

**BEFORE THE CONTEMPT JUDGE**  
**SPECIAL TRIBUNAL FOR LEBANON**

**Case No:** STL-14-05/PT/CJ  
**Before:** Judge Nicola Lettieri, Contempt Judge  
**Registrar:** Mr Daryl Mundis  
**Date:** 4 September 2014  
**Filing Party:** *Amicus Curiae* Prosecutor  
**Original language:** English  
**Classification:** Public

**IN THE CASE AGAINST**  
**KARMA MOHAMED TAHSIN AL KHAYAT**

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**REDACTED VERSION OF “PROSECUTION’S PRE-TRIAL BRIEF”**  
**DATED 1 SEPTEMBER 2014**

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Mr Kenneth Scott

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## I. INTRODUCTION

1. From 6 to 10 August 2012, five episodes of a series titled “The Witnesses of the International Tribunal” were broadcast on the Lebanese television channel *Al Jadeed TV* during prime time daily news bulletins. *Al Jadeed TV* and its management, including the accused Karma MOHAMED TAHSIN AL KHAYAT, knew the significance, sensitivity and impact of the information they were broadcasting. On the eve of the broadcast of the first episode, *Al Jadeed TV*'s newscaster made the following dramatic announcement, obviously hoping for and intending a large audience:

Starting tomorrow, Monday, *Al Jadeed* channel will be broadcasting a series of reports in its news bulletins. [...] They reveal the identities of the witnesses of the Special International Tribunal for the assassination of Prime Minister Rafic HARIRI and the contents of their statements.<sup>1</sup>

2. The exposure of alleged confidential witnesses of the Tribunal was aimed at demonstrating *Al Jadeed TV*'s allegations that the Tribunal does not have the ability to protect its witnesses. Before the broadcast of the first episode of the series, the newscaster left no doubt as to the intention behind the broadcasts to convey the message that the Tribunal could not maintain the confidentiality of its information:

[M]ore than fifty names in Lebanon and they are classified in the confidential list of the Witness Protection Program. We will not say that they will make false statements, and to each his own circumstance at the level of collaboration with the International Tribunal. But since they hold this level of importance, why did the Tribunal dispense with their confidential status? How did their names reach us? And where is the protection they were promised? This is a compromised Tribunal [...] today its witnesses are left exposed in the media.<sup>2</sup>

3. Subsequent to their broadcast, the episodes were transferred to *Al Jadeed TV*'s website and YouTube channel where they continued to be available to the public for many months despite an Order for Immediate Removal of Disseminated Material and Cessation of Dissemination issued by the STL Pre-Trial Judge on 10 August 2012, directing *Al Jadeed TV* to

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<sup>1</sup> AP1405\_007\_ENG\_T\_00482-00482.

<sup>2</sup> AP1405\_008\_ENG\_T\_00701-00703 (emphasis added).

immediately remove from *Al Jadeed TV*'s website and YouTube channel information on purported confidential witnesses in the *Ayyash et al.* case.

4. The Accused in this Case, Karma MOHAMED TAHSIN AL KHAYAT (hereinafter "Karma KHAYAT"), was at all times relevant to the charges, Deputy Head of News and Political Programs at *Al Jadeed TV*. In this capacity, she decided to broadcast and caused to be broadcast the five episodes of 6-10 August 2012 on *Al Jadeed TV*, knowingly and wilfully interfering with the Tribunal's administration of justice. In addition, she knowingly violated a clear STL court Order by failing to remove the episodes from *Al Jadeed TV*'s website and YouTube channel.

## II. THE OFFENCES

5. Karma KHAYAT is charged with two counts of contempt and obstruction of justice:

### Count 1

6. Pursuant to Rule 60bis (A), Karma KHAYAT is charged with interfering with the administration of justice by broadcasting and/or publishing information on purported confidential witnesses in the *Ayyash et al.* case, thereby undermining public confidence in the Tribunal's ability to protect the confidentiality of information about, or provided by, witnesses or potential witnesses.

7. Count 1 is based on the STL's inherent contempt power and Rule 60 bis (A) which identifies the core of the crime of contempt as any *knowing and willful interference with the administration of justice*.<sup>3</sup> The *actus reus* of contempt is conduct which "tends to obstruct,

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<sup>3</sup> Rule 60 bis (A) makes it clear that it is not limited to the particular conduct listed in paragraph (A). See STL, *In the case against New TV S.A.L. and Karma Mohamed Tahsin al Khaysat*, STL-14-05/1/CJ/, Decision in Proceedings for Contempt with Orders in Lieu of Indictment, 31 January 3014, paras.11-13 [Decision with Order in Lieu].

prejudice or abuse the administration of justice.”<sup>4</sup> The required *mens rea* is that the conduct be knowing and wilful.<sup>5</sup>

8. The International Criminal Tribunal for the former Yugoslavia (“ICTY”) has held that this general provision of contempt encompasses “[a]ny deliberate conduct which creates a real risk that confidence in the Tribunal’s ability to grant effective protective measures would be undermined [as such a conduct] amounts to a serious interference with the administration of justice [as] public confidence in the effectiveness of such orders is absolutely vital to the success of the work of the Tribunal.”<sup>6</sup>

9. As the President of the STL, acting as Contempt Judge, stated in the Order in Lieu, “[t]he reason for seeking confidentiality of witnesses’ particulars is to avoid exposing them to risk”.<sup>7</sup> If it was not for provisions of confidentiality, protective measures and the like, many persons would be reluctant or even refuse to give information or evidence to the Tribunal.<sup>8</sup>

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<sup>4</sup> ICTY, *Prosecutor v Duško Tadić*, IT-94-1-A-R77, Judgement on Allegations of Contempt Against Prior Counsel, Milan Vujin, 31 January 2000, para.26 [Vujin]. See also, *inter alia*, ICTY, *Prosecutor v. Zlatko Aleksovski*, Judgement on Appeal by Anto Nobile Against Finding of Contempt, IT-95-14/1, 30 May 2001, para.36 [Nobile - Appeals], ICTY, *Prosecutor v. Beqa Beqaj*, IT-03-66-T-R77, Judgement on Contempt Allegations, 27 May 2005, para.9 [Beqaj]; ICTR, *Prosecutor v. Nshogoza*, ICTR-07-91-T, Judgement, 7 July 2009, para.155 [Nshogoza]; ICTY, *In the Matter of Ljubiša Petković*, IT-03-67-R77.1, Redacted Version of Judgment Pronounced on 11 September 2008, 11 September 2008, para. 25 [Petković], para. 155.

<sup>5</sup> *Beqaj*, para. 22; *Nshogoza*, para. 155; ICTR, *Prosecutor v. Siméon Nchamihigo*, ICTR-2001-63-T, *Decision on Defence Motion on Contempt of Court and Reconsideration of Protective Measures for Defence Witnesses*, 9 August 2007, para.9 [Nchamihigo]; SCSL, *Independent Counsel against Brima Samura*, SCSL-2005-01, Judgement in Contempt proceedings, 26 October 2005, para.18 [Samura]; SCSL, *In the Matter of Contempt Proceedings Arising from the Case of The Prosecution v. Charles Ghankay Taylor*, SCSL-12-01-T, Judgement in Contempt proceedings, 19 October 2012, para.41 [Taylor]; *Nobile – Appeals*, para.30.

<sup>6</sup> ICTY, *The Prosecutor v. Ivica Marijačić & Markica Rebić*, IT-95-14-R77.2, Judgment, 10 March 2006, paras 49-50 [Marijačić & Rebić]. See also ICTY, *The Prosecutor v. Domagoj Margetić*, IT-95-14-R77.6, Judgement on Allegations of Contempt, 7 February 2007, para.15 [Margetić]; ICTY, *In the Matter of Vojislav Seselj*, IT-03-67-R77.4, Public Redacted Version of Judgement Issued on 28 June 2012, 28 June 2012, para. 40 [Seselj R77.4].

<sup>7</sup> Decision with Order in Lieu, para. 34.

<sup>8</sup> In the ICTY jurisprudence cited above, the Judges concluded that creating a real risk of undermining the public confidence in the ability of the Tribunal to grant effective protective measures amounted to serious interference with the administration of justice after noting the prosecution’s point that witnesses who are willing to give evidence but wish to do so under protective measures, as well as witnesses who did give evidence and are about

10. Accordingly, the *actus reus* of the offence charged in Count 1 consists of creating a real risk that the workings of the Tribunal (its administration of justice) and the public's confidence in it (including its ability to grant and enforce effective protective measures) would be undermined.

11. Established jurisprudence makes it clear that the Prosecution is not required to prove that the charged conduct *actually* interfered with the administration of justice.<sup>9</sup> Where a person is charged with contempt involving interfering with a witness or potential witness, it is required that the conduct of the Accused be likely to interfere with a witness or potential witness.<sup>10</sup>

12. The requisite *mens rea* related to Count 1 is the knowledge by the Accused that his conduct will create a real risk that public confidence in the Tribunal will be undermined. The Accused must have knowledge and will to interfere with the administration of justice.

13. The elements of Count 1 are:

(1) Karma KHAYAT, through her acts and/or omissions, willfully broadcast and or published, or caused to be broadcast or published, information on purported confidential witnesses in the *Ayyash et al.* case.

(2) The broadcast and/or publication of information on purported confidential witnesses in the *Ayyash et al.* case interfered with the administration of justice by creating a real risk that public confidence in the Tribunal would be undermined,

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to be heard before the Tribunal but anticipate that protective measures will apply to them, might be reluctant to do so as a result of the Accused conduct. See the Judgment of 10 March 2006 in *The Prosecutor v. Ivica Marijačić & Markica Rebić*, para.49.

<sup>9</sup> The contempt conduct is conduct which "tends to obstruct, prejudice or abuse the administration of justice." *Supra*, note 4.

<sup>10</sup> *Beqaj*, para.21; *Margetić*, para.64; ICTY, *Prosecutor v. Astrit Haraqija and Bajrush Morina*, IT-04-84-R77.4, Judgment on Allegations of Contempt, 17 December 2008 [*Haraqija & Morina*] paras.18-19; ICTY, *Prosecutor v. Vojislav Seselj*, IT-03-67-R77.2, Public Edited Version of "Judgement on Allegations of Contempt" Issued on 24 July 2009, 24 July 2009 [*Seselj R77.2*], para. 27; ICTY, *In the Case against Vojislav Seselj*, IT-03-67-R77.2-A, Judgment, 19 May 2010 [*Seselj R77.2 - Appeals*], para.20; SCSL, *The independent Counsel Against Hassan Papa BANGURA, Samuel KARGBO, Santigie Borbor KANU, Brima Bazzy KAMARA*, SCSL-11-02-T, Judgment in Contempt Proceedings, 25 September 2012 (filed 1 October 2014), para.664.

including, *inter alia*, its ability to grant and enforce protective measures and confidentiality.

(3) Karma KHAYAT knew, should have known that broadcasting and/or publishing information on purported confidential witnesses in the *Ayyash et al.* case would interfere with the administration of justice by creating a real risk that public confidence in the Tribunal would be undermined, including, *inter alia*, its ability to grant and enforce protective measures and confidentiality.

## **Count 2**

14. Count 2 charges Karma KHAYAT with violating an Order issued to “*Al Jadeed TV*, its principals, employees, agents and affiliates” by the Pre-Trial Judge in the *Ayyash et al.* case on 10 August 2012 by failing to immediately remove from *Al Jadeed TV*’s website and *Al Jadeed TV*’s YouTube channel information on purported confidential witnesses in the *Ayyash et al.* case.

15. The *actus reus* of this form of contempt is the violation of an Order issued by a Judge or Chamber of the Tribunal.<sup>11</sup> The violation of a judicial Order constitutes, in itself, an interference with the administration of justice. The Prosecution is not required to prove actual interference, beyond the violation, with the administration of justice.<sup>12</sup>

16. The *mens rea* is the knowledge of the Order.<sup>13</sup> Either actual knowledge of the Order, or willful blindness (when the Accused had a suspicion or realization that the Order existed), or reckless indifference to the existence of the Order, are sufficient to convict.<sup>14</sup>

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<sup>11</sup> *Marijačić & Rebić*, para. 17; ICTY, *Prosecutor v Josip Jovic*, IT-95-14/2-R77, Judgement, 30 August 2006, para.19 [*Jovic*]; *Margetić*, para.36; ICTY, *In the Case Against Florence Hartmann*, IT-02-54-R77.5, Judgement on Allegations of Contempt, 14 September 2009, paras.20-21 [*Hartmann*]; ICTY, *Prosecutor v. Vojislav Seselj*, IT-03-67-R77.3, Public Redacted Version of “Judgement” Issued on 31 October 2011, 19 May 2010, para.31 [*Seselj R77.3*]; *Seselj R77.4*, paras.40-41; *Nshogoza*, para.157.

<sup>12</sup> ICTY, *Prosecutor v. Ivica Marijačić and Markica Rebić*, IT-95-14-R77.2-A, Judgement, 27 September 2006, para. 44 [*Marijačić & Rebić Appeals*]; ICTY, *Prosecutor v Josip Jovic*, IT-95-14/2-R77-A, Judgement, 15 March 2007, para.30 [*Jovic Appeals*]; ICTY, *Judgement, In the Case Against Florence Hartmann*, IT-02-54-R77.5-A, 19 July 2011, para.107 [*Hartmann Appeals*]; *Seselj R77.2 Appeals*, para.20.

<sup>13</sup> *Nobilo Appeals*, paras.53-54; *Jovic Appeals*, para.27; *Margetić*, para.36; ICTY, *Prosecutor v. Radoslav Brđanin Concerning Allegations Against Milka Maglov*, Decision on Motion for Acquittal Pursuant to Rule 98 bis, 19 March 2004, para.37 [*Maglov*]; *Hartmann*, para.22; *Seselj R77.3*, para.32; *Seselj R77.4*, paras.40-41; ICTR, *Prosecutor v. Nshogoza*, ICTR-07-91-A, Judgement, 15 March 2010, para.80; *Taylor*, para.40.

17. Freedom of expression and press does not include the right to violate a court order<sup>15</sup> and an accused, as a media person or otherwise, is not free to assess that the public interest warrants or justifies publishing or giving access to protected information.<sup>16</sup>

18. The elements of Count 2 are:

(1) On 10 August 2012, the Pre-Trial Judge ordered “*Al Jadeed TV*, its principals, employees, agents and affiliates immediately to remove any confidential information or material allegedly related to witnesses before the Tribunal, from their websites and from any other resource accessible to the public”.

(2) The 10 August 2012 the Order was served on *Al Jadeed TV* and Karma KHAYAT had knew about, should have known about or was recklessly indifferent to the existence of the Order.

(3) Karma KHAYAT violated the 10 August 2012 Order by continuing to publish information and/or material covered by the Order on *Al Jadeed TV*'s website and *Al Jadeed TV*'s YouTube channel.

### III. THE ACCUSED

19. *Al Jadeed TV* is a category A television/establishment pursuant to Lebanese law no. 382 dated 4 November 1994. It broadcasts general interest programs on television, including news bulletins.<sup>17</sup> In addition, *Al Jadeed TV* publishes the content of its broadcasts on its official website (“www.aljadeed.tv”) and on its YouTube channel

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<sup>14</sup> *Nobilo Appeals*, para.54; *Marijačić & Rebić*, para.18; *Margetić*, para.37; *Maglov*, para.37; *Samura*, paras. 24-25; *Taylor*, paras.36, 37 & 39.

<sup>15</sup> *Jovic*, para.23; *Margetić*, para.81; *Marijačić & Rebić*, para.39.

<sup>16</sup> *Marijačić & Rebić*, para.39, ICTY, *Prosecutor v. Baton Haxhiu*, IT-04-84-R77.5, Judgement on Allegations of Contempt, 24 July 2008, para.28 [*Haxhiu*]; *Hartmann*, paras.69-70.

<sup>17</sup> *See Confidential Annex B.*

(“www.youtube.com/user/aljadeedonline”). It also posts its videos on its Facebook page (“https://www.facebook.com/#!/aljadeedonline”).<sup>18</sup>

20. *Al Jadeed TV* is owned and operated by *Al Jadeed S.A.L.* *Al Jadeed S.A.L.* is a legal person registered before the Beirut Commercial Court on 13 December 1990, registration number 57693 (Beirut(B)/public/1990/57693), having its headquarters in Wata Al Mosaytaba, Beirut, Lebanon.<sup>19</sup>

21. The accused Karma KHAYAT was born in 1983 in Saida, Lebanon.

22. At all times relevant to the Order in Lieu, Karma KHAYAT was Deputy Head of News and Political Programmes at *Al Jadeed TV* and a shareholder at *Al Jadeed S.A.L.*<sup>20</sup> At all times relevant to the Order in Lieu, Karma KHAYAT was (and is) the daughter of *Al Jadeed S.A.L.*'s chairman of the board, who is also one of the major owners of the company.<sup>21</sup> As of February 2009, five KHAYAT family members, including Karma KHAYAT, each owned 60300 shares or 10% of the company (for a total of 50% ownership).

23. In her capacity as Deputy Head of News and Political Programmes, Karma KHAYAT had authority over and supervised the work of *Al Jadeed TV*'s news and political programs. She directed and coordinated reporters and staff in their investigations, and she was responsible for the outcome of their investigations and reports.<sup>22</sup> Karma KHAYAT decided which reports and investigative reports were broadcast during *Al Jadeed TV*'s news bulletins.<sup>23</sup>

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<sup>18</sup> AP1405\_059\_ARA-ENG\_00620-00653, 00621-00653; AP1405\_061ARA-ENG\_00513-00516 to 00515-00516; AP1405\_085\_ENG\_00768-00770; AP1405\_086\_ENG\_00774-00775; AP1405\_092\_ENG\_00806-00812.

<sup>19</sup> See Confidential Annex B.

<sup>20</sup> See Confidential Annex B; AP1405\_059\_ARA-ENG\_00616-00653.

<sup>21</sup> AP1405\_021\_ENG\_T\_00078-00169 to 00080-00170; AP1405\_059\_ARA-ENG\_00623-00653.

<sup>22</sup> AP1405\_059\_ARA-ENG\_00629-00653.

<sup>23</sup> AP1405\_059\_ARA-ENG\_00617-00653 & 00621-00653.



## IV. THE PUBLICATIONS

### 1. Overview

24. In the course of the broadcasts and publications at issue in this case, *Al Jadeed TV* claimed to have obtained a list of more than 50 names of persons who were alleged to be confidential STL witnesses.<sup>24</sup> The five episodes broadcast by *Al Jadeed TV* on 6, 7, 9 and 10 August 2012 exposed to the public persons alleged to be confidential STL witnesses and also gave details about the information that these persons had allegedly given to STL investigators.

25. *Al Jadeed TV* grouped the alleged confidential witnesses into four different categories that *Al Jadeed TV* said represented “threads” of the investigation into the HARIRI assassination:

- (a) The so-called “car witnesses” (second episode);
- (b) The so-called “*al Nafha*” and “fire” witnesses (third episode);
- (c) The alleged witnesses related to telecommunications (fourth episode); and
- (d) The alleged witnesses related to universities (fifth episode).

26. In total, eleven persons were introduced as confidential witnesses through the five episodes,<sup>25</sup> with *Al Jadeed TV* purporting that the eleven represented a much larger number of confidential witnesses known to *Al Jadeed TV*. The entire thrust and tenor of the broadcasts, and *Al Jadeed TV*'s repeat message to the public, was that it had in its possession a very large amount of confidential STL witness information, which it could publish and make known at will, and that the STL's entire regime concerning the confidentiality and protection of witnesses was broken, ineffective and could not be relied upon. Persons intending or attempting to give evidence to, or at the Tribunal while maintaining (or hoping to maintain) various elements of

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<sup>24</sup> AP1405\_008\_ENG\_T\_00701-00703; AP1405\_010\_ENG\_T\_00484-00486; AP1405\_016\_ENG\_T\_00496-00499.

<sup>25</sup> For future reference, the alleged witnesses are hereafter allotted a number in the order in which they were presented during the series, together with the notation “AW”, which stands for “alleged witness.” The masculine form is used in this text for all alleged witnesses whether or not the particular alleged witness can actually be recognized as a male or female in the episodes.

confidentiality and protection would act at their peril and would be subject to ready disclosure, just as the fifty claimed to be known by *Al Jadeed TV* and the eleven involved in their broadcasts.

27. The episodes featured *Al Jadeed TV* reporter Mr Rami AL AMIN, who introduced various of the eleven alleged confidential witnesses. Various identifying information was given for different alleged confidential witnesses, including, *inter alia*, initials, occupation and rank, as well as the place where an alleged witness worked.

28. Certain alleged witnesses were approached to be filmed and/or contacted over the phone by *Al Jadeed TV*'s reporter. At least some of the alleged witnesses were filmed without being aware of it. On some occasions, *Al Jadeed* approached or "lured" alleged witnesses under false pretexts. Some were contacted only by telephone or were called after having been secretly filmed in order to be asked if they had been contacted by STL investigators. Video or audio recordings of these conversations or interactions were then broadcast.

29. [REDACTED]

30. Taken together, a significant amount of identifying information was published about the alleged confidential witnesses, together with the type of information which they had allegedly provided to STL investigators.

## **2. The episodes and related broadcasts**

31. The following is a chronological account of *Al Jadeed TV*'s broadcasts of 5 to 10 August 2012, concerning its series "The Witnesses of the International Tribunal".<sup>26</sup>

32. **On 5 August 2012**, *Al Jadeed TV*'s newscaster announced the upcoming series of episodes during a news bulletin:

Starting tomorrow, Monday, *Al Jadeed* channel will be broadcasting a series of reports in its news bulletins. [...] They reveal the identities of the witnesses of the Special International Tribunal for the assassination of Prime Minister Rafic HARIRI and the contents of their statements.<sup>27</sup>

This announcement was followed by a preview of the series consisting of a sequence of short footage clips taken from the upcoming episodes.<sup>28</sup>

33. **On 6 August 2012**, preceding the first episode of the series, the newscaster of the bulletin stated the following:

[M]ore than fifty names in Lebanon and they are classified in the confidential list of the Witness Protection Program. We will not say that they will make false statements, and to each his own circumstance at the level of collaboration with the International Tribunal. But since they hold this level of importance, why did the Tribunal dispense with their confidential status? How did their names reach us? And where is the protection they were promised? This is a compromised Tribunal [...] today its witnesses are left exposed in the media.

...

In the first part of the 'Witnesses of the International Tribunal' series: luring the first witness in order to film him and a listing of the other witnesses: An investigation by Rami AL AMIN."<sup>29</sup>

34. **The first episode (on 6 August 2012)**, is principally an introduction to the series and a preview of the upcoming attractions.

<sup>26</sup> Confidential Annex D is a table of identifying information broadcast by *Al Jadeed TV* concerning the various alleged witnesses.

<sup>27</sup> AP1405\_007\_ENG\_T\_00482-00482.

<sup>28</sup> AP1405\_023\_ARA, from 20:15 to 20:49.

<sup>29</sup> AP1405\_008\_ENG\_T\_00701-00703 (emphasis added).

35. [REDACTED]

36. **On 7 August 2012**, the second and third episodes were broadcast. At the beginning of the news bulletin, the newscaster announced:

And on to the proceedings of the International Tribunal, where tonight we follow a new chapter of the pillars upon which the Tribunal is relying, to reveal the identity of the most prominent witnesses who have been classified as confidential. They are waiting to give their testimonies, each coming from a different position: be it in the two telecommunications companies or as traffic experts, maintenance workers and other positions. The Tribunal promised a cover of confidentiality to the witnesses but the leak has knocked on the doors of The Hague once again, and exclusively from Al-Jadeed.<sup>34</sup>

37. **The second episode** of the series was dedicated to the so-called “car witnesses”.<sup>35</sup> The reporter dramatically states that “The International Tribunal has proven yet again to be

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<sup>30</sup> AP1405\_024\_ARA, from 04:38 to 04:43.

<sup>31</sup> AP1405\_008\_ENG\_T\_00701-00703, 00702-00703.

<sup>32</sup> AP1405\_024\_ARA, 05:29 to 05:52. See also AP1405\_025\_ARA, from 16:12 to 16:30.

<sup>33</sup> AP1405\_024\_ARA, 05:54 to 06:50.

<sup>34</sup> AP1405\_009\_ENG\_T\_00483-00483 (emphasis added).

<sup>35</sup> AP1405\_010\_ENG\_T\_00484-00486.

infiltrated. What we are looking for essentially relies on information leaked from inside the International Tribunal. We obtained a list containing the names of most of the witnesses who testified before the investigators.”<sup>36</sup>

38. The alleged witnesses presented as part of the second episode were all apparently filmed without being aware of the presence of the camera. Indeed, during the episode, before the first footage showing the first alleged witness, a narrator’s voice mentions that “considering the sensitivity of the subject, we had to use hidden cameras in order to accomplish the task of filming the witnesses.”<sup>37</sup>

39. [REDACTED]

40. [REDACTED] [REDACTED]  
[REDACTED]

[REDACTED]

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<sup>36</sup> AP1405\_010\_ENG\_T\_00484-00486 (emphasis added).

<sup>37</sup> AP1405\_010\_ENG\_T\_00484-00486.

<sup>38</sup> The initials in the English language are ‘equivalent’ to the Arabic language letters that can be heard during *Al Jadeed TV*’s broadcasts. The interpretation of the ‘equivalent’ English letters can differ from one interpretation / translation to another, although the Arabic letters are completely precise.

<sup>39</sup> AP1405\_010\_ENG\_T\_00484-00486, 00485-00486.

<sup>40</sup> AP1405\_025\_ARA, from 15:15 to 16:13 and from 16:44 to 16:55.

<sup>41</sup> AP1405\_025\_ARA, from 16:12 to 16:30.

<sup>42</sup> AP1405\_010\_ENG\_T\_00485-00486.

41. [REDACTED]

42. **The third episode** of the series pertained to the so-called “*al Nafha*”<sup>44</sup> and “fire” witnesses.<sup>45</sup>

43. [REDACTED]

44. [REDACTED]  
[REDACTED]

45. [REDACTED]  
[REDACTED]

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<sup>43</sup> AP1405\_010\_ENG\_T\_00485-00486, 00486-00486.

<sup>44</sup> *Al Nafha* is the department of vehicle registration in Lebanon.

<sup>45</sup> AP1405\_011\_ENG\_T\_00487-00489.

<sup>46</sup> AP1405\_011\_ENG\_T\_00487-00489.

<sup>47</sup> AP1405\_025\_ARA, from 39:00 to 39:23.

[REDACTED]

46. **On 8 August 2012**, *Al Jadeed TV* publicly presented and commented on a letter dated 7 August 2012 from the STL Registrar, communicating a “Notice of Cease and Desist,” which demanded that *Al Jadeed TV*, its employees and its affiliates cease and desist from broadcasting reports about alleged confidential witnesses of the Tribunal. The reporter underlined that the Notice of Cease and Desist warned that approaching alleged Tribunal witnesses using false identities and hidden cameras and airing the resulting reports might constitute interference with the administration of justice pursuant to Rule 60bis and “may have jeopardized the security of the individuals with whom *Al Jadeed TV* conducted interviews”. The reporter then states:

*Al Jadeed* channel deems that the decisions of the Intentional Tribunal are not legally binding for Lebanese media, and that the sole legal reference for them is the Lebanese law. Hence, *Al Jadeed* channel will legally study the file, knowing that they will later pursue airing the reports about the witnesses of the Tribunal.<sup>50</sup>

47. **On 9 August 2012**, in the introductory part of the news bulletin, the newscaster announced that after legal consultations, *Al Jadeed TV* considers the Registrar’s Notice of Cease and Desist non-binding. He further said that *Al Jadeed TV* will reply to the Notice of Cease and Desist later during the news bulletin. He underlined that “all witnesses who gave their statements [to *Al Jadeed TV*] did so of their own free will”.<sup>51</sup>

48. Later on the same news bulletin, *Al Jadeed TV* broadcast **the fourth episode** of the series “The Witnesses of the International Tribunal,” concerning alleged confidential witnesses related to the field of telecommunications.<sup>52</sup>

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<sup>48</sup> AP1405\_011\_ENG\_T\_00489-00489.

<sup>49</sup> AP1405\_025\_ARA, from 39:24 to 39:40.

<sup>50</sup> AP1405\_012\_ENG\_T\_00490-00491.

<sup>51</sup> AP1405\_013\_ENG\_T\_00492-00492.

<sup>52</sup> AP1405\_014\_ENG\_T\_00704-00707.

49. [REDACTED]  
[REDACTED]

50. [REDACTED]  
[REDACTED]

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- 53 AP1405\_014\_ENG\_T\_00704-00707.
  - 54 AP1405\_027\_ARA, from 30:16 to 30:35.
  - 55 AP1405\_027\_ARA, from 28:21 to 29:31.
  - 56 AP1405\_014\_ENG\_T\_00704-00707.
  - 57 AP1405\_014\_ENG\_T\_00704-00707.
  - 58 AP1405\_027\_ARA, from 29:34 to 29:40.
  - 59 AP1405\_014\_ENG\_T\_00704-00707.
  - 60 AP1405\_027\_ARA, from 29:41 to 29:50.



51. [REDACTED]  
[REDACTED]

[REDACTED]

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<sup>61</sup> AP1405\_027\_ARA, from 29:51 to 31:13.

[REDACTED]

52. The fourth episode is followed by *Al Jadeed TV*'s response to the Registrar's Notice of Cease and Desist, stating that the Notice of Cease and Desist is "complete[ly] reject[ed] on the basis that it was "illegal and without merit". The newscaster states:

(1) That *Al Jadeed TV*'s reporters approached the alleged witnesses using their journalistic credentials very clearly and that the individuals appearing in the episodes gave information to the reporters "knowingly and wilfully" "without any reservation or pressure";

(2) "Al Jadeed [*TV*]'s investigations came within the boundaries of the exercise of freedom of the press";

(3) The 25 May 2012 Order issued by the Pre-Trial Judge of the Tribunal concerning the non-dissemination of material was not communicated to *Al Jadeed TV*, and in any case "it is not possible to hold the media accountable for the failures of the Tribunal in preserving and safeguarding its documents, assuming that the information broadcast is true; and

(4) The Tribunal cannot restrict the freedom of opinion "except in accordance with the laws and relevant judicial verdicts."<sup>63</sup>

53. **On 10 August 2012** , *Al Jadeed TV* broadcast the **fifth episode** of the series "The Witnesses of the International Tribunal," concerning alleged witnesses related to universities.<sup>64</sup>

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<sup>62</sup> AP1405\_014\_ENG\_T\_00704-00707 to 00707-00707.

<sup>63</sup> AP1405\_015\_ENG\_T\_00493-00495.

<sup>64</sup> AP1405\_014\_ENG\_T\_00707-00707; AP1405\_016\_ENG\_T\_00406-00409.

The newscaster stated that the Tribunal investigators searched in universities for “all the data on students in all of Lebanon’s universities.”<sup>65</sup>

54. [REDACTED]  
[REDACTED]

**3. The episodes and news bulleti ns were available to the public on *Al Jadeed TV*'s website and *Al Jadeed TV*'s YouTube channel**

55. Once the episodes of 6, 7, 9 and 10 August 2012 were broadcast by *Al Jadeed TV*, they were placed online on *Al Jadeed TV*'s website ([www.aljadeed.tv](http://www.aljadeed.tv)) and *Al Jadeed TV*'s YouTube channel (“[www.youtube.com/user/aljadeedonline](http://www.youtube.com/user/aljadeedonline)”). Links to *Al Jadeed TV*'s official website pages on which the episodes were available were also posted on *Al Jadeed TV*'s Facebook page (“<https://www.facebook.com/#!/aljadeedonline>”).<sup>68</sup>

56. On 10 August 2012, the Pre-trial Judge issued the confidential and *ex parte* “Order for Immediate Removal of Disseminated Material and Cessation of Dissemination” in which he ordered “*Al Jadeed TV*, its principals, employees, agents and affiliates immediately to remove

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<sup>65</sup> AP1405\_016\_ENG\_T\_00496-00499.

<sup>66</sup> AP1405\_028\_ARA, from 12:13 to 14:32.

<sup>67</sup> AP1405\_016\_ENG\_T\_00496-00499 to 00498-00499 (emphasis added).

<sup>68</sup> AP1405\_059\_ARA-ENG\_00620-00653, 00621-00653; AP1405\_061ARA-ENG\_00513-00516 to 00515-00516; AP1405\_085\_ENG\_00768-00770; AP1405\_086\_ENG\_00774-00775; AP1405\_092\_ENG\_00806-00812.

any confidential information or material allegedly related to witnesses before the Tribunal, from their websites and from any other resource accessible to the public.”<sup>69</sup> The 10 August 2012 Order was served on *Al Jadeed TV* on 14 August 2012.<sup>70</sup>

57. Despite the Order, *Al Jadeed TV* continued to publish all of the episodes indicated above until at least 19 September 2013 and on *Al Jadeed TV*'s YouTube channel until at least 15 January 2014. Links to the episodes were posted on *Al Jadeed TV*'s Facebook page until at least 26 September 2012.<sup>71</sup>

## V. THE RESPONSIBILITY OF THE ACCUSED

58. As a principal actor and official at *Al Jadeed TV*, and pursuant to her *de jure* and *de facto* powers, authority and influence, Karma KHAYAT decided to broadcast, caused to be broadcast and was, and is responsible for broadcasting the series “The Witnesses of the International Tribunal” on 6, 7, 9 and 10 August 2012, which were subsequently transferred to and published on *Al Jadeed TV*'s website and YouTube channel, and linked to its Facebook site.<sup>72</sup> Prior to their broadcast, Karma KHAYAT decided to produce the five episodes, and she directed, supervised and tasked *Al Jadeed TV* reporter Rami AL AMIN to prepare and produce the episodes.<sup>73</sup> In all respects, as to Counts 1 and 2, Kharma KHAYAT acted with the requisite scienter.

### Count 1

59. By her position, authority and conduct, as set out above, Karma KHAYAT knowingly interfered with the administration of justice by broadcasting and/or publishing information on

<sup>69</sup> *In the Case Against Ayyash et al.*, STL-11-01/PT/PTJ. Order for Immediate Removal of Disseminated Material and Cessation of Dissemination, 10 August 2012; AP1405\_001\_ENG\_00001-00006.

<sup>70</sup> AP1405\_002\_ENG\_T\_00013-00015.

<sup>71</sup> AP1405\_085\_ENG\_00768-00770; AP1405\_086\_ENG\_00774-00775; AP1405\_092\_ENG\_00806-00812.

<sup>72</sup> AP1405\_093\_ENG\_00813-00815; AP1405\_059\_ARA-ENG\_00616-00653.

<sup>73</sup> AP1405\_059\_ARA-ENG\_00629-00653 to 00631-00653, 00633-00653, 00649-00653 to 00651-00653.

purported confidential witnesses in the *Ayyash et al.* case, thereby undermining public confidence in the Tribunal's ability to protect the confidentiality of information about, or provided by, witnesses or potential witnesses.

60. The entire thrust and tenor of the *Al Jadeed TV* publications were, day after day and for months thereafter, and in the television company's own words, to "reveal" and "expose" the identities of alleged witnesses "collaborat[ing] with the International Tribunal" and known to be "classified as confidential," "on which the Tribunal is relying," as well as the "contents of their statements":

Starting tomorrow, Monday, *Al Jadeed* channel will be broadcasting a series of reports in its news bulletins. [...] They reveal the identities of the witnesses of the Special International Tribunal for the assassination of Prime Minister Rafic HARIRI and the contents of their statements.<sup>74</sup>

[M]ore than fifty names in Lebanon and they are classified in the confidential list of the Witness Protection Program. We will not say that they will make false statements, and to each his own circumstance at the level of collaboration with the International Tribunal [...] This is a compromised Tribunal [...] today its witnesses are left exposed in the media.<sup>75</sup>

. . . [T]onight we follow a new chapter of the pillars upon which the Tribunal is relying, to reveal the identity of the most prominent witnesses who have been classified as confidential. They are waiting to give their testimonies, each coming from a different position: be it in the two telecommunications companies or as traffic experts, maintenance workers and other positions. The Tribunal promised a cover of confidentiality to the witnesses but the leak has knocked on the doors of The Hague once again, and exclusively from Al-Jadeed.<sup>76</sup>

61. Karma KHAYAT knowingly and wilfully broadcast and caused to be broadcast identifying information about alleged confidential Tribunal witnesses, in full knowledge of the confidentiality and sensitivity of the matters involved, in the particular environment of the place and times, with a very clear, indeed obvious, and real risk that the workings of the Tribunal (its administration of justice), and the public's confidence in the Tribunal would be undermined. Alleged confidential witnesses were filmed by hidden cameras because of the known "sensitivity

<sup>74</sup> AP1405\_007\_ENG\_T\_00482-00482.

<sup>75</sup> AP1405\_008\_ENG\_T\_00701-00703 (emphasis added).

<sup>76</sup> AP1405\_009\_ENG\_T\_00483-00483 (emphasis added).

of the subject,” sometimes being “lured” or approached under false pretexts, sometimes being pressed and/or disclosed even when they denied being witnesses or declined to give information.<sup>77</sup>

62. This was confirmed during an interview given by Rami AL AMIN to the *Al Akhbar newspaper*, published in an article dated 6 August 2012. AL AMIN announced to the public the episodes to be broadcast during the week, as well as their content: “Around 30 witnesses spoke without being aware of the presence of the camera. Some of the situations border on the comedic . . .” He also stated: “[For the alleged witnesses] talking about the tribunal was a feared taboo . . . I only met them so people could identify them.”<sup>78</sup>

63. Karma KHAYAT received the Registrar’s Notice of Cease and Desist on 7 August 2012<sup>79</sup>, sent on behalf of the Tribunal, through which she was put on notice that:

[Televising the interviews with the alleged witnesses] may constitute a knowing and wilful interference with the administration of justice and may place at risk the security of those individuals that have been the subject of the *Al Jadeed* interviews.<sup>80</sup>

64. Despite this Notice, which demanded that the broadcasts cease immediately, *Al Jadeed TV* continued to broadcast the series of episodes.

65. [REDACTED]  
[REDACTED]

<sup>77</sup> AP1405\_092\_ENG\_00807-00812, 00808-00812.

<sup>78</sup> AP1405\_018\_ENG\_T\_00056-00058.

<sup>79</sup> AP1405\_036\_ENG\_00280-00280; AP1405\_059\_ARA-ENG\_00643-00653; AP1405\_005\_ENG\_00024-00025.

<sup>80</sup> AP1405\_004\_ENG\_00018-00019.

<sup>81</sup> AP1405\_019\_ENG\_T\_00062-00062; AP1405\_070\_ENG\_T\_00708-00708.

[REDACTED]

## Count 2

66. Karma KHAYAT knew of the 10 August 2012 Order and failed to remove the episodes from *Al Jadeed TV*'s website and YouTube channel, although the episodes and their publication were under her responsibility as Deputy Head of News and Political Programmes.<sup>84</sup>

67. On 11 August 2012, [REDACTED]  
[REDACTED] sent the 10 August 2012 Order to Karma KHAYAT's *Al Jadeed TV*'s email address as an attachment to a message titled "Order from the Pre-Trial Judge of the STL."<sup>85</sup> This was the same address to which she was sent the Notice of Cease and Desist and through which she sent back *Al Jadeed TV*'s response.<sup>86</sup>

68. On the same date, [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]

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<sup>82</sup> AP1405\_067\_ENG\_00559-00561 to 00560-00561.

<sup>83</sup> AP1405\_019\_ENG\_T\_00062-00062; AP1405\_070\_ENG\_T\_00708-00708.

<sup>84</sup> AP1405\_059\_ARA-ENG\_00626-00653, 00649-00653.

<sup>85</sup> AP1405\_038\_ENG\_00284-00285; AP1405\_ENG\_089\_00795-00797.

<sup>86</sup> AP1405\_036\_ENG\_00280-00280; AP1405\_037\_ENG\_00282-00282.

<sup>87</sup> AP1405\_083\_ENG\_00745-747, 00746-00747; AP1405\_0\_68\_00564-00564; AP1405\_038\_ENG\_00282-00285.

69. On 14 August 2012, two chief warrant Officers of the Judicial Police Command mandated by the Office of the Public Prosecutor at the Lebanese Court of Cassation served the 10 August 2012 Order on *Al Jadeed TV*. Mariam AL BASSAM, Head of news and political programmes at *Al Jadeed TV* with whom Karma KHAYAT holds a close professional relation, signed the receipt of service.<sup>88</sup>

70. [REDACTED]  
[REDACTED]

71. On 5 June 2013, the 10 August 2012 Order was issued in a public redacted version.<sup>92</sup>

72. [REDACTED]  
[REDACTED]

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<sup>88</sup> AP1405\_087\_ENG\_00778-00783 to 00780-00783; AP1405\_088\_ENG\_00786-00790, 00787-00790; AP1405\_002\_ENG\_T\_00013-00015.

<sup>89</sup> AP1405\_082\_ENG\_T\_00741-00742, 00742-00742.

<sup>90</sup> AP1405\_079\_ENG\_T\_00728-00728.

<sup>91</sup> AP1405\_080\_ENG\_T\_00732-00734 to 00734-00734.

<sup>92</sup> *In the Case Against Ayyash et al.*, STL-11-01/PT/PTJ, Public Redacted Version of the 10 August 2012 “Order for Immediate Removal of Disseminated Material and Cessation of Dissemination,” 5 June 2013; AP1405\_066\_ENG\_00551-00555.



[REDACTED]

**Word Count:** 7282 words

**RESPECTFULLY SUBMITTED ON THIS 4 SEPTEMBER 2014.**



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Mr Kenneth Scott  
*Amicus Curiae*

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<sup>93</sup> AP1405\_059\_ARA-ENG\_00645-00653 to 00649-00653.

<sup>94</sup> AP1405\_003\_ENG\_T\_00016-00016; AP1405\_069\_ENG\_T\_00568-00570 to 00570-00570.

