

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:** 1 April 2016

**Original language:** English

**Classification:** Public

IN THE CASE AGAINST

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

**PUBLIC REDACTED VERSION OF CONSOLIDATED DECISION ON DEFENCE  
REQUESTS FOR THE ADMISSION OF THE STATEMENTS OF WITNESSES DT01  
AND DT02 PURSUANT TO RULE 155 AND FOR VIDEO-CONFERENCE LINK  
TESTIMONY FOR WITNESSES DT01 AND DT03**

***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 requests that witnesses DT01 and DT03 be authorized to provide their testimony via video-conference link, pursuant to Rule 124 of the Rules of Procedure and Evidence (“Rules”).<sup>1</sup> The *Amicus Curiae* Prosecutor (“*Amicus*”) does not oppose this measure *per se*.<sup>2</sup>

2. The Defence also requests the admission of the statements of witnesses DT01 and DT02 under Rule 155, whereby the witnesses would not provide *vive voce* evidence nor be subject to cross-examination.<sup>3</sup> The *Amicus* opposes the Request under Rule 155.<sup>4</sup>

3. Having considered the Parties’ arguments, for the reasons provided below, I dismiss the Defence Request to admit the statements of witnesses DT01 and DT02 under Rule 155 and order that they appear in court for cross-examination pursuant Rule 156. I also grant the Application to authorize the testimony of witnesses DT01 and DT03 by video-conference link.

## APPLICABLE LAW

### **I. Admission of written statements in lieu of oral testimony**

4. Rule 155, which applies *mutatis mutandis* to contempt proceedings, stipulates the conditions under which a statement may be admitted in lieu of a witness’s *viva voce* testimony and provides in relevant part:

(A) Subject to Rule 158, the Trial Chamber may admit in lieu of oral testimony the evidence of a witness in the form of a written statement, or a transcript of evidence which was given by a witness in proceedings before the Tribunal, which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment.

---

<sup>1</sup> STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/T/CJ, F0215, Request for Authorisation of Video-Conference Link Testimony for DT01 and DT03, 18 March 2016 (“Application for video-conference link testimony”). All further references to filings and decisions refer to this case number unless otherwise stated.

<sup>2</sup> F0226, Response to Request for VTC Testimony: Request for Reclassification of *ex parte* filings, Confidential, 22 March 2016, para. 5 (“Response to Application”); Email from *Amicus* Legal Officer to Chambers Legal Officer, 30 March 2016.

<sup>3</sup> F0217, Requête aux fins d’admission des déclarations des témoins DT01 et DT02 en vertu de l’article 155, Confidential, 21 March 2016 (“Request under Rule 155”).

<sup>4</sup> F0225, Response to Defence “Requête aux fins d’admission des déclarations des témoins DT01 et DT02 en vertu de l’article 155”, Confidential, 29 March 2016, para. 2 (“Response to Request under Rule 155”).

- (i) Factors in favour of admitting evidence in the form of a written statement include, but are not limited to circumstances in which the evidence in question:
  - (a) is of a cumulative nature, in that other witnesses have given or will give oral testimony of similar facts;
  - (b) relates to relevant historical, political or military background;
  - (c) consists of a general or statistical analysis relating to the composition of the population in the places to which the indictment relates;
  - (d) concerns the impact of crimes upon victims;
  - (e) relates to issues of the character of the accused;
  - (f) relates to factors to be taken into account in determining sentence; or
  - (g) has been given by the witness in the presence of the Parties who have had the opportunity to examine or cross-examine him.
- (ii) Factors against admitting evidence in the form of a written statement include whether:
  - (a) There is an overriding public interest in the evidence in question being presented orally;
  - (b) A Party or a victim participating in the proceedings, who objects, can demonstrate that its nature and source renders it unreliable, or that its prejudicial effect outweighs its probative value; or
  - (c) There are any other factors that make it appropriate for the witness to appear for cross-examination.

(B) [...]

(C) The Trial Chamber shall decide, after hearing the parties, whether to require the witness to appear for cross-examination. It may decide, providing reasons, that the interests of justice and the demands of a fair and expeditious trial exceptionally warrant the admission of the statement or transcript, in whole or in part, without cross-examination. If the Chamber decides to require the witness to appear for cross-examination, Rule 156 applies.

5. Rule 156 states in relevant part:

Subject to Rule 158, the Trial Chamber may admit the evidence of a witness in the form of a written statement or transcript of evidence given by a witness in proceedings before the Tribunal that goes to proof of the acts and conduct of the accused as charged in the indictment, only if the following conditions are satisfied:

- (i) the witness is present in court;

- (ii) the witness is available for cross-examination and any questioning by the Judges; and
- (iii) the witness attests that the written statement or transcript accurately reflects that witness's declaration and what the witness would say if examined.

6. A statement cannot be admitted without cross-examination if it relates to the acts or conduct of the Accused.<sup>5</sup> As a result, I must carefully balance the public interest in ensuring a fair and expeditious trial against the prejudice that a party may experience in not cross-examining a witness testifying against its interests.<sup>6</sup> Such power must be exercised sparingly and only for cogent reasons.<sup>7</sup>

## II. Testimony by video-conference link

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

8. This Tribunal has found that nothing in Rule 124 suggests that testimony via video-conference link is “exceptional”.<sup>8</sup> In evaluating whether the interests of justice permit testimony via video-conference link, the following criteria may be considered: the nature of the evidence; the reported views and personal circumstances of the witnesses; the current situation in Lebanon; the concerns and objections, if any, of the other party, being the *Amicus* in this case; the expeditiousness of the proceedings; and, the Tribunal's logistical and financial resources.<sup>9</sup>

---

<sup>5</sup> Ayyash Decision under Rule 155, para. 13.

<sup>6</sup> *Id.* at para. 23.

<sup>7</sup> *Ibid.*

<sup>8</sup> F0174, Public Redacted Decision on Application for Protective Measures regarding Witnesses AP02, AP06, AP07, AP09, AP13, AP14, Persons employed by the Tribunal and Related Exhibits, and for Video Conference Link Testimony, 19 January 2016, para. 34 (“Decision on Protective Measures”); *see also* STL, *In the case against New T.V. S.A.L. and Khayat*, STL-14-05/T/CJ, F0149, Decision on Defence Motion for Admission of Written Statements and for Video-Link Testimony, 8 May 2015 (“Decision on Video-Link Testimony”), para. 29; *see also* STL, *In the case against New T.V. S.A.L. and Khayat*, STL-14-05/T/CJ, F0148 Public Redacted Decision on Defence Application for Protective Measures Regarding Witness DT13, 7 May 2015, para. 20 ; *see also* STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, F1425, General Decision on Video-Conference Link Testimony and Reasons for Decision on Video-Conference Link Testimony of Witness PRH128, 25 February 2014, para. 26.

<sup>9</sup> STL, *In the case against New T.V. S.A.L. and Khayat*, STL-14-05/T/CJ, F0148 Public Redacted Decision on Defence Application for Protective Measures Regarding Witness DT13, 7 May 2015, para. 20; *see also* STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, F1425, General Decision on Video-Conference Link Testimony and Reasons for Decision on Video-Conference Link Testimony of Witness PRH128, 25 February 2014, para. 27.

## DISCUSSION

### I. Positions of the Parties

#### A. Application under Rule 155

##### 1. Position of the Defence

9. The Defence requests the admission of the statements of witnesses DT01 and DT02 under Rule 155 in lieu of oral testimony and without cross-examination.<sup>10</sup>

10. The Defence avers that this procedure reduces the length of the trial proceedings and as such enhances trial efficiency.<sup>11</sup>

11. The Defence asserts that the content of both witness statements relates to [REDACTED], following the publication of information about purported confidential Tribunal witnesses.<sup>12</sup> The Defence reasons that this information therefore goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment.<sup>13</sup>

12. The Defence argues that factors in favour of the admission of these statements under Rule 155 include their relevance to [REDACTED] and their cumulative nature insofar as [REDACTED].<sup>14</sup>

##### 2. Position of the *Amicus*

13. The *Amicus* opposes the Defence Request under Rule 155.<sup>15</sup> He avers that the proposed area of these witnesses' testimonies, [REDACTED], are important matters in this case that should be fully addressed with questions from the Parties and the Judge.<sup>16</sup> The *Amicus* argues that he should not be deprived of the opportunity to cross-examine these witnesses and recalls my previous ruling in which I found that statements relating to the [REDACTED] were too central to the charges. As a result, the opposing party could not be deprived of an opportunity for

---

<sup>10</sup> Request under Rule 155, para. 1.

<sup>11</sup> *Id.* at para. 2.

<sup>12</sup> *Id.* at para. 3.

<sup>13</sup> *Id.* at para. 3.

<sup>14</sup> *Id.* at para. 6.

<sup>15</sup> Response to Request under Rule 155, para. 2.

<sup>16</sup> *Id.* at para. 2.

cross-examination.<sup>17</sup> In fact, the *Amicus* reasons that the evidence of these witnesses is directly related to the crime charged<sup>18</sup>, contrary to the submissions of the Defence.

14. Moreover, the *Amicus* further contests that the Defence witnesses' evidence could be properly characterized as cumulative of the witnesses who testified in the *Amicus's* case-in-chief.<sup>19</sup>

## ***B. Application for video-conference link testimony***

### **1. Position of the Defence**

15. The Defence requests that two of its witnesses be authorized to testify from Beirut via video-conference link.<sup>20</sup> The Defence recalls that testimony via video-conference link is not exceptional and that it is in the interests of justice for it to be permitted in the circumstances.<sup>21</sup>

16. With respect to witness DT01, the Defence states that medical, professional and personal reasons underlie his application to appear by video-conference, though it notes that the witness has no specific security concerns.<sup>22</sup> More specific details have been set out in confidential and *ex parte* Annex A.<sup>23</sup> In particular, the witness himself attests that he is [REDACTED] years old and suffers from [REDACTED].

17. With respect to witness DT03, the Defence notes that his professional obligations prevent him from traveling to The Netherlands for his testimony. The witness is the [REDACTED] and in light of what the witness has described as “[REDACTED]”, he is required to follow the development of that situation and others from Lebanon.<sup>24</sup> He also notes that during the time period relevant to the presentation of the Defence's case he has a number of professional engagements that were arranged before the trial dates in this matter were fixed.<sup>25</sup> The specific

---

<sup>17</sup> Response to Request under Rule 155, para. 3.

<sup>18</sup> *Id.* at para. 4.

<sup>19</sup> *Id.* at para. 3.

<sup>20</sup> Application for video-conference link testimony, para. 1.

<sup>21</sup> *Id.* at paras 2-4.

<sup>22</sup> *Id.* at para. 6.

<sup>23</sup> F0215, Confidential and *ex parte* Annex A, Confidential, 18 March 2016 (“Annex A”). A confidential redacted version of this Annex was filed on 29 March 2016.

<sup>24</sup> F0215, Confidential Annex B, Confidential, 18 March 2016, p. 2 (“Annex B”).

<sup>25</sup> Annex B, p. 2.

reasons outlining this witness's request for video-conference testimony are set out in Annex B, with further support included in Annex C.<sup>26</sup>

18. The Defence also underlines that the age of both of the witnesses should be a factor to consider in determining whether to authorize video-link testimony.<sup>27</sup> The Defence attests that neither witness is reticent to testify before the Tribunal but that both are only able to do so from the Tribunal's Beirut office.<sup>28</sup>

19. The Defence avers that video-link testimony will not prejudice the *Amicus* in any way as he will be able to cross-examine the witnesses in the same manner in which they are examined in chief.<sup>29</sup>

20. Finally, the Defence asserts that video-link testimony will contribute significantly to the efficiency of the trial and economise logistic and financial resources, thus serving the interests of justice.<sup>30</sup>

## 2. Position of the *Amicus*

21. The *Amicus* first filed a partial response to the Application, asking that confidential and *ex parte* Annex A to the Application, which sets out the reasons that video-conference testimony is sought for witness DT01, be reclassified to enable the *Amicus* to access the contents therein and thereafter provide a response on the merits.<sup>31</sup>

22. The *Amicus* also acknowledged that he agreed to the "concept" of testimony by video-conference link but that he could not provide a position on the specific Application without first being reasonably informed of its basis.<sup>32</sup>

23. The Defence thereafter filed a confidential and redacted Annex A to the Application.<sup>33</sup> As a result, the *Amicus* informed me that he did not wish to further supplement his initial response to the Application.<sup>34</sup>

---

<sup>26</sup> F0215, Confidential Annex C, Confidential, 18 March 2016, p. 4.

<sup>27</sup> Application for video-conference link testimony, para. 8.

<sup>28</sup> *Id.* at para. 9.

<sup>29</sup> *Id.* at para. 10.

<sup>30</sup> *Id.* at para. 11.

<sup>31</sup> Response to Application, para. 5.

<sup>32</sup> *Id.* at para. 3.

24. I therefore understand that the *Amicus* does not oppose the Application provided that he is given an opportunity to fully cross-examine the witnesses.

## II. Discussion

### A. Rule 155 Application

25. Having reviewed the proposed statements, I am satisfied that they pertain to a central issue of this case as they relate to one of the elements of the offence charged: [REDACTED].

26. Accordingly, allowing the introduction of these statements without the possibility of cross-examination would be unduly prejudicial to the *Amicus*. I conclude that it is therefore in the interests of justice to reject the admission of the statements under Rule 155 and require the witnesses to appear in court for the purposes of cross-examination in application of Rule 156. I shall rule on the admission of the statements under this rule after the testimony of the witnesses in court.

### B. Application for video-conference link testimony

27. I note that the *Amicus* does not oppose this measure *per se*, provided that he is permitted to cross-examine the witnesses.

28. In regards to the reported views and personal circumstances of witness DT01, the Defence and the witness have relayed and I accept that this witness [REDACTED] and additionally has other responsibilities and commitments in Lebanon that would make his presence in the courtroom in The Netherlands difficult. The Defence and witness DT03 have relayed and I accept that his professional commitments require his physical presence in Lebanon on the dates scheduled for his testimony in this case.

29. In light of the personal circumstances of the witnesses and the position of the *Amicus* I am satisfied that it is in the interests of justice to permit witnesses DT01 and DT03 to testify via video-conference link.

---

<sup>33</sup> F0215, Version confidentielle expurgée de l'“Annexe confidentielle et *ex parte* – A”, datée du 18 mars 2016, Confidential, 29 March 2016.

<sup>34</sup> Email from *Amicus* Legal Officer to Chambers Legal Officer, 30 March 2016.



30. These measures will also, quite clearly, contribute to the expeditiousness of the proceedings and will be more resource efficient.<sup>35</sup> I therefore authorize witness DT01 and witness DT03 to testify via video-conference link from the Tribunal's Beirut office.

### **III. Confidentiality**

31. The Parties have filed confidential filings in these two matters and I therefore order the parties to file public redacted versions of those filings. In order to safeguard the identities of witnesses DT01, DT02 and DT03 against public disclosure until such time that they provide evidence in open court, I am issuing this Decision confidentially. A public redacted version will also be issued.

---

<sup>35</sup> Decision on Protective Measures, para. 37.

**DISPOSITION****FOR THESE REASONS;****PURSUANT TO** Rules 124, 149, 155 and 156 of the Rules;**I****ORDER** the Parties to file public redacted versions of all confidential filings related to the Application for video-conference link testimony and the Request under Rule 155;**DISMISS** the request to admit the statements of DT01 and DT02 under Rule 155;**GRANT** the Application for video-conference link testimony; and**AUTHORIZE** witness DT01 and witness DT03 to testify before the Tribunal via video-conference link from the Tribunal's Beirut Office.

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

Dated 1 April 2016

Leidschendam, the Netherlands



---

Judge Nicola Lettieri  
Contempt Judge

