



THE CONTEMPT JUDGE

Case No.: STL-14-05/S/CJ
Before: Judge Nicola Lettieri, Contempt Judge
Registrar: Mr Daryl Mundis, Registrar
Date: 6 October 2015
Original language: English
Classification: Public

IN THE CASE AGAINST

KARMA MOHAMED TAHSIN AL KHAYAT

REASONS FOR SENTENCING JUDGMENT

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

Counsel for Ms Karma Khayat:
Mr Karim A.A. Khan
Mr Rodney Dixon
Ms Shyamala Alagenda



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INTRODUCTION

1. On 18 September 2015, I pronounced the judgment in this case,¹ whereby I acquitted *Al Jadeed* [CO.] S.A.L./New T.V. S.A.L. (N.T.V.) (“*Al Jadeed* TV”) of all charges under the Amended Order in Lieu of an Indictment;² acquitted Ms Karma Mohamed Tahsin Al Khayat of the charges under count 1; and convicted Ms Khayat of the charges under count 2.³

2. On 28 September 2015, I heard the Parties’ submissions on sentencing with respect to Ms Khayat’s conviction under count 2 of the Order in Lieu of Indictment.⁴ I pronounced my decision on sentencing on the same day, imposing on Ms Khayat a fine of 10,000 Euros to be paid no later than 30 October 2015. I clarified that I would issue the written reasons for my decision as soon as practicable.⁵ Below are my reasons.

ARGUMENTS OF THE PARTIES

I. Position of the *Amicus*

3. The *Amicus Curiae* Prosecutor (“*Amicus*”) argues that the publication and dissemination of the Episodes⁶ online increased the scope of the disclosures, making the violation of the 10 August 2012 Order⁷ even more serious.⁸ He states further that the dissemination took place in a relatively small community, which adds to the gravity of the offence.⁹

4. With respect to the aggravating factors, the *Amicus* asserts that Ms Khayat had already ignored the Pre-Trial Judge’s 25 May 2012 Order¹⁰ prohibiting disclosure of confidential information. Moreover, he argues that *Al Jadeed* TV dismissed the Registrar’s Cease-and-Desist

¹ STL, *Prosecutor v. Al Jadeed [Co.] S.A.L./New T.V. S.A.L. (N.T.V.) and Karma Mohamed Tahsin Al Khayat*, F0176, Public Redacted Version of Judgment, 18 September 2015 (“Judgment”). All further references to filings refer to this case number unless otherwise stated.

² F0068, Amended Order in Lieu of an Indictment, 17 October 2014 (“Order in Lieu of Indictment”).

³ Judgment, p. 53.

⁴ 20150928_STL-14-05_S_T17_OFF_PUB_EN 1/45, 28 September 2015. All further references to transcripts in this document will use an abbreviated number.

⁵ T17, 28 September 2015, p. 45.

⁶ Broadcast aired on *Al Jadeed* TV on 6, 7, 9 and 10 August 2012 titled “Witnesses of the International Tribunal”.

⁷ STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/PTJ, F0372, Order for Immediate Removal of Disseminated Material and Cessation of Dissemination, 10 August 2012.

⁸ T17, 28 September 2015, p. 7.

⁹ *Ibid.*

¹⁰ STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/PTJ, F0269, Decision Relating to the Prosecution Request Seeking Measures for the Non-Dissemination of Material of 2 May 2012, 25 May 2012.

Letter¹¹ as not legally binding. This, he claims, constitutes a pattern of conduct in defiance of the Tribunal.¹² The *Amicus* further contends that Ms Khayat's lack of remorse constitutes an aggravating factor.¹³

5. The *Amicus* avers that there are no mitigating factors in this case. While Ms Khayat agreed to be interviewed as a suspect, the quantity and quality of the information that she provided during the interview of 2 October 2013 were not sufficient to constitute substantial cooperation with the investigation.¹⁴

6. With respect to Ms Khayat's individual circumstances, the *Amicus* states that she covered all the expenses related to her defence.¹⁵ Moreover, he asserts that she holds a position of authority in and owns a sizeable share of *Al Jadeed* TV, which, according to the testimony of Ms Rana Sabbagh, executive director of Arab Reporters for Investigative Journalism, is a success story.¹⁶ The *Amicus* infers that, consequently, Ms Khayat has accrued some financial gain.¹⁷

7. In light of these considerations, the *Amicus* requests that I sentence Ms Khayat to a term of imprisonment of one year and a fine of 100,000 Euros.¹⁸

II. Position of the Defence

8. The Defence argues that the publication of the Episodes did not harm the public's confidence in the Tribunal and no order granting protective measures to witnesses was violated.¹⁹

9. The Defence asserts further that Ms Khayat appeared before the Tribunal when summoned, attended every day of the trial and paid her own legal costs.²⁰

10. Contrary to the *Amicus*'s assertion, the Defence contends that Ms Khayat cooperated with the investigation in this case by answering every question during her suspect interview and that *Al Jadeed* TV cooperated with the Prosecution in the *Ayyash et al.* case by providing material as

¹¹ Notice of Cease and Desist from the Registrar to Mr Tahseen Khayat, Confidential, 7 August 2012.

¹² T17, 28 September 2015, p. 10.

¹³ T17, 28 September 2015, p. 12.

¹⁴ T17, 28 September 2015, p. 14.

¹⁵ T17, 28 September 2015, p. 36.

¹⁶ T17, 28 September 2015, pp 16, 37.

¹⁷ T17, 28 September 2015, p. 37.

¹⁸ T17, 28 September 2015, p. 17.

¹⁹ T17, 28 September 2015, pp 20, 40.

²⁰ T17, 28 September 2015, pp 21-22.

requested.²¹ The Defence adds that, as Ms Sabbagh testified, Ms Khayat demonstrated good professional conduct. It also highlights that she has no previous convictions.²²

11. With respect to Ms Khayat's individual circumstances, the Defence avers that *Al Jadeed* TV had to lay off many of its employees due to financial difficulties.²³ It states that the *Amicus* made no inquiries as to Ms Khayat's financial means.²⁴

12. Accordingly, the Defence argues that a conviction is sufficient punishment and no sentence should be imposed.²⁵ It submits that because the Episodes are no longer online and their publication caused no harm, it was a "breach without harm" and the "damage caused has been made good".²⁶

APPLICABLE LAW

13. Rule 60 *bis* (J) of the Tribunal's Rules of Procedure and Evidence ("Rules") states that the maximum penalty that may be imposed on a person convicted for contempt is a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 Euros, or both.

14. Rule 172 (B), which applies *mutatis mutandis* in contempt proceedings pursuant to Rule 60 *bis* (H), provides that, in determining a sentence, the Trial Chamber shall take into account the factors mentioned in Article 24 (2) of the Tribunal's Statute—namely, the gravity of the offence and the individual circumstances of the convicted person—as well as factors such as: any aggravating circumstances; any mitigating circumstances, including substantial cooperation with the Prosecutor by the convicted person before or after conviction; the general practice regarding prison sentences in Lebanon; and the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served.

15. In considering these factors, I am also guided by the well-established sentencing practice of the International Criminal Tribunal for the former Yugoslavia ("ICTY") in contempt matters. I agree with the ICTY's case-law that the most important factors in determining the appropriate penalty in a contempt case are the gravity of the conduct and the need to deter repetition and

²¹ T17, 28 September 2015, pp 23, 38-39.

²² T17, 28 September 2015, pp 29-30.

²³ T17, 28 September 2015, p. 25.

²⁴ T17, 28 September 2015, pp 37-38.

²⁵ T17, 28 September 2015, pp 30-31.

²⁶ T17, 28 September 2015, pp 42-43.

similar conduct by others.²⁷ In short, in determining the penalty I will essentially focus on its retribution and deterrence functions.²⁸

DISCUSSION

16. As a preliminary issue, I note that the Parties argued at length about the weight that Ms Khayat's absence at the pronouncement of the judgment and during the sentencing hearing should have, if any, in my determination of the sentence in this case.²⁹ I recall that under Rule 168 (A), Ms Khayat was entitled to be present at the pronouncement of the judgment. Further, pursuant to Rule 171 (E), a sentence shall be pronounced, wherever possible, in the presence of the convicted person. I conclude that Ms Khayat was within her rights and under no obligation to be present at the pronouncement of the judgment or the sentence. I also observe that Ms Khayat did not simply fail to appear; rather, she waived her right to be present at those hearings and was represented by her chosen counsel.³⁰ As a result, I cannot infer any conclusions from her absence at those hearings in determining the sentence in this case.

17. With respect to the kind and gravity of the offence, I first recall my finding that Ms Khayat failed to remove the Episodes from *Al Jadeed* TV's website from 11 August 2012 until at least 2 October 2013.³¹ I consider that knowingly violating an order is a serious offence since it *per se* defies the authority of the Tribunal. The effectiveness of orders issued by a court of law is vital to its proper administration of justice. It is not for those subject to an order to decide whether or not to follow it.³²

18. With respect to the mitigating circumstances, I recall that the evidence did not show that the publication of the Episodes was likely to undermine the public's confidence in the Tribunal's

²⁷ ICTY, *Prosecutor v. Jović*, IT-95-14 & IT-95-14/2-R77, Judgement, 30 August 2006, para. 26; ICTY, *Prosecutor v. Marijačić and Rebić*, IT-95-14-R77.2, Judgement, 10 March 2006, para. 46; ICTY, *Prosecutor v. Margetić*, IT-95-14-R77.6, Judgement on Allegations of Contempt, 7 February 2007, para. 84; ICTY, *Prosecutor v. Haraqija and Morina*, IT-04-84-R77.4, Judgement on Allegations of Contempt, 17 December 2008, para. 103.

²⁸ Cf. ICTY, *Prosecutor v. Hartmann*, IT-02-54-R77.5, Judgment on Allegations of Contempt, 14 September 2009, para. 88; ICTY, *Prosecutor v. Šešelj*, IT-03-67-R77.3, Public Redacted Version of "Judgment" Issued on 31 October 2011, paras. 77, 80; ICTY, *Prosecutor v. Šešelj*, IT-03-67-R77.4, Public Redacted Version of Judgment Issued on 28 June 2012, 28 June 2012, para. 52.

²⁹ T17, 28 September 2015, pp 3, 11, 19, 32, 37.

³⁰ T16, 18 September 2015, p. 1; T17, 28 September 2015, p. 2.

³¹ Judgement, paras 172, 176.

³² Cf. ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-2582, Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I of 8 July 2010 entitled "Decision on the Prosecution's Urgent Request for Variation of the Time-Limit to Disclose the Identity of Intermediary 143 or Alternatively to Stay Proceedings Pending Further Consultations with the VWU", 8 October 2010, para. 1; ICTY, *Prosecutor v. Margetić*, IT-95-14-R77.2-A, Judgement, 27 September 2006, paras 44-45.

ability to protect confidential information.³³ Furthermore, I am satisfied that Ms Khayat cooperated with the investigation in this case by making herself available to be interviewed by the *Amicus Curiae* Investigator on 2 October 2013 and responding to all of his questions.³⁴ I also note that Ms Khayat appeared at her trial and was duly represented by counsel at the delivery of the judgment and during the sentencing hearing.³⁵

19. The Defence refers to Ms Khayat's good character as a mitigating circumstance. Citing Ms Sabbagh's testimony that Ms Khayat chaired working groups and participated in expert panels, the Defence argues that Ms Khayat's mission is to contribute to building a sustainable democratic society in Lebanon.³⁶ However, Ms Khayat's mere participation in a number of journalistic events³⁷ does not allow me to draw any conclusions with respect to her character or conduct that I could consider in determining the relevant sentence in this case.

20. In regard to Ms Khayat's individual circumstances, which I may take into consideration in evaluating the proportionality of the penalty, I find that the Parties failed to substantiate their arguments (*inter alia*, from the *Amicus*, that Ms Khayat has been financially successful and, from the Defence, that Ms Khayat is of good character). There is simply inadequate support in the record for these contentions.

21. Nor can I say, as the Defence appears to imply by invoking the journalistic duty to inform, that Ms Khayat acted for reasons of particular moral or social value, which might constitute mitigating circumstances. Indeed, no such finding can be attributed to professional journalistic conduct which targets, on the basis of mere conjectures, the first serious attempt to shed light on the appalling attacks which bloodied Lebanon in the period beginning October 2004.³⁸ While simply criticizing the Tribunal (which is holding proceedings that could deliver justice for the victims and the broader public and shape collective memory of horrible events) is of course not a crime, nor an aggravating circumstance, it also cannot objectively mitigate guilt in this case.

³³ Judgment, paras 125-126.

³⁴ P00173 (confidential).

³⁵ T16, 18 September 2015, p. 1; T17, 28 September 2015, p. 1.

³⁶ T17, 28 September 2015, p. 29.

³⁷ Sabbagh, T11, 12 May 2015, pp 15-23, 46-47.

³⁸ In this period covered by the jurisdiction of the Tribunal, 1 October 2004/12 December 2005 (article 4.3 of the Statute), 15 terroristic bomb attacks carried out against similar targets and with the same *modus operandi* occurred (murder of the former premier Hariri and of other 21 persons, as well as other 14 bomb attacks). Without forgetting the other five bomb attacks and one shooting attacks which occurred in the period November 2006/January 2008, where also an investigator involved in the investigation on the Hariri murder was killed.

22. Finally, I note that the case-law of other international tribunals cited by the Parties concerns cases that, quite clearly, are factually very different from this case.³⁹ As a result, in determining the sentence to be imposed on Ms Khayat in this case, I cannot be guided by the penalties imposed in those cases.⁴⁰

23. In sum, taking into account all these factors, in particular the gravity of the particular criminal conduct for which Ms Khayat was convicted and the need for deterrence, I find it appropriate to sentence her to a fine of 10,000 Euros.

DISPOSITION

FOR THESE REASONS;

PURSUANT to Article 24 (2) of the Statute of the Tribunal and Rules 60 *bis* (J) and 172 (B) of the Rules;

I

SENTENCED Ms Khayat to a fine of 10,000 Euros, to be paid in full by 30 October 2015.

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

Dated 6 October 2015

Leidschendam, the Netherlands



Judge Nicola Lettieri
Contempt Judge



³⁹ T17, 28 September 2015, pp 3-5, 12-13, 20-21.

⁴⁰ Cf, ICTY, *Prosecutor v. Šešelj*, IT-03-67-R77.2-A, Judgment, 19 May 2010, para. 41.