

BEFORE THE APPEALS PANEL
SPECIAL TRIBUNAL FOR LEBANON

Case No: STL-14-05/PT/AP/AR126.1

Before: Judge Janet Nosworthy, Presiding
Judge Walid Akoum
Judge Ivana Hrdličková

Registrar: Mr Daryl Mundis

Date: 15 August 2014

Filing Party: *Amicus Curiae* Prosecutor

Original language: English

Classification: Public

IN THE CASE AGAINST
NEW TV S.A.L.
KARMA MOHAMED TAHSIN AL KHAYAT

REQUEST FOR APPEALS HEARING

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

**Counsel for New TV S.A.L.
and Ms Karma Khayat:**
Mr Karim A.A. Khan Q.C.
Mr Rodney Dixon Q.C.
Ms Dato' Shyamala Alagendra
Ms Maya Habli



I. INTRODUCTION

1. Pursuant to Rules 77(A), 130(B) and 176(B) of the Rules of Procedure and Evidence (“Rules”), the *Amicus Curiae* Prosecutor (“*Amicus*”) respectfully requests an oral hearing on the *Amicus* Interlocutory Appeal on the Contempt Judge Decision on Motion Challenging Jurisdiction.¹ The Appeals Chamber of the Tribunal has already, in another appeal of similar magnitude, held oral hearings in order for the parties to better argue, respond to the Chamber’s questions and clarify their submissions.²

II. PROCEDURAL BACKGROUND

2. On 24 July 2014, the Contempt Judge rendered the Decision on Motion Challenging Jurisdiction and on Request for Leave to Amend Order in lieu of an Indictment (“Impugned Decision”) granting the Defence challenge to the power of the Tribunal to charge legal persons for contempt and obstruction of justice.³

3. On 31 July 2014, *Amicus* filed its Interlocutory Appeal against the Impugned Decision (“Interlocutory Appeal”).⁴ On the same day, *Amicus* sought suspensive effect concerning the Interlocutory Appeal and the orders set out in the Impugned Decision and related Scheduling Order until the Interlocutory Appeal has been decided (“Request for Suspensive Effect”).⁵

4. On 11 August 2014, the Defence for Al Jadeed S.A.L. and Ms. Karma Mohamed Tahsin al Khayat (collectively “the Defence”) filed a Response to the *Amicus* Interlocutory Appeal (“Defence Response”).⁶

¹ *In the Case against New TV S.A.L. & Karma Mohamed Tahsin al Khayat*, STL-14-05/PT/AP, Interlocutory Appeal Brief on Decision on Motion Challenging Jurisdiction, 31 July 2014.

² On the matter of the legality of the Tribunal; see *In the Case against Ayyash et al.*, STL-11-01/PT/AC/AR90.1, Scheduling Order for Appeals Hearing, 20 September 2012.

³ *In the Case Against New TV S.A.L. & Karma Khayat Mohamed Tahsin Al Khayat*, STL-14-05/PT/CJ, Decision on Motion Challenging Jurisdiction and on Request for Leave to Amend Order in Lieu of Indictment, 24 July 2014, p. 34.

⁴ *In the Case against New TV S.A.L. & Karma Mohamed Tahsin al Khayat*, STL-14-05/PT/AP, Interlocutory Appeal Brief on Decision on Motion Challenging Jurisdiction, 31 July 2014.

⁵ *In the Case against New TV S.A.L. & Karma Mohamed Tahsin al Khayat*, STL-14-05/PT/AP, Urgent Request for the Suspensive Effect of the Appeal Against the Decision on Motion Challenging Jurisdiction, 31 July 2014.

⁶ *In the Case against New TV S.A.L. & Karma Mohamed Tahsin al Khayat*, STL-14-05/PT/AP, Defence Response to the Amicus Prosecutor’s “Interlocutory Appeal Brief on Decision on Motion Challenging Jurisdiction”, 11 August 2014.

IV. SUBMISSIONS

5. *Amicus* submits that two main reasons justify the scheduling of oral hearings. First, oral hearings provide the best opportunity for the parties to respond to the Appeals Panel's specific questions regarding their arguments and positions. Second, oral hearings permit the parties to respond to and correct any misstatements of their positions by the opposing side. In our respectful submission, the Defence Response misleads the Appeals Panel on a number of arguments and/or misstates our position.

6. For example, the *Amicus* never claimed, in any way, contrary to the Defence submission, that the *raison d'être* of international tribunals to fight impunity should, as a stand-alone basis, "permit, if not obligate, all international tribunals to extend jurisdiction to legal entities for core and ancillary crimes."⁷ That is not our position.

7. Nor does *Amicus* argue that "reference at first instance" to "national law trends" would by itself permit the Tribunal to charge legal persons with contempt, an argument which, according to the Defence, would be contrary to the rules of interpretation.⁸ That is not our position. In the actions below, both the President (in issuing the Order in Lieu of Indictment) and the Contempt Judge used the national law trends not as a *per se* test or justification, but as relevant considerations and guidance in interpreting the term 'person' in accordance with the referenced Appeals Chamber Decision and with "the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose". Further, neither the President nor the Contempt Judge ignored the issue of possible ambiguity.⁹

8. Finally, *Amicus* is mindful of the need for the Interlocutory Appeal to be dealt with in a timely fashion. *Amicus* respectfully submits, however, that the timing in considering this appeal, which raises a fundamental question about the Tribunal's power and jurisdiction, and

⁷ Defence Response, para.8.

⁸ Defence Response, paras.36-37.

⁹ Impugned Decision, paras.70 & 72-75. The Contempt Judge first noted the Appeals Chamber Decision mentioning that the rules must be interpreted "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose". He then stated: "the basic canons of treaty interpretation, invoked in Rule 3 and also adopted by other international criminal tribunals, compel a finding that legal persons cannot be held liable for contempt by this Tribunal. It makes eminent sense to read "person" in the Rules, as adopted by the Plenary of Judges, in consonance with the Statute's understanding of the same term" [...] In reading a legal text, as noted above, one should also look at its context, which requires the use of all legitimate aids to interpretation. . . ." (Emphasis added.)

its ability to police the integrity of its own proceedings, is secondary to a full and proper presentation and adjudication concerning the appeal's merits.

RELIEF SOUGHT

9. *Amicus* respectfully requests the Panel of Judge of the Appeals Chamber to hold oral arguments in this appeal.

Word Count: 1 006

RESPECTFULLY SUBMITTED THIS 15 AUGUST 2014.



Mr Kenneth Scott
Amicus Curiae Prosecutor

