

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

**THE CONTEMPT JUDGE**

**Case No.:** STL-14-06/PT/CJ  
**Before:** Judge Nicola Lettieri, Contempt Judge  
**Registrar:** Mr Daryl Mundis, Registrar  
**Date:** 11 December 2015  
**Original language:** English  
**Classification:** Public

IN THE CASE AGAINST

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

**PUBLIC REDACTED VERSION OF DECISION ON *AMICUS CURIAE*  
PROSECUTOR'S MOTION FOR ADMISSION OF RECORDS OF SUSPECT  
INTERVIEWS AND RELATED DOCUMENTS**

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

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



## INTRODUCTION

1. On 18 and 19 November 2013, the *Amicus Curiae* Investigator and members of his team conducted suspect interviews with [REDACTED] and Mr Ibrahim Mohamed Ali Al Amin, journalists for the newspaper owned by *Al Akhbar Beirut S.A.L.* (“*Al Akhbar*”), as part of an investigation into alleged contempt of the Tribunal.<sup>1</sup>

2. The *Amicus Curiae* Prosecutor (“*Amicus*”) now requests that I admit into evidence the audiovisual recordings and written transcripts of the suspect interviews of [REDACTED] and Mr Al Amin, as well as documents referred to in the course of those interviews.<sup>2</sup> The Defence generally does not oppose the Motion but seeks a number of editorial and linguistic clarifications relating to some of the documents.<sup>3</sup> The *Amicus* has requested leave to reply.<sup>4</sup>

3. Having considered the Parties’ submissions and reviewed the relevant materials, I admit the recordings and written transcripts of the suspect interviews of both [REDACTED] and Mr Al Amin. However, for the reasons below I deny the request to admit into evidence the documents related to [REDACTED] interview and the CD-ROM that was introduced by Mr Al Amin during his interview.

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<sup>1</sup> STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/CJ, F0125, Motion for Admission of Records of Suspect Interviews and Related Documents, Confidential, 18 November 2015, p.1 (“Motion”). All further references to filings and decisions refer to this case number unless otherwise stated.

<sup>2</sup> Motion, p.1.

<sup>3</sup> F0133, Defence Response to the Motion for Admission of the Recordings of Interviews of [REDACTED] Al Amin and [REDACTED] and Documents Related Thereto, Confidential, 2 December 2015 ; Corrigendum of the Defence Response to the Motion for Admission of the Recordings of Interviews of Mssrs Al Amin and [REDACTED] and Documents Related Thereto, Dated 2 December 2015, Confidential, 2 December 2015 ; Corrected Version of the Defence Response to the Motion for Admission of the Recordings of Interviews of Mssrs Al Amin and [REDACTED] and Documents Related Thereto, Dated 2 December 2015, Confidential, 3 December 2015 (“Defence Response”).

<sup>4</sup> F0134, Request for Leave to Reply to Defence “Version corrigée de la Réponse de la Défense aux fins d’admission des enregistrements d’interrogatoires de MM. Al Amin et [REDACTED] et des pièces y afférentes, en date du 2 décembre 2015”, Confidential, 4 December 2015 (“Request for Leave to Reply”).

## APPLICABLE LAW

4. The following provisions of the Rules, relevant to my decision, apply *mutatis mutandis* in the present case.<sup>5</sup>

5. Under Rule 154, evidence may be admitted in the form of a document or other record, consistently with Rule 149 (C) and (D). Pursuant to Rule 149 (C) and (D), a Chamber may admit any relevant evidence which it deems to have probative value; but it may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.<sup>6</sup> To demonstrate probative value, the tendering party need only show sufficient indicia of reliability.<sup>7</sup> Probative value, in this context, is distinct from the weight ultimately attributed to a document or record by the Chamber.<sup>8</sup> The offering party must further be able to demonstrate, with clarity and specificity, where and how each document or record fits into its case.<sup>9</sup>

6. The Chamber may exclude evidence gathered in violation of the rights of the suspect or the accused as set out in the Statute and the Rules. Furthermore, no evidence shall be admissible if obtained by methods which cast substantial doubt on its reliability.<sup>10</sup>

7. Rule 65, which reflects Article 15 of the Tribunal's Statute, articulates the rights of suspects during an investigation. It provides, in relevant part:

(A) [A] suspect who is to be questioned by the Prosecutor shall have the following rights, of which the Prosecutor shall inform the suspect prior to questioning in a manner and language the suspect understands:

- (i) The right to be informed that there are grounds to believe that he has committed a crime within the jurisdiction of the Tribunal;
- (ii) the right to be assisted by counsel of the suspect's choosing or to be assigned legal assistance without payment if the suspect does not have sufficient means to pay for such assistance;

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<sup>5</sup> Rule 60 *bis* (H) STL RPE.

<sup>6</sup> STL, *In the case against New TV S.A.L. & Khayat*, STL-14-05/PT/CJ, F0102, Decision on *Amicus Curiae* Prosecutor's Motion for Admission of Record of Karma Khayat's Suspect Interview and Related Documents, 4 March 2015, para. 7 ("Decision for Admission of Khayat's Suspect Interview").

<sup>7</sup> STL, *In the case against New TV S.A.L. & Khayat*, STL-14-05/PT/CJ, F0120, Decision on *Amicus Curiae* Prosecutor's Motion for Admission of Evidence Pursuant to Rule 154, 9 April 2015, para. 7.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> Decision for Admission of Khayat's Suspect Interview, para. 7; *see also* Rule 164 STL RPE.

- (iii) the right to have the free assistance of an interpreter if the suspect cannot understand or speak the language to be used for questioning; and
  - (iv) the right to remain silent and to be cautioned that any statement the suspect makes shall be recorded and may be used in evidence.
- I. (B) Questioning of a suspect shall not proceed without the presence of counsel, unless the suspect has voluntarily and expressly waived the right to counsel.
8. Rule 66 sets out the requirements for recording the questioning of suspects. It provides, in relevant part:

(A) Whenever the Prosecutor questions a suspect, the procedure envisaged in Rule 65 and the questioning shall be video-recorded or, if that is not practicable, audio-recorded, in accordance with the following procedure:

- (i) The suspect shall be informed in a language he understands that the questioning is being video-recorded or audio-recorded;
- (ii) In the event of a break in the course of the questioning, the questioner shall state the fact and the time of the break before video-recording or audio-recording ends, and the time of resumption of the questioning shall also be recorded;
- (iii) At the conclusion of the questioning, the suspect shall be offered the opportunity to clarify anything he has said and to add or amend anything he may wish, and the time of conclusion shall be recorded;
- (iv) A copy of the recorded tape or digital recording or, if multiple recording apparatus were used, one of the original recorded tapes or memory cards shall be supplied to the suspect or his counsel; [and]
- (vi) The tape or digital recording shall be transcribed if the suspect becomes an accused.

## DISCUSSION

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

9. The *Amicus* seeks the admission into evidence of (i) the audiovisual recording and transcript of Mr Al Amin's suspect interview, together with certain items handed over by Mr Al Amin during the interview, and (ii) the audiovisual recording and transcript of [REDACTED] suspect interview, together with documents shown to and signed by [REDACTED] in the course of his interview.<sup>11</sup> The *Amicus* notes that both Mr Al Amin and

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<sup>11</sup> Motion, para.8.

[REDACTED] immediately received a copy of the recording of their interviews and that both copies were disclosed to the Defence in July and September 2014, respectively.<sup>12</sup>

10. The *Amicus* asserts that the recording and transcript of Mr Al Amin's interview are relevant and probative, as Mr Al Amin gave evidence on many aspects of the publication of the two *Al Akhbar* articles of 15 and 19 January 2013 of which part of the allegations of contempt relate, the circumstances preceding these publications, his position towards the Tribunal and his direct involvement in the two publications.<sup>13</sup>

11. The *Amicus* also states that the recording and transcript of [REDACTED] interview are relevant and probative, as [REDACTED] gave evidence as to the role of the two Accused, affirming that Mr Al Amin is the Head of the Board of Directors, General Manager and Director in charge of *Al Akhbar* in addition to providing details about the way in which the company publishes, its interest in the Tribunal's activities and the roles and position of others within *Al Akhbar*.<sup>14</sup>

12. The *Amicus* further contends that all of the requirements of Article 15 of the Statute and Rules 65 and 66 were satisfied with respect to the interviews of both Mr Al Amin and [REDACTED].<sup>15</sup>

13. The *Amicus* also seeks admission of documents related to the interviews of both suspects. In particular, he seeks the admission of a signed undertaking related to the non-dissemination of the interview recording and three other documents provided by Mr Al Amin which were introduced during the course of his interview, being (i) a sheet with questions to the *Amicus Curiae* investigator; (ii) the written statement of Mr Al Amin; and (iii) a CD-ROM provided by Mr Al Amin.<sup>16</sup> The *Amicus* argues that the documents related to Mr Al Amin's interview "constitute the core of his evidence" and therefore form an inseparable and indispensable part of his interview, which in turn is central to the narrative of this case.<sup>17</sup>

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<sup>12</sup> *Id.* at para. 9.

<sup>13</sup> *Id.* at para. 10.

<sup>14</sup> *Id.* at para. 12.

<sup>15</sup> *Id.* at para. 14.

<sup>16</sup> Motion, para. 19.

<sup>17</sup> *Id.* at paras 19 and 21.

14. Finally, the *Amicus* seeks the admission of nine documents which were discussed, shown to and signed by [REDACTED] in the course of [REDACTED] suspect interview, being (i) the copy of an identity document; (ii) *Al Akhbar* article of 15 January 2013; (iii) *Al Akhbar* article of 19 January 2013; (iv) *Al Akhbar* article of 28 June 2011; (v) Notice of Cease and Desist; (vi) *Al Akhbar* article of 21 January 2013; (vii) *Al Akhbar* article of 10 April 2013; (viii) copies of mobile phone text messages and (ix) an undertaking.<sup>18</sup> The *Amicus* maintains that these documents also formed an inextricable part of [REDACTED] suspect interview as all were shown to and signed by [REDACTED] and seven of the nine documents formed the subject matter of specific questions and answers provided in the course of the suspect interview.<sup>19</sup>

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

15. In its response to the Motion, the Defence states that it is not opposed to the admission of evidence as sought by the *Amicus*.<sup>20</sup> However, the Defence asserts that in an apparent oversight, the *Amicus* has failed to include a letter that forms part of a larger document contained on a CD-ROM which was provided by Mr Al Amin during his suspect interview. Further, the Defence recalls that at the conclusion of [REDACTED] suspect interview, [REDACTED] expressed concerns about the quality of the language interpretation provided therein.<sup>21</sup>

16. The Defence therefore requests that before granting the *Amicus*'s motion to admit these recordings, transcripts and documents into evidence, I order the inclusion into the record of the above-mentioned missing document.<sup>22</sup> He also requests that I order that the transcripts of [REDACTED] interview be "properly translated" before they are admitted.<sup>23</sup>

### **C. Reply from the *Amicus***

17. The *Amicus* has requested leave to reply to the Defence Response, submitting that new issues have arisen in the Response which relate to the fair and expeditious conduct of the

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<sup>18</sup> *Id.* at para. 20.

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

<sup>20</sup> Defence Response, para. 2.

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

<sup>22</sup> Defence Response, Orders requested.

<sup>23</sup> *Ibid.*

proceedings.<sup>24</sup> He avers that it is in the interest of justice to grant leave as the Defence has made two requests which are inappropriate and could lead me to draw erroneous conclusions.<sup>25</sup>

18. In response to the first request, the *Amicus* responds that any missing documentation from the CD-ROM will be remedied.<sup>26</sup> As concerns the second request, the *Amicus* draws attention to the distinction between the contemporaneous oral interpretation provided during [REDACTED] interview and the subsequent transcription and translation of that interview provided by the Tribunal's Language Services Section, which he asserts is a complete record of the interview.<sup>27</sup>

## II. Discussion

### A. Audiovisual Recording and Transcript of Mr Al Amin's Suspect Interview

19. Having considered the *Amicus's* submissions and reviewed the audiovisual recordings and transcript of Mr Al Amin's suspect interview, I conclude that the recordings and transcript are plainly relevant and have probative value. The information provided by Mr Al Amin in the interview in the form of a written statement which he reads and then files with the *Amicus Curiae* investigator clearly relates to the alleged *actus reus* and *mens rea* of the offences charged in the Order in Lieu of an Indictment.

20. There is then no reason to exclude this material under Rule 149 (D). The interview was conducted in a manner that respects the right to a fair trial and the fundamental rights of a suspect which are set out in the Statute and Rules. The *Amicus Curiae* Investigator satisfied Rule 65 (A)'s requirements, given that Mr Al Amin was informed prior to questioning in a manner and language he understood that he was suspected of committing contempt under the Rules; that he had the right to be assisted by counsel of his choosing; that he had the right to the free assistance of an interpreter during the interview; and that he had the right to remain silent but that any statement he made would be recorded and could be used in evidence.<sup>28</sup> Although he had

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<sup>24</sup> Request for Leave to Reply, para.1.

<sup>25</sup> *Ibid.*

<sup>26</sup> Request for Leave to Reply, para.5.

<sup>27</sup> Request for Leave to Reply, para.6.

<sup>28</sup> ERNs AP1406\_052\_Part\_1\_01286-01286, AP1406\_151\_02017-02060, p.7, lines 11-18; p.8, lines 1-14; p.9, lines 2-9; p.11, lines 14-18 and 24-29; p.12, lines 2-13; p.13, lines 2-21.

such a right, Mr Al Amin declined to have the assistance or presence of counsel at the outset of the interview and therefore it is nevertheless in compliance with Rule 65 (B).<sup>29</sup>

21. I also note that the *Amicus Curiae* investigator complied with the technical requirements set out in Rule 66, including that Mr Al Amin be given an opportunity to make clarifications to his statement and that he be provided with a copy of the recording.<sup>30</sup>

22. Finally, nothing suggests that this evidence was obtained by methods which cast substantial doubt on its reliability. I therefore find admissible the recordings and accompanying transcript of Mr Al Amin's suspect interview.<sup>31</sup>

### ***B. Documents Shown to and Provided by Mr Al Amin During Suspect Interview***

23. I have reviewed the four documents which the *Amicus* tenders for admission into evidence. With respect to the questions and written statement submitted by Mr Al Amin, in addition to the undertaking he signed, I conclude that each of these three documents is relevant and has probative value. The documents provided by Mr Al Amin himself are part and parcel of his suspect interview and, in fact, contain the only substantive content therein. In particular, Mr Al Amin's written statement directly relates to the alleged *actus reus* and *mens rea* of the offences with which both Accused are charged. There is no reason to exclude these documents under Rule 149 (D) as the documents were not obtained by methods which cast substantial doubt on their reliability. I therefore find these documents admissible.<sup>32</sup>

24. With respect to document (iii), a CD-ROM handed over by Mr Al Amin in the course of his suspect interview, I note that this document contains in excess of six hundred pages of material of which the *Amicus* has failed to explain the relevance; nor has he demonstrated that the material was discussed in any substantive way during the course of the interview. Lacking sufficient detail from the *Amicus* on how these materials are probative, I deny the request to

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<sup>29</sup> ERNs AP1406\_052\_Part\_1\_01286-01286, AP1406\_151\_02017-02060, p.13, lines 22-29 and p.14, lines 3-4.

<sup>30</sup> ERNs AP1406\_052\_Part\_1\_01286-01286, AP1406\_052\_Part\_2\_01287-01287, AP1406\_052\_Part\_3\_01288-01288, AP1406\_151\_02017-02060.

<sup>31</sup> ERNs AP1406\_151\_02001-02060, AP1406\_052\_Part\_1\_01286-01286, AP14 AP1406\_052\_Part\_2\_01287-01287, AP1406\_052\_Part\_3\_01288-01288.

<sup>32</sup> ERNs AP1406\_055\_00644-00645, AP1406\_056\_00646-00650, AP1406\_060\_ENG-01285-01285.



admit this particular document into evidence.<sup>33</sup> As a consequence, I find it unnecessary to further address the Defence request in relation to the document purportedly missing from this CD-ROM.

**C. Audiovisual Recording and Transcript of [REDACTED] Suspect Interview**

25. Having considered the *Amicus's* submissions and reviewed the audiovisual recordings and transcript of [REDACTED] suspect interview, I conclude that the recordings and transcript are plainly relevant and have probative value. The information provided by [REDACTED] in the interview is relevant to the acts and conduct of the Accused, namely the role played by Mr Al Amin within the hierarchical structure of *Al Akhbar* newspaper and an acknowledgement of certain articles published by the newspaper. Importantly, I note that the requirements of Rule 65,<sup>34</sup> which articulates the rights of suspects during an investigation, and Rule 66,<sup>35</sup> which sets out the conditions for recording the questioning of suspects, were met. While the interview took place without the presence of legal counsel to assist [REDACTED], [REDACTED] unequivocally waived such a right at the commencement of the interview. I therefore find the interview is in compliance with Rule 65 (B).<sup>36</sup> Moreover, there is no evidence to suggest that this evidence was obtained by methods which cast substantial doubt on its reliability. Based on the fulfilment of the above-mentioned requirements, I therefore find admissible the recordings and accompanying transcript of [REDACTED] suspect interview.<sup>37</sup>

26. Finally, the Defence has raised concerns in respect of the quality of the interpretation provided over the course of [REDACTED] interview. I note however that the transcript in its current form provides the Tribunal's translations of the English and Arabic spoken during the interview, including the live interpretations. It is therefore apparent on its face at what point the live interpretation may have faltered or been deficient for [REDACTED]. As a result, I decline to make any further order with respect to the translation of this document which is separate from the interpretation of which [REDACTED] raised concerns.

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<sup>33</sup> ERNs AP1406\_057\_00651-00652, AP1406\_058\_00653-00653, AP1406\_059\_00654-01284.

<sup>34</sup> ERNs AP1406\_092\_Part\_1\_01494, AP1406\_182\_02073-02165, p.7, lines 4-10.

<sup>35</sup> ERNs AP1406\_092\_Part\_1\_01494, AP1406\_182\_02073-02165, p.7, lines 11-15 ; p.8, lines 3-12, p.9, lines 2-15, p.13, lines 6-29, p.14.

<sup>36</sup> ERNs AP1406\_092\_Part\_1\_01494, AP1406\_182\_02073-02165, p.14, lines 17-18.

<sup>37</sup> ERNs AP1406\_152\_02061-02165, AP1406\_092\_Part\_1\_01494, AP14 AP1406\_092\_Part\_2\_01495, AP1406\_092\_Part\_3\_01496, AP1406\_092\_Part\_4\_01497, AP1406\_092\_Part\_5\_01498.

**D. Documents Shown to [REDACTED] During Suspect Interview**

27. The *Amicus* submits the documents purportedly shown to and signed by [REDACTED] during [REDACTED] suspect interview in a single annex,<sup>38</sup> instead of presenting each document for which he seeks admission into evidence in separate and properly identified files. I have reviewed this annex, which contains 64 pages of different documents and articles and note that many are not clearly identified or dated, particularly the texts in Arabic whose English translations, if they are included, are not clearly indicated. As a result, I am unable to determine which documents were shown to the witness at which point in the interview or if they are, in fact, the documents referenced.

28. As a result, I cannot admit a single annex whose contents are not sufficiently or clearly identifiable. Lacking further clarification from the *Amicus* on how each of the materials contained in the document are relevant and which pages correspond to articles referenced in [REDACTED] interview and which pages are translations, I deny the motion to admit this document into evidence.<sup>39</sup>

**E. Application for Leave to Reply**

29. In light of the aforementioned reasons in which I dismissed the requests made in the Defence's Response, I find that the issues raised in the *Amicus*'s Request for Leave to Reply are now moot, and in the interest of the economy of the proceedings, I dismiss the request for leave to reply to the Defence Response.

**F. Confidentiality**

30. The *Amicus* filed this Motion confidentially. He did so because his application states that [REDACTED] was interviewed as a "suspect" and that confidentiality or protective measures may be in place until such time that this evidence is admitted and used in the course of public, open proceedings.<sup>40</sup> I find no reason that would require maintaining the confidentiality of this Motion in its entirety, nor of the Response, the Reply or of this Decision. However, I consider it appropriate that any reference to [REDACTED] as a suspect remain confidential at this stage. I therefore order the parties to file public redacted versions of their filings. In line with Tribunal

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<sup>38</sup> ERN AP1406\_094\_01555-01618

<sup>39</sup> ERN AP1406\_094\_01555-01618.

<sup>40</sup> Motion, para.22.

practice, the material I found admissible will remain confidential until used in the course of the trial proceedings.

## DISPOSITION

### FOR THESE REASONS;

**PURSUANT** to Article 15 of the Tribunal's Statute and Rules 60 *bis* (h), 65, 66, 149 (C) and 154;

**I**

**GRANT** the *Amicus's* Motion in part;

**ADMIT** into the trial record the audiovisual recording and transcript of Mr Al Amin's suspect interview, as well as related documents (i), (ii) and (iv);

**ADMIT** into the trial record the audiovisual recording and transcripts of [REDACTED] suspect interview;

**REQUEST** the Registry to assign exhibit numbers to the admitted documents;

**DISMISS** the Motion in all other respects;

**DISMISS** the requests made in the Response;

**DISMISS** the Request for Leave to Reply; and

**ORDER** the Parties to file public redacted versions of their submissions.

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

Dated 11 December 2015

Leidschendam, the Netherlands



Judge Nicola Lettieri  
Contempt Judge

