



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE TRIAL CHAMBER

Case No: STL-11-01/T/TC

Before: Judge David Re, Presiding
Judge Janet Nosworthy
Judge Micheline Braidy
Judge Walid Akoum, Alternate Judge
Judge Nicola Lettieri, Alternate Judge

Registrar: Mr Daryl Mundis

Date: 9 December 2015

Original language: English

Classification: Public

THE PROSECUTOR
v.
SALIM JAMIL AYYASH
MUSTAFA AMINE BADREDDINE
HASSAN HABIB MERHI
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA

**DECISION ON PROSECUTOR REQUEST FOR ACCESS TO THE CONFIDENTIAL
VERSION OF THE JUDGMENT IN THE CASE AGAINST AL JADEED [CO.] S.A.L.
/ NEW T.V. S.A.L. (N.T.V.) AND KARMA MOHAMED TAHSIN AL KHAYAT (STL-
14-05)**

Office of the Prosecutor:

Mr Norman Farrell, Mr Graeme Cameron
& Mr Alexander Hugh Milne

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Mr Peter Haynes, Mr Mohammad F. Mattar
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Counsel for Mr Mustafa Amine Badreddine:

Mr Antoine Korkmaz, Mr Iain Edwards &
Ms Mylène Dimitri

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Mr Vincent Courcelle-Labrousse, Mr Yassine
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Counsel for Mr Assad Hassan Sabra:

Mr David Young, Mr Guénaél Mett
Mr Geoffrey Roberts



INTRODUCTION

1. The Prosecution requests, under Rule 133 (H) of the Special Tribunal's Rules of Procedure and Evidence, the Trial Chamber to order the Registry to provide the Prosecutor with a single, unredacted copy of the confidential version of the Judgment of 18 September 2015 rendered by the Contempt Judge in the case against Al Jadeed [CO.] S.A.L. / New T.V. S.A.L. (N.T.V.) and Karma Mohamed Tahsin Al Khayat.¹ The Prosecution originally filed the request before the Contempt Judge, who declared that the request was not receivable, as 'Rule 133 (H) unequivocally directs a party seeking variation of protective measures in different proceedings to file its request before the proceedings to which it is a party'.² The request was then filed before the Trial Chamber confidentially and *ex parte*, but was later re-filed as confidential and cross-filed in the *Al Jadeed* case.³ No Defence counsel in the *Ayyash* case or in the *Al Jadeed* case responded to the request. The *Amicus Curiae* Prosecutor in the *Al Jadeed* case requested leave to make submissions on the Prosecutor's request, attaching submissions in an annex.⁴

SUBMISSIONS

A. Prosecution submissions

2. The Prosecution submits that the Prosecutor needs access to the confidential version of the Judgment to assess whether any evidence or information provided during the *Al Jadeed* proceedings affects the ongoing work in the *Ayyash* case.⁵ He has an interest in the safety of purported witnesses in his case and an obligation to provide for their safety.⁶ Similarly, the

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F2222, Prosecutor Request for Access to a Single Copy of the Confidential Version of the Judgment in the case against Al Jadeed [CO.] S.A.L. / New T.V. S.A.L. (N.T.V.) and Karma Mohamed Tahsin Al Khayat, confidential and *ex parte*, 28 September 2015; F2249, Prosecutor Request for Access to a Single Copy of the Confidential Version of the Judgment in the case against Al Jadeed [CO.] S.A.L. / New T.V. S.A.L. (N.T.V.) and Karma Mohamed Tahsin Al Khayat, confidential, 6 October 2015.

² STL-14-05, *In the case against Karma Mohamed Tahsin Al Khayat*, F0182, Decision on Prosecutor's Request for Access to a Copy of the Confidential Version of the Judgment in the *Al Jadeed* Case, confidential and *ex parte*, 25 September 2015, para. 4; F0180, Prosecutor Request for Access to a Single Copy of the Confidential Version of the Judgment in the *Al Jadeed TV* Case, confidential and *ex parte*, 24 September 2015.

³ Email from the Trial Chamber's Senior Legal Officer to counsel, 6 October 2015.

⁴ STL-11-01/T/TC, F2278, Request for Leave to Make *Amicus Curiae* Submissions, confidential, 21 October 2015.

⁵ Prosecution motion, para. 1.

⁶ Prosecution motion, para. 4. Rule 61 (ii) concerns the Prosecutor's ability to take measures providing for the safety of potential witnesses and informants.

Prosecutor has an interest in knowing information that may affect the credibility of witnesses.⁷

3. The Prosecution proposes that the confidential version of the Judgment would be provided to the Prosecutor only, and only shown to a limited number of Prosecution senior staff members when determined necessary by the Prosecutor.⁸

B. Amicus Curiae Prosecutor submissions

4. On 21 October 2015, the *Amicus Curiae* Prosecutor in the *Al Jadeed* case requested leave to file *amicus curiae* submissions on the Prosecution request because the confidential information redacted from the public version of the Judgment ‘directly implicates *Amicus*’ witnesses who were granted protective measures’. The *Amicus* Prosecutor also submits that he is in a position to know the relevant security and safety concerns.⁹ The Trial Chamber accepts the submissions as validly filed, under Rule 131, and has considered the *Amicus* Prosecutor’s substantive submissions attached in Annex A to his request.¹⁰

5. Understanding the need to balance witness safety and the Prosecutor’s role, the *Amicus* Prosecutor did not object to the Prosecutor receiving one copy of the confidential version of the Judgment, subject to a few additional conditions: i) a single, paper copy of the confidential Judgment is hand-delivered to the Prosecutor; ii) access is restricted on a need-to-know basis to certain individuals within the Office of the Prosecutor; and iii) the Office of the Prosecutor keeps a log of the people who have access to the document.¹¹

DISCUSSION

6. Allowing a third party access to confidential information which identifies protected witnesses necessitates a variation of the protective measures ordered for those witnesses. The Contempt Judge in the *Al Jadeed* case ordered protective measures for four witnesses referred to in the Judgment, including closed session testimony for three of those witnesses.¹² However, Rule 133 (H) stipulates:

⁷ Prosecution motion, para. 5.

⁸ Prosecution motion, para. 6.

⁹ *Amicus* request, paras 5-9.

¹⁰ *Amicus* request, Annex A.

¹¹ *Amicus* request, Annex A, paras 2-6.

¹² STL-14-05, F0119, Decision on *Amicus Curiae* Prosecutor’s Application for Protective Measures Regarding Witnesses AP11, AP12 and AP13, 7 April 2015; F0122, Decision on *Amicus Curiae* Prosecutor’s Application

A Party to the subsequent proceedings seeking to vary protective measures ordered in the first proceedings, after having sought the consent of the witness in respect of whom the submission is made, must apply to the Chamber seized of the subsequent proceedings.

7. Despite having commenced earlier, the *Ayyash* case is ‘subsequent proceedings’ for the purposes of the Rule. The Prosecution is a party to the subsequent proceedings making the request for a variation of protective measures in different proceedings, the *Al Jadeed* case.

8. In compliance with Rule 133 (I),¹³ the Trial Chamber, on 25 and 26 November 2015, consulted the Contempt Judge and obtained the relevant information for determining the Prosecution’s request. In doing so, the Trial Chamber has considered the Contempt Judge’s decisions granting the protective measures to the four witnesses concerned.

9. Two of the four witnesses with protective measures in the *Al Jadeed* case are already known to the Prosecution—one testified publicly and was formerly employed by the Office of the Prosecutor, and the other appears on the Prosecution’s witness list, filed under Rule 91, and may therefore be called to testify in the *Ayyash* proceedings. The Judgment contains redacted information concerning these witnesses. Any assessment made by the Contempt Judge in the Judgment in the *Al Jadeed* case may bear relevance to the Prosecution’s case in *Ayyash*. A clear overlap, therefore, exists between the cases.

10. For the remaining two protected witnesses referred to in the Judgment, the Trial Chamber is satisfied that their identities will be sufficiently safeguarded by the measures proposed by the Prosecution and the *Amicus* Prosecutor limiting the internal distribution of the Judgment. For this reason, under Rule 133 (J),¹⁴ the Trial Chamber will exceptionally order this variation of protective measures without obtaining the consent of the particular witnesses. The Trial Chamber, therefore, grants the Prosecution’s request for the Prosecutor to have access to a copy of the confidential version of the Judgment in the *Al Jadeed* case.

for Protective Measures Regarding Witness AP02, 14 April 2015. AP02’s protective measures did not include a pseudonym, and he, therefore, testified publicly.

¹³ Rule 133 (I): ‘Before determining an application under paragraph (H) above, the Chamber seized of the subsequent proceedings shall obtain all relevant information from the first proceedings and shall consult with any Judge who ordered the protective measures in the first proceedings, if that Judge remains a Judge of the Tribunal.’

¹⁴ Rule 133 (J): ‘The Chamber determining an application under paragraph (H) shall ensure, with the assistance of the Victims and Witnesses Unit where necessary, that the protected victim or witness has consented to the variation of the protective measures. In exceptional circumstances, the Chamber may *proprio motu* order the variation of protective measures without this consent.’

CONFIDENTIALITY

11. The Prosecution and the *Amicus* Prosecutor filed their submissions confidentially. Reiterating the public nature of the proceedings, the Trial Chamber orders the Prosecution and *Amicus* Prosecutor to file public redacted versions as soon as practicable.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

GRANTS leave to the *Amicus Curiae* Prosecutor to file submissions under Rule 131 of the Special Tribunal's Rules of Procedure and Evidence, and accepts the submissions as validly filed;

ORDERS the Registry to provide the Prosecutor with one copy of the confidential version of the Judgment in the case against Al Jadeed [CO.] / New T.V. S.A.L. (N.T.V.) and Karma Mohamed Tahsin Al Khayat, case number STL-14-05/T/CJ; that this is hand-delivered to the Prosecutor; that the Prosecutor only share this copy as is strictly necessary for the performance of his duties; that the Office of the Prosecutor keep a log of everyone who has access to the Judgment; and

ORDERS the Prosecution and *Amicus Curiae* Prosecutor to file public redacted version of their filings.

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

Leidschendam,
The Netherlands
9 December 2015

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

