees were Ms Al Bassam, Ms Khayat, Mr Al Amin and Mr Tahsine Khayat.²⁹³

158. On 7 August 2012, the Registrar forwarded the Cease-and-Desist Letter to the Lebanese Prime Minister requesting his assistance to ensure that *Al Jadeed* TV cease the broadcast of the Episodes.²⁹⁴ On 8 August 2012, the Prime Minister in turn forwarded the Cease-and-Desist Letter to Mr Abdel-Hadi Hasan Mahfouz, President of the NAMC requesting that he take the appropriate action.²⁹⁵ Mr Mahfouz testified that as soon as he received the Cease-and-Desist Letter, he called Mr Tahsine Khayat, Chairman of the Board of Directors of *Al Jadeed* TV. Mr Khayat informed him that *Al Jadeed* TV had interrupted the broadcast of the Episodes pending the review of the Cease-and-Desist Letter by the company's attorney.²⁹⁶ Mr Mahfouz further testified that on 8 August 2012 he met with Ms Al Bassam and *Al Jadeed* TV's attorney, Ms Maya Habli, who sought his advice with

²⁸⁹ P00057; P00056 (confidential); D00059 (confidential).

²⁹⁰ P00056 (confidential); D00059 (confidential).

²⁹¹ P00173 (confidential), p. 80.

²⁹² P00065; Lodge, T8, p. 11; P00131 (confidential) (second transcript), pp. 13-15, 20-25; P00132 (confidential).

²⁹³ P00132 (confidential).

²⁹⁴ D00057.

²⁹⁵ P00061(confidential).

²⁹⁶ Mahfouz, T12, 13 May 2015, pp. 27-28; P00062 (confidential) and P00062 (confidential), p. 2.

respect to the Letter.²⁹⁷ Based on the information provided by Ms Habli and Ms Al Bassam, Mr Mafouz advised them that there was no legal impediment to the broadcast of the Episodes.²⁹⁸

159. In a letter of 9 August 2012, Ms Habli informed the Registrar that *Al Jadeed* TV dismissed the Cease-and-Desist Letter as unfounded and not binding.²⁹⁹ The same day, Ms Khayat sent Ms Habli's letter to Mr Marten Youssef from the same email address to which Mr Youssef successfully transmitted the Cease-and-Desist Letter.³⁰⁰ *Al Jadeed* TV reported several times in its news bulletins on the content of the Letter stating that the company was not bound by it.³⁰¹

160. During her suspect interview of 2 October 2013, Ms Khayat confirmed that she was aware of the content of the Letter and of the response provided by *Al Jadeed* TV's counsel Ms Habli on 9 August 2012.³⁰²

b) Evidence presented with respect to the Accused's knowledge of the 10 August 2012 Order

161. The Defence presented a copy of Ms Khayat's passport documenting her travels overseas.³⁰³

162. The evidence shows that on 11 August 2012 Ms Bernard attempted to deliver the 10 August 2012 Order to *Al Jadeed* TV at the company's headquarters in Beirut but no one at the office accepted the delivery.³⁰⁴

163. During Ms Khayat's suspect interview of 2 October 2013, Mr Gagnon affirmed that the 10 August 2012 Order was not sent by email to Ms Khayat but to *Al Jadeed* TV and to someone else he does not identify.³⁰⁵ However, on 11 August 2012, Mr Anthony Brettell Lodge, Head of Registry and Resident Representative at the Tribunal's Beirut office, forwarded the 10 August 2012 Order to Ms Khayat by email to the same address from which Ms Khayat had exchanged emails with the Tribunal's Spokesperson regarding the Cease-and-Desist Letter.³⁰⁶ Mr Lodge confirmed in court that he sent this email

²⁹⁷ Mahfouz, T12, 13 May 2015, pp. 9, 18-19.

²⁹⁸ Mahfouz, T12, 13 May 2015, pp. 37-38.

²⁹⁹ P00074 (confidential).

³⁰⁰ P00075 (confidential); D00075 (confidential); D00076 (confidential); D00077 (confidential).

³⁰¹ P00067 (confidential); P00068 (confidential); P00070; P00072.

³⁰² P00173 (confidential), pp. 73-75.

³⁰³ D00065 (confidential); D00066 (confidential).

³⁰⁴ Bernard, T7, 17 April 2015, pp. 97-101; P00081; Lodge, T8, 20 April 2015, pp. 15-16, 33-34.

³⁰⁵ P00173, pp. 82-83.

³⁰⁶ Lodge, T8, 20 April 2015, pp. 12-14, 24, 41; P00160 (confidential).

to Ms Khayat but that he did not receive a confirmation of receipt or a response to his email of 11 August 2012. He also testified that there was no indication that the message was undeliverable, that the address was wrong or that for some other reason the intended recipient did not receive the mail in the inbox.³⁰⁷ Mr Lodge confirmed that, until the Order was given to the Lebanese authorities to be delivered to *Al Jadeed* TV, there was no attempt on his behalf, other than his email of 11 August 2012.³⁰⁸

164. On 14 August 2012, Chief Warrant Officers Messrs Ziad Eid and Akram Rahal served the 10 August 2012 Order to Ms Mariam Al Bassam who signed the service report at *Al Jadeed* TV's headquarters in Beirut.³⁰⁹ Mr Eid testified that he and Mr Rahal "informed [Ms Al Bassam] of the content" after which "she looked at the documents" and stated that "the Tribunal did not want us to publish anything" and "signed the receipt".³¹⁰ During Ms Khayat's suspect interview of 2 October 2013, both Ms Khayat and Ms Habli denied having seen the 10 August 2012 Order before or having knowledge of its service to Ms Al Bassam on 14 August 2012.³¹¹

165. On 8 October 2013, Ms Al Bassam filed a complaint for forgery of her signature on the report of service of the 10 August 2012 Order. On 23 October 2013, Ms Al Bassam withdrew her complaint.³¹² At the hearing related to her forgery complaint before Public Prosecutor Mr Bou Samra, Ms Al Bassam declared that she thought the document that had been served to her on 14 August 2012 concerned "the prohibition of the publication of news on the Special Tribunal" but that it actually related to "a ruling made by the Pre-Trial Judge".³¹³

166. In a letter dated 28 August 2012, the Registrar informed the Prosecutor-General of the Court of Cassation that on 27 August 2012 the Episodes were still available on *Al Jadeed* TV's online platforms despite the service of the 10 August 2012 Order on *Al Jadeed* TV and requested his assistance to ensure the discontinuation of the broadcasts.³¹⁴ On 6 September 2012, the Acting Prosecutor-General informed the President of the NAMC of the content of the 10 August 2012 Order; that the Order had been served on Ms Al Bassam and that despite this service the Episodes were still available on *Al Jadeed* TV's online

³⁰⁷ Lodge, T8, 20 April 2015, pp. 12-14, 25-27, 44.

³⁰⁸ Lodge, T8, 20 April 2015, pp. 14, 28.

³⁰⁹ P00080.

³¹⁰ Comeau, T7, 17 April 2015, pp. 118-121.

³¹¹ P00173 (confidential), pp. 80-90.

³¹² Bou Samra, T12, 13 May 2015, pp. 136, 139-140; P00138 (confidential).

³¹³ Bou Samra, T12, 13 May 2015, p. 150 ; P00139.

³¹⁴ P00063 (confidential).

platforms on 27 August 2012. He requested the President of the NAMC to take appropriate action to enforce the 10 August 2012 Order.³¹⁵ Mr Mahfouz testified that he took no action following the receipt of this letter because he considered that the NAMC had no jurisdiction to intervene in a matter of a criminal nature.³¹⁶

167. During and after Ms Khayat's suspect interview of 2 October 2013, *Al Jadeed* TV's attorney Ms Maya Habli requested the former *Amicus Curiae* Investigator to provide her with a copy of the 10 August 2012 Order.³¹⁷ On 30 October 2013, Ms Habli told Mr Bourgon that she had still not received such copy.³¹⁸ Mr Bourgon informed Ms Habli that due to its confidential nature, he could not provide her with a copy of the Order and that he had asked the Registrar's authorization to do so.³¹⁹

c) Findings with respect to Karma Khayat

168. Based on this evidence, I have to determine whether the *Amicus* has established that Ms Khayat had knowledge of the 10 August 2012 Order and deliberately violated it. I first note that there is no direct evidence on the record showing that Ms Khayat knew of the service of the 10 August 2012 Order to Ms Al Bassam.

169. Further the Defence asserts that Ms Khayat was not in Lebanon at the time of the service of the 10 August 2012 Order. It relies on Ms Khayat's passport to claim that she was in France at the time. I observe that the copy of Ms Khayat's passport adduced by the Defence indicates that she departed from Lebanon on 29 July 2012 and returned on 22 August 2012.³²⁰ However, I find that this is of no relevance given that Ms Khayat on a number of occasions during this period received, read and wrote email messages at the email address to which the copy of the Order was sent.

170. Indeed, the evidence shows that Mr Lodge transmitted the 10 August 2012 Order to the same email address used by Ms Khayat in her exchanges with Mr Marten Youssef, the Tribunal's Spokesperson, including those on 7 and 9 August 2012 concerning the Cease-and-Desist Letter.

³¹⁵ P00064 (confidential).

³¹⁶ Mahfouz, T12, 13 May 2015, pp. 87-88.

³¹⁷ D00053 (confidential).

³¹⁸ D00054 (confidential).

³¹⁹ D00055 (confidential).

³²⁰ D00066 (confidential).

171. Additionally, Mr Lodge testified that he received no failed delivery notification of this email. Indeed, nothing in the record indicates that *Al Jadeed* TV's server or Ms Khayat's e-mail inbox were not functioning on that date.

172. The only reasonable inference I can draw from this evidence is that Ms Khayat received the 10 August 2012 Order in her email inbox on 11 August 2012.

173. Additionally, while there is no proof on the record that Ms Khayat actually read Mr Lodge's e-mail or the attached Order, I note that Ms Khayat had knowledge of the Cease-and-Desist Letter to which *Al Jadeed* TV had responded on 9 August 2012. Ms Khayat therefore had every reason to suspect that the email she received from Mr Lodge, an official of the Tribunal, only three days later, concerned the broadcast of the Episodes and she deliberately chose to ignore it in order to be able to deny knowledge of its existence.

174. Finally, I note that during Ms Khayat's suspect interview both Ms Khayat and Ms Habli denied having previously seen the 10 August 2012 Order. To substantiate these denials, the Defence points to Ms Khayat's and Ms Habli's supposed surprised reactions when shown the 10 August 2012 Order. However, I am unable to draw any conclusions about the veracity of Ms Khayat's and Ms Habli's statements merely from viewing their demeanours during the video recording of the interview.

175. I conclude from the foregoing that Ms Khayat was at least wilfully blind to the 10 August 2012 Order.

176. With respect to Ms Khayat's deliberate violation of the 10 August 2012 Order, I found that despite having the ability to do so, as of 2 October 2013, more than a year later, Ms Khayat had not removed the Episodes from *Al Jadeed* TV's website. I am therefore satisfied that being wilfully blind to the 10 August 2012 Order and failing to remove the Episodes from *Al Jadeed* TV's website, Ms Khayat deliberately violated the Order.

d) Findings with respect to the corporate Accused

177. To obtain the corporate Accused's conviction for count 2, the *Amicus* needs to (1) establish the criminal responsibility of a specific natural person; (2) demonstrate that, at the relevant time, such natural person was a director, member of the administration, representative (someone authorized by the legal person to act in its name) or an employee/worker (who must have been provided by the legal body with explicit authorization to act in its name) of the corporate Accused; and (3) prove that the natural person's criminal

conduct was performed (a) on behalf of or (b) using the means of the corporate Accused. As discussed above, the law does not require the conviction of a natural person to establish the criminal liability of a corporation. All that is needed is the identification of the criminal conduct by one of the individuals capable of representing the corporation.

178. The *Amicus* has submitted evidence with respect to the conduct of two *Al Jadeed* TV employees: Ms Al Bassam and Ms Khayat. I will review the evidence to determine whether the elements have been satisfied for attributing their conduct to *Al Jadeed* TV.

i) Mariam Al Bassam

179. With respect to Ms Al Bassam's conduct, I am satisfied that she was Head of News and Political Programs at all times relevant to this case.³²¹ In his suspect interview of 3 October 2013, Mr Ibrahim Dsouki, Head of *Al Jadeed* TV's online department, declared that *Al Jadeed* TV's "news management" was responsible for "what goes on the website". He explained further that "everything that is being broadcasted on television is published on the website, so [the news management] have the decision of what is being broadcasted on TV and consequently what is being published on the website".³²² He confirmed that he took his instructions from both Ms Khayat, "deputy manager of news" and Ms Al Bassam, who were responsible for the news.³²³ In her suspect interview of 2 October 2013, Ms Khayat explained that Ms Al Bassam had the responsibility for the "sequence and introduction of the news bulletin" and that in other areas, which she did not specify, the decisions were taken by both her and Ms Al Bassam "in coordination".³²⁴ Ms Khayat explained further that Ms Al Bassam was aware of "every story that is broadcast daily" but that she was responsible for "the final output of the report" and that "[when] [Ms Al Bassam] manages a report for instance, during the news bulletin, she [...] follows it up from A to Z. It's her [...] call on the Story".³²⁵

180. In his suspect interview of 2 October 2013, Mr Al Amin explained that Ms Al Bassam did not play a role in the investigations or the editing of videos being aired. Mr Al Amin explained that Ms Al Bassam "supervise[d] the bulletin in general", "wr[ote] the introduction" and was responsible for that introduction.³²⁶

³²¹ Table of Agreed Facts (fact 6).

³²² P00131 (confidential) (second transcript), pp. 9-11.

³²³ P00131 (confidential) (second transcript), p. 12.

³²⁴ P00173 (confidential), pp. 53-54.

³²⁵ P00173 (confidential), pp. 54, 71.

³²⁶ P00126 (confidential), pp. 31-32.

181. I am satisfied that Ms Al Bassam was part of the management of the news department. However, Mr Dsouki does not provide further information on Ms Al Bassam's exclusive responsibilities. The evidence only shows that the production and broadcasting of the Episodes were the responsibility of Ms Khayat. Consequently, I cannot conclude beyond reasonable doubt that Ms Al Bassam had the ability to remove the Episodes from *Al Jadeed* TV's platforms in compliance with the 10 August 2012 Order. Therefore, I cannot conclude that Ms Al Bassam violated the 10 August 2012 Order.

ii) Karma Khayat

182. With respect to Ms Khayat's conduct, I found that being wilfully blind to the 10 August 2012 Order and having the ability to remove the Episodes from *Al Jadeed* TV's website but failing to do so, she deliberately violated the Order.

183. It is thus necessary to determine whether the evidence shows that Ms Khayat qualified as one of the persons whose conduct can be attributed to *Al Jadeed* TV. There is no proof on the record that Ms Khayat qualified as director or a member of the board of directors of the company. The evidence only shows that in October 2013, Mr Dimitri Khodr was *Al Jadeed* TV's general manager.³²⁷ The *Amicus* has also not proved that Ms Khayat was member of *Al Jadeed* TV's administration.

184. The evidence shows that Ms Khayat had some degree of authority within the news department of *Al Jadeed* TV. Indeed, Ms Khayat was deputy Head of News and Political Programs.³²⁸ Moreover, in her suspect interview of 2 October 2013, Ms Khayat explained that she and Ms Al Bassam were at the same level in the company's structure. As discussed above, Ms Khayat explained that while she handled certain matters by herself, Ms Al Bassam had the final decision for other matters, such as the "sequence and introduction of the news bulletins".³²⁹ Ms Khayat declared that she assumed "the direct responsibility" for the investigation of the Episodes.³³⁰ With respect to the online broadcasting of political content, Ms Khayat explained that Mr Dsouki, Head of the Online Department, coordinated with her and with Ms Al Bassam.³³¹ I also found that Ms Khayat was responsible for the production and broadcast of the Episodes.

³²⁷ P00131 (confidential) (second transcript), p.9.

³²⁸ Table of Agreed Facts (fact 5).

³²⁹ P00173 (confidential), pp.52-53.

³³⁰ P00173 (confidential), pp.54.

³³¹ P00173 (confidential), pp. 72-73.

185. However, while I am satisfied that Ms Khayat was part of the management of the News Department of *Al Jadeed* TV, there is no evidence of her having any managerial responsibility beyond this discrete department.

186. Additionally, other evidence indicates that Ms Khayat had no authority to represent the company before third parties. Indeed, under Article 22 of *Al Jadeed* TV's bylaws, the representatives of the company before third parties are the Chairman of the Board, the General Manager or the Delegate Member.³³² Article 23 of *Al Jadeed* TV's bylaws provides that the company "shall be bound by the signature of the Chairman of the Board [of Directors], the General Manager or the Delegate Member, within the limits of the powers conferred on them". In addition, the bylaws establish that the company "shall be bound by the signature or the actions carried out by its representatives, within the limits of the powers conferred to them."³³³ There is no evidence that Ms Khayat held any of these positions at the relevant times.

187. Moreover, an exhibit submitted by the *Amicus* shows that, in March 2009, it was Mr Tahsine Khayat, acting on behalf of *Al Jadeed* TV in his capacity as Chairman and Managing Director, who had the authority to grant a general power of attorney for Ms Habli.³³⁴ There is no evidence that Ms Khayat had been provided with any authorization to act in *Al Jadeed* TV's name at the relevant time.

188. In light of this evidence, I cannot conclude beyond reasonable doubt that Ms Khayat qualified as a representative or duly authorized agent of *Al Jadeed* TV in the sense of Article 210 of the Lebanese Criminal Code.

189. In view of the above, the *Amicus* has not proved that Ms Khayat was a director, member of the administration, representative or duly authorized worker of *Al Jadeed* TV at the relevant times. Her conduct can therefore not be attributed to the company.

190. In sum, the *Amicus* has not proved that either Ms Al Bassam's or Ms Khayat's conduct can be attributed to *Al Jadeed* TV.

³³² P00117 (confidential), p. 21.

³³³ P00117 (confidential), p. 22.

³³⁴ P00175 (confidential).

DISPOSITION

FOR THESE REASONS;

PURSUANT to Rules 60 *bis* (A), 60 *bis* (A) (iii), 60 *bis* (H) and 168 of the Rules;

I

FIND both Accused **NOT GUILTY** with respect to the charges under Count 1 of the Amended Order in Lieu of Indictment;

FIND the Accused Ms Karma Khayat **GUILTY** and the Accused *Al Jadeed* TV **NOT GUILTY** with respect to the charges under Count 2 of the Amended Order in Lieu of Indictment;

AND

ORDER that a sentencing hearing shall be held on 28 September 2015 subject to the modalities that I will set out in a separate scheduling order.

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

Dated 18 September 2015

Leidschendam, the Netherlands



Judge Nicola Lettieri
Contempt Judge

GLOSSARY OF ABBREVIATIONS

Abbreviation Used	Full reference
10 August 2012 Order	STL, <i>Prosecutor v. Ayyash et al.</i> , STL-11-01/PT/PTJ, Order for Immediate Removal of Disseminated Material and Cessation of Dissemination, 10 August 2012.
<i>Al Jadeed TV</i>	<i>Al Jadeed</i> [Co.] S.A.L./New T.V. S.A.L. (N.T.V.)
<i>Amicus</i>	<i>Amicus Curiae</i> Prosecutor
Appeals Panel	Appeals Panel of the Special Tribunal for Lebanon
<i>Ayyash et al.</i> case	STL, <i>Prosecutor v. Ayyash et al.</i> , STL-11-01
Cease-and-Desist Letter	Notice of Cease and Desist from the Registrar to Mr Tahseen Khayat, Confidential, 7 August 2012.
Closing arguments	Closing arguments made on 19 June 2015
Contempt Judge	Judge Nicola Lettieri (<i>see</i> STL, <i>In the Case Against New TV S.A.L. & Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/I/PRES, F0002, Order Designating Contempt Judge, Confidential and <i>Ex Parte</i> , 31 January 2014)
corporate Accused	<i>Al Jadeed</i> [Co.] S.A.L./New T.V. S.A.L. (N.T.V.)
Episodes	Broadcast aired on Al Jadeed TV on 6, 7, 9 and 10 August 2012 titled “Witnesses of the International Tribunal”.
ICTY	International Criminal Tribunal for the former Yugoslavia
Opening statements	Opening statements held on 16 April 2015
OTP	Office of the Prosecutor of the Special Tribunal for Lebanon
President	President of the Special Tribunal for Lebanon
Rules	Rules of Procedure and Evidence of the Special Tribunal for Lebanon, amended on 12 February 2015
Statute	Statute of the Special Tribunal for Lebanon
STL/Tribunal	Special Tribunal for Lebanon

FILINGS SUBMITTED IN THE PRESENT CASE

Decision in Proceedings for Contempt	STL, <i>In the case against New TV S.A.L. & Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/I/CJ, F0001, Redacted Version of Decision in Proceedings for Contempt with Orders in Lieu of an Indictment, 31 January 2014.
<i>Amicus</i> Jurisdiction Appeal	STL, <i>In the case against New TV S.A.L. & Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/PT/AP/AR126, F0001, Interlocutory Appeal against the Decision on Motion Challenging Jurisdiction, 31 July 2014.
Order in Lieu of Indictment	STL, <i>In the case against New TV S.A.L. & Karma Mohamed Thasin Al Khayat</i> , STL-14-06/I/CJ, F0001, Order in Lieu of an Indictment, 31 January 2014.
Order Designating Contempt Judge	STL, <i>In the case against New TV S.A.L. & Karma Mohamed Thasin Al Khayat</i> , STL-14-05/I/PRES, F0002, Order Designating Contempt Judge, 31 January 2014.
Registrar Decision Appointing Replacement <i>Amicus Curiae</i>	STL, <i>In the case against New TV S.A.L. & Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/I/CJ, F0004, Registrar's Decision Under Rule 60bis(ii) to Appoint a Replacement <i>Amicus Curiae</i> to Investigate and Prosecute contempt Allegations, 4 March 2014.
Defence Response to <i>Amicus</i> Jurisdiction Appeal	STL, <i>In the case against New TV S.A.L. & Karma Mohamed Thasin Al Khayat</i> , STL-14-05/PT/AP/AR126.1, F0005, Defence Response to <i>Amicus</i> Prosecutor's "Interlocutory Appeal against the Decision on Motion Challenging Jurisdiction", 11 August 2014.
Summons to Appear (<i>New TV S.A.L.</i>)	STL, <i>In the case against New TV S.A.L. & Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/I/CJ, F0006, Summons to Appear (<i>New TV S.A.L.</i>), 18 March 2014.
Summons to Appear (Ms Karma Khayat)	STL, <i>In the case against New TV S.A.L. & Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/I/CJ, F0007, Summons to Appear (Ms Karma Khayat), 18 March 2014.
Order Lifting Confidentiality	STL, <i>In the case against New TV S.A.L. & Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/I/CJ, F0008, Order Lifting Confidentiality, 24 April 2014.

Appointment of Counsel	STL, <i>In the case against New TV S.A.L. & Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/I/CJ, F0010, Appointment of Counsel Pursuant to Rules 57 (D) (vii) and 58 of the Rules of Procedure and Evidence, 9 May 2014.
Appointment of Co-Counsel	STL, <i>In the case against New TV S.A.L. & Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/I/CJ, F0011, Appointment of Co-Counsel Pursuant to Rules 57 (D) (vii) and 58 of the Rules of Procedure and Evidence, 12 May 2014.
Jurisdiction Appeal Decision	STL, <i>In the case against New TV S.A.L. & Karma Mohamed Thasin Al Khayat</i> , STL-14-05/PT/AP/AR126.1, F0012, Decision on Interlocutory Appeal Concerning Personal Jurisdiction in Contempt Proceedings, 2 October 2014.
<i>Amicus</i> Request for Leave to Amend Order in Lieu of Indictment	STL, <i>In the case against New TV S.A.L. & Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/PT/CJ, F0032, Request for Leave to Amend Order in Lieu of an Indictment with Annexes, 12 June 2014.
Defence Preliminary Motion Challenging Jurisdiction	STL, <i>In the case against New TV S.A.L. & Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/PT/CJ, F0037, Defence Preliminary Motion Challenging Jurisdiction, 16 June 2014.
Defence Response to <i>Amicus</i> Request for Leave to Amend Order in Lieu of Indictment	STL, <i>In the case against New TV S.A.L. & Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/PT/CJ, F0046, Defence Response to <i>Amicus</i> Prosecutor's Request for Leave to Amend Order in Lieu of an Indictment, 26 June 2014.
Response to "Defence Preliminary Motion Challenging Jurisdiction"	STL, <i>In the case against New TV S.A.L. & Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/PT/CJ, F0047, Response to "Defence Preliminary Motion Challenging Jurisdiction", 30 June 2014.
Response to Defence Request for Leave to Reply to "Response to 'Defence Preliminary Motion Challenging Jurisdiction'"	STL, <i>In the case against New TV S.A.L. & Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/PT/CJ, F0051, Response to Defence Request for Leave to Reply to "Response to 'Defence Preliminary Motion Challenging Jurisdiction'", 4 July 2014.

Jurisdiction Decision	STL, <i>In the case against New TV S.A.L. & Karma Mohamed Tahsin Al Khayat</i> , 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.
<i>Amicus</i> Pre-Trial Brief	STL, <i>In the case against New TV S.A.L. & Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/PT/CJ, F0057, Redacted Version of “Prosecution’s Pre-Trial Brief” dated 1 September 2014, 4 September 2014.
Defence Pre-Trial Brief	STL, <i>In the case against New TV S.A.L. & Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/PT/CJ, F0060, Redacted Version of “Defence Pre-Trial Brief”, 22 September.
Decision on <i>Amicus</i> Request for Leave to Amend Order in Lieu of Indictment	STL, <i>In the case against New TV S.A.L. & Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/PT/CJ, F0061, Decision on <i>Amicus Curiae</i> Prosecutor’s Request for Leave to Amend Order in Lieu of an Indictment and Scheduling Order, 7 October 2014.
<i>Amicus</i> Amended Pre-Trial Brief	STL, <i>In the case against New TV S.A.L. & Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/PT/CJ, F0066, Amended “Redacted Version of “Prosecution Pre-Trial Brief”, dated 4 September 2014”, 14 October 2014.
Amended Order in Lieu of Indictment	STL, <i>In the case against Al Jadeed [CO.] S.A.L./NEW T.V. S.A.L (N.T.V) Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/PT/CJ, F0068, Amended Order in Lieu of an Indictment, Annex, 17 October 2014.
Defence Amended Pre-Trial Brief	STL, <i>In the case against Al Jadeed [CO.] S.A.L./NEW T.V. S.A.L (N.T.V) Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/PT/CJ, F0071, Amended Defence Pre-Trial Brief, Confidential, 23 October 2014.
Table of Agreed Facts	STL, <i>In the case against Al Jadeed [CO.] S.A.L./NEW T.V. S.A.L (N.T.V) Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/PT/CJ, F0108, Table of Agreed Facts, 13 March 2015.
Expert Decision	STL, <i>In the case against Al Jadeed [CO.] S.A.L./NEW T.V. S.A.L (N.T.V) Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/PT/CJ, F0114, Decision on Expert Witness Anne-Marie de Brouwer, 27 March 2015.

Decision on <i>Amicus</i> Application for Protective Measures Regarding Witnesses AP11, AP12 and AP13	STL, <i>In the case against Al Jadeed [CO.] S.A.L./NEW T.V. S.A.L (N.T.V) Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/PT/CJ, F0119, Decision on <i>Amicus Curiae</i> Prosecutor Application for Protective Measures Regarding Witnesses AP11, AP12 and AP13, Confidential, 7 April 2015.
Decision on <i>Amicus</i> Bar Table Motion	STL, <i>In the case against Al Jadeed [CO.] S.A.L./NEW T.V. S.A.L (N.T.V) Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/PT/CJ, F0120, Decision on <i>Amicus Curiae</i> Prosecutor's Motion for Admission of Evidence Pursuant to Rule 154, 9 April 2015.
Decision on <i>Amicus</i> Application for Protective Measures Regarding Witness AP02	STL, <i>In the case against Al Jadeed [CO.] S.A.L./NEW T.V. S.A.L (N.T.V) Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/PT/CJ, F0122, Public Redacted Decision on <i>Amicus Curiae</i> Prosecutor's Application for Protective Measures Regarding Witness AP02, 16 April 2015.
Defence Submission of Company Representation Authorization	STL, <i>In the case against Al Jadeed [CO.] S.A.L./NEW T.V. S.A.L (N.T.V) Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/PT/CJ, F0123, Defence Submission of Company Representation Authorization, 15 April 2015.
Defence Witness and Exhibit Lists	STL, <i>In the case against Al Jadeed [CO.] S.A.L./NEW T.V. S.A.L (N.T.V) Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/T/CJ, F0136, Submission of Defence List of Witnesses and List of Evidence, Public with Confidential Annexes, 29 April 2015.
Decision on Defence Application for Protective Measures Regarding Witness DT13	STL, <i>In the case against Al Jadeed [CO.] S.A.L./NEW T.V. S.A.L (N.T.V) Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/T/CJ, F0148, Public Redacted Decision on Defence Application For Protective Measures Regarding Witness DT13, 4 June 2015; T13, 14 May 2015.
Defence Bar Table Motion	STL, <i>In the case against Al Jadeed [CO.] S.A.L./NEW T.V. S.A.L (N.T.V) Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/T/CJ, F0155, Defence Application for Admission of Evidence Pursuant to Rule 154 of the Rules of Procedure and Evidence, Public with Confidential Annex, 18 May 2015.

<i>Amicus</i> Final Trial Brief	STL, <i>In the case against Al Jadeed [CO.] S.A.L./NEW T.V. S.A.L (N.T.V) Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/T/CJ, F0164/CRG, Corrigendum to “ <i>Amicus</i> Final Trial Brief” Dated 8 June 2015, Confidential, 10 June 2015.
Defence Final Trial Brief	STL, <i>In the case against Al Jadeed [CO.] S.A.L./NEW T.V. S.A.L (N.T.V) Karma Mohamed Tahsin Al Khayat</i> , STL-14-05/T/CJ, F0165, Defence Final Trial Brief, Confidential with Public Annexes, 8 June 2015.

