



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

**THE CONTEMPT JUDGE**

**Case No.:** STL-14-06/T/CJ  
**Before:** Judge Nicola Lettieri, Contempt Judge  
**Registrar:** Mr Daryl Mundis, Registrar  
**Date:** 29 March 2016  
**Original language:** English  
**Classification:** Public

**IN THE CASE AGAINST**

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

**DECISION ON DEFENCE REQUEST FOR AMENDMENT OF EXHIBIT LIST**

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

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



## **INTRODUCTION**

1. The Defence submitted its witness and exhibit lists on 8 March 2016. On 16 March 2016, the Defence submitted a Request to add two documents to its exhibit list.<sup>1</sup> The *Amicus* opposes the Request.<sup>2</sup>

2. Having considered the arguments of the Parties, I reject the request for the reasons below.

## **APPLICABLE LAW**

3. With respect to the amendment of exhibit lists, I have previously ruled that that,

[c]onsistent with well-established international criminal case-law and that of this Tribunal's Trial Chamber, I may permit the *Amicus* to amend his witness and exhibit lists in the interests of justice. In making such determination, I must balance the *Amicus*'s interest in presenting available evidence against the rights of the Accused to adequate time and facilities to prepare for trial. The evidence must be *prima facie* relevant and probative, and I may consider the following factors, among others: (i) whether the *Amicus* has shown good cause for not seeking the amendments at an earlier stage, (ii) the stage of the proceedings and (iii) whether granting the amendments would result in undue delay.<sup>3</sup>

4. This test applies equally when the Defence requests to amend its exhibit list.<sup>4</sup>

## **DISCUSSION**

### **I. Positions of the Parties**

#### ***A. Position of the Defence***

5. The Defence requests that it be permitted to add two documents to its exhibit list, being the judgment rendered by the Contempt Judge in the *New T.V. S.A.L./Khayat* case<sup>5</sup> as well as the

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<sup>1</sup> STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/T/CJ, F0212, *Demande d'autorisation aux fins de modifications de la liste d'éléments de preuve de la défense*, 14 March 2016 ("Request"). All further references to filings and decisions refer to this case number unless otherwise stated.

<sup>2</sup> F0216, Response to Defence «Demande d'autorisation aux fins de modifications de la liste d'éléments de preuve de la défense», 21 March 2016 ("Response")

<sup>3</sup> F0164, Public Redacted Version of Decision on Motions to Amend the *Amicus Curiae* Prosecutor's Exhibit List and Witness Lists, 18 December 2015, para. 3.

<sup>4</sup> STL, *In the case against New T.V. S.A.L. and Khayat*, STL-14-05/T/CJ, Oral Order, Trial Proceedings, 12 May 2015, pp. 2-3.

<sup>5</sup> STL, *In the matter against New T.V. S.A.L. and Khayat*, 14-05/T/CJ ("New T.V. S.A.L./Khayat case").

recent judgment issued by the Appeals Panel in the same case (“Judgments”).<sup>6</sup> The Defence argues that the legal and factual findings contained in these Judgments are relevant to this case and that it intends to request their admission into the record at a later stage.<sup>7</sup> In this context, it refers to a previous decision in which I found that the Defence had established a significant factual link between the *New T.V. S.A.L./Khayat* case and the present matter.<sup>8</sup>

6. The Defence notes that the Appeals Panel only issued its judgment in the *New T.V. S.A.L./Khayat* case on 8 March 2016.<sup>9</sup> It asserts that the *Amicus* will not be prejudiced in any way by the addition of these exhibits at this stage of the proceedings as the *Amicus* is also a party to the *New T.V. S.A.L./Khayat* case and has had access to the confidential versions of both exhibits.<sup>10</sup> In any event, the Defence notes that it disclosed both judgments to the *Amicus* on 11 March 2016.<sup>11</sup>

### ***B. Position of the Amicus***

7. The *Amicus* opposes the addition of the Judgments to the Defence exhibit list.<sup>12</sup> He argues that they are part of the Tribunal record; therefore, their addition to the Defence exhibit list is unnecessary in order for the Defence to cite or refer to these documents in the course of the proceedings, the examination of witnesses or in the final trial brief.<sup>13</sup> He further argues that a court’s judicial record may be referred to without being admitted into evidence.<sup>14</sup>

8. The *Amicus* asserts further that the Judgments should not be added to the Defence exhibit list given that the facts in these proceedings and the *New T.V. S.A.L./Khayat* case substantially differ as to the events, the timeframe, mode of transmission and individuals involved.<sup>15</sup> The *Amicus* submits that the same evidence can be assessed differently in different cases because of

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<sup>6</sup> Request, para. 1.

<sup>7</sup> *Id.* at para. 3.

<sup>8</sup> *Id.* at para. 2.

<sup>9</sup> *Id.* at para. 3.

<sup>10</sup> *Id.* at para. 5.

<sup>11</sup> *Ibid.*

<sup>12</sup> Response, para. 5.

<sup>13</sup> *Id.* at para. 2.

<sup>14</sup> *Ibid.*

<sup>15</sup> Response, para. 3.

other evidence on the record and states that a Trial Chamber has the obligation to assess the evidence and reach its own conclusion.<sup>16</sup>

9. Finally, the *Amicus* asserts that adding the Judgments as exhibits is contrary to the established practice of international tribunals as they do not qualify as evidence and adding them will “inadvertently emphasize the facts of the *New T.V. S.A.L./Khayat* case to the detriment of other contempt cases.”<sup>17</sup>

## II. Discussion

10. I recall that the Defence requests the addition of the Judgments to its exhibit list, as it argues that the legal and factual findings contained in these Judgments are relevant to this case and intends to request their admission into evidence at a later stage.

11. With respect to any legal holdings made by the Contempt Judge and the Appeals Panel, I agree with the *Amicus*’s position that such reasoning may be referred to without the need to admit the underlying filings into evidence given that they form part of the Tribunal’s case-law.

12. Furthermore, as regards any factual findings contained in the Judgments, I recall that the introduction of such findings from other proceedings is governed by Rule 160 (B), which applies *mutatis mutandis* in contempt proceedings pursuant to Rule 60 *bis* (H). Rule 160 (B) states that:

(B) At the request of a Party or *proprio motu*, the Trial Chamber, after hearing the Parties, may decide, in the interests of a fair and expeditious trial, to take judicial notice of adjudicated facts from other proceedings of the Tribunal or from proceedings of national and international jurisdictions relating to matters at issue in the current proceedings, to the extent that they do not relate to acts and conduct of the accused that is being tried.

13. In its request the Defence has not identified the discrete adjudicated facts for which I could take judicial notice as is required by Rule 160 and the applicable case-law. Instead, the Defence has improperly referred to the entirety of both Judgments rendered in the *New TV SAL/Khayat* case.

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<sup>16</sup> Response, para. 3.

<sup>17</sup> *Id.* at para. 4.

14. Therefore, I find that it is not appropriate to add the Judgments to the Defence exhibit list for the purpose of the later admission in to evidence of the legal and factual findings contained therein. I therefore dismiss the Request.

### **DISPOSITION**

#### **FOR THESE REASONS;**

**I**

**DISMISS** the Request.

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

Dated 29 March 2016

Leidschendam, the Netherlands



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Judge Nicola Lettieri  
Contempt Judge

