

THE CONTEMPT JUDGE

Case No.: STL-14-06/PT/CJ
Before: Judge Nicola Lettieri, Contempt Judge
Registrar: Mr Daryl Mundis, Registrar
Date: 4 November 2015
Original language: English
Classification: Public

IN THE CASE AGAINST

AKHBAR BEIRUT S.A.L.
IBRAHIM MOHAMED ALI AL AMIN

**DECISION ON URGENT REQUEST FOR REVIEW OF THE DECISION ON THE
AMICUS CURIAE PROSECUTOR'S APPLICATION FOR PROTECTIVE
MEASURES OF 20 MARCH 2015**

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

**Counsel for *Akhbar Beirut* S.A.L. and Mr
Ibrahim Mohamed Ali Al Amin:**
Mr Antonio Abou Kasm



INTRODUCTION

1. The Defence requests that I “reconsider” my decision on 20 March 2015 (“Decision”)¹ with respect to protective measures granted for a number of witnesses, pursuant to Rules 140 and 110 (A) (ii) of the Rules of Procedure and Evidence (“Rules”).² In particular, the Defence seeks an order directing the *Amicus Curiae* Prosecutor (“*Amicus*”) to disclose to the Defence the unredacted statements of these witnesses and any confidential and *ex parte* materials filed by the *Amicus* in support of his applications for protective measures.³ The *Amicus* opposes the request.⁴ Having considered the Parties’ arguments, I grant the request, as explained below.

BACKGROUND

2. On 20 March 2015, I authorized the *Amicus* to temporarily withhold the disclosure to the Defence of the identities of seven prosecution witnesses (AP05, AP06, AP07, AP08, AP09, AP10 and AP11) until further ordered.⁵ I further authorized the *Amicus* to disclose only redacted versions of the statements of these witnesses to the Defence until further ordered and granted the *Amicus*’s request to permanently redact parts of the statement of witnesses AP10 and AP11.⁶

APPLICABLE LAW

3. Rule 110 states in the relevant parts:

Subject to the provisions of Rules 115, 116, 117 and 118:

(A) the Prosecutor shall make available to the Defence in a language which the Accused understands,

[...]

(ii) within the time-limit prescribed by the Trial Chamber or by the Pre-Trial Judge, copies of: (a) the statements of all witnesses whom the Prosecutor intends to call to testify

¹ STL-14-06/PT/CJ, F0088, Decision on the *Amicus Curiae* Prosecutor’s Applications for Protective Measures, Confidential and *Ex Parte*, 20 March 2015 (“Decision”). A public redacted version was filed the same day. All further references to filings and decisions refer to this case number unless otherwise stated.

² F0112, Urgent Defence Request for Reconsideration of the Decision on the *Amicus Curiae* Prosecutor’s Applications for Protective Measures of 20 March 2015, 21 October 2015 (“Motion”), para. 1.

³ *Id.* at p. 5.

⁴ F0113, Response to Defence “Demande urgente de la Défense aux fins de réexamen de la décision du 20 mars 2015 relative aux mesures de protection sollicitées par le Procureur *Amicus Curiae*,” 26 October 2015.

⁵ Decision, pp. 11-12.

⁶ Decision, pp. 11-12.

at trial; (b) all statements, depositions, or transcripts taken in accordance with Rules 93, 123, 125, 155, 156, 157 and 158; and (c) copies of the statements of additional prosecution witnesses.

4. Rule 115 (C) states that subject to Rule 133, the identity of the victim or witness shall be disclosed in sufficient time prior to the trial to allow adequate time for preparation of the defence.

5. Rule 140 states that a Chamber may, *proprio motu* or at the request of a Party with leave of the Presiding Judge, reconsider a decision, other than a judgement or sentence, if necessary to avoid injustice.

DISCUSSION

I. Arguments of the Parties

1. Position of the Defence

6. The Defence asserts that it is seriously handicapped in its capacity to conduct proper investigations and to adequately prepare for trial since more than three quarters of the identities of the Prosecution witnesses, as well as their unredacted statements, have not been disclosed.⁷ Indeed of the 12 witnesses mentioned in the *Amicus* witness list, the identities of witnesses AP05, AP06, AP07, AP08, AP09, AP10 and AP11, as well as their unredacted statements, have not been disclosed to the Defence.⁸

7. The Defence asserts that under Article 16 (2) of the Statute of the Tribunal “the accused is entitled to a fair and public hearing.”⁹ The Defence further asserts that Rule 115 (C) requires that the identity of the victims or witnesses must be disclosed within a sufficient period of time prior to the start of the trial to allow the Defence to properly prepare.¹⁰ Given that the date for trial has been set, the Defence urgently requires this material—which it refers to as “essential information”—because otherwise the lack of its disclosure would have a negative impact on the Defence’s preparation and may delay its ability to start the proceedings.¹¹

⁷ Motion, para. 9.

⁸ Motion, para. 9.

⁹ Motion, para. 10.

¹⁰ Motion, para. 10.

¹¹ Motion, paras 11-18.

8. The Defence asserts that the month of December is not favourable for conducting investigations as, given the festivities which take place throughout that whole month in Lebanon and elsewhere, people are less available and it is well known that activities slow down.¹²

9. Finally, the Defence, “in the interest of the transparency and fairness of the proceedings”, requests access to all of confidential and *ex parte* filings made by the *Amicus* in support of his applications for protective measures of the relevant witnesses.¹³

2. Position of the *Amicus*

10. The *Amicus* asserts that the Defence did not follow the procedure established by Rule 140 with respect to the reconsideration of decisions and that even if such request was considered on the merits, it would not meet the necessary standard for reconsideration for a number of reasons.¹⁴

11. He notes however that in any event I may determine the appropriate time to disclose the witnesses’ identities and their unredacted statements to the Defence, without the need to reconsider my Decision.¹⁵ In this context he stresses that both the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda have held that the appropriate time frame for disclosure of such information is 30 days prior to trial.¹⁶ He notes that a similar approach was adopted in the *Al Jadeed* case and should also be adopted here.¹⁷

II. Discussion

12. As a preliminary matter, I note that while the Defence characterizes its motion as a request for reconsideration, it is in fact seeking an order from me to the *Amicus* to disclose all outstanding unredacted statements of *Amicus* witnesses. In my previous Decision I stated that any protective measures would remain in place “until further order”.¹⁸ Because the Defence now seeks such “further order”, there is no room for reconsideration in this case. I therefore need not address the *Amicus*’ arguments with respect to reconsideration.

¹² Motion, para 18.

¹³ Motion, para 20.

¹⁴ *Amicus* Response, paras 4-8.

¹⁵ *Amicus* Response, para 9.

¹⁶ *Amicus* Response, para 10.

¹⁷ *Amicus* Response, para 11.

¹⁸ Decision, p. 11.

13. As the proceedings currently stand, of the 12 witnesses found in the *Amicus* witness list, the identities of witnesses AP05, AP06, AP07, AP08, AP09, AP10, AP11, as well as their unredacted statements, have not yet been disclosed to the Defence. These are more than half of the witnesses *Amicus* intends to present at trial. I agree with the Defence that the identities of the witnesses and their unredacted statements are essential to the Defence investigation and preparation for trial.¹⁹

14. I also note that the trial is scheduled to begin on 28 January 2015.²⁰ In this regard, I am persuaded by the Defence argument that the month of December is not favourable for conducting investigations, due to the festivities that take place throughout that month in Lebanon and elsewhere.²¹ Deferring the disclosure to a later date will limit the time available to the Defence to carry out its investigations.

15. Further, the *Amicus* has not made any arguments to the effect that disclosure of the identities of the witnesses and their unredacted statements to the Defence at this time would put these witnesses in danger or at risk. Indeed, any disclosure remains subject to my 3 July 2014 Order²² on protective measures, which established basic confidentiality requirements for these proceedings.

16. Consequently, in the interest of facilitating the preparation of an effective Defence, I order the *Amicus* to disclose to the Defence the unredacted statements within seven days of this Decision. I recall that the *Amicus* is permitted to permanently redact paragraphs 9-11 of the statement of witness AP10 and paragraphs 9-12 of witness AP11, pursuant to my previous Decision.²³

17. For the same reasons, I also find that the Defence must have access to all confidential *ex parte* submissions filed by the *Amicus* in support of his applications for protective measures.²⁴ I

¹⁹ Motion, para 9.

²⁰ F0111, Scheduling Order, 14 October 2015.

²¹ Motion, para 18.

²² F0030, Decision on the *Amicus Curiae* Prosecutor's application for Protective Measures and Non-disclosure, 3 July 2014.

²³ Decision, para 24.

²⁴ F0045, Application for Protective Measures and Non-disclosure, Confidential with Confidential and *ex parte* Annexe, 1 August 2014, Annexes B, C, D; F0079, Application for Non-disclosure, Confidential with Confidential and *ex parte* Annexes, 19 February 2015, Annexes A - B; F0082, Application for Non-disclosure of Portions of

note that paragraph 4 of Annex A of filing F0082 needs to be redacted before being disclosed to the Defence as it refers to the portions of the statement of witness AP10 which must remain permanently redacted. Annex B of filing F0082 containing the statements of witnesses AP10 and AP11 must also be redacted before being disclosed to the Defence as they contain information which must remain permanently redacted.

Witness Statements and Postponement of Disclosure, Confidential with Confidential and *ex parte* Annexes, 27 February 2015, Annexes A - B.

DISPOSITION

FOR THESE REASONS;

PURSUANT to Rule 115 (C)

I

GRANT the Motion in part,

ORDER the *Amicus*, within seven days of this decision, to disclose to the Defence the unredacted statements of witnesses AP05, AP06, AP07, AP08, AP09, AP10, AP11, excluding the permanently redacted paragraphs 9-11 of the statement of witness AP10 and paragraphs 9-12 of the statement of witness AP11.

ORDER the *Amicus*, within seven days of this decision, to file confidential and redacted versions of Annexes A and B of filing F0082, as described above.

REQUEST the Registry to reclassify Annexes B, C and D of filing F0045 and Annexes A and B of filing F0079 from confidential *ex parte* to confidential;

DISMISS the Motion in all other respects.

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

Dated 4 November 2015

Leidschendam, the Netherlands



Judge Nicola Lettieri
Contempt Judge

