

I am sitting today to deliver the Judgment in this case. I will summarize the procedural history, the applicable law and, finally, my findings. I emphasize that this is a summary only and that the authoritative account of my findings is contained in the written Judgment, which will be made available at the close of this hearing. The Judgment will be in the working language of these proceedings – English – but Arabic and French versions will be made available soon. However, the summary is available in all three languages. I also note that the Judgment comes in a confidential version and a public version. This public version contains a number of minor redactions to protect the identity and safety of certain witnesses who testified in these proceedings.

This case concerns a series of television episodes broadcast in Lebanon in August 2012 on purported confidential Tribunal witnesses, and the episodes' subsequent availability online. *Al Jadeed* TV, a television broadcasting company headquartered in Beirut, Lebanon and Ms Kharma Mohamed Tahsin Al Khayat, who was at all relevant times *Al Jadeed* TV's Deputy Head of News and Political Programs, are alleged to have been responsible both for the broadcasts and for leaving the episodes online. For this conduct, they are charged with interfering with the Tribunal's administration of justice. In various ways, this is an unconventional contempt case. It implicates media expression and supposed limits to that expression under the law; it involves a count - Count 1 - never before charged in an international court; and most notably, it is the first in the history of international criminal justice in which a legal person is accused of a crime.

I now summarize the procedural history of this case.

On 31 January 2014, Judge David Baragwanath charged *Al Jadeed* TV and Ms Khayat with two counts of contempt pursuant to Rule 60 *bis* of the Tribunal's Rules of Procedure and Evidence.

The Accused pleaded not guilty to both counts.

The trial opened on 16 April 2015 and concluded on 15 May 2015. Twelve witnesses testified live in court or by video-conference link, including a prosecution expert. The Parties filed their final trial briefs on 8 June 2015, and made closing arguments on 18 and 19 June 2015.

I now turn to the applicable law.

Contempt of the Tribunal is described in Rule 60 *bis* (A). It provides that “[t]he Tribunal, in the exercise of its inherent power, may hold in contempt those who knowingly and willfully interfere with its administration of justice”. The Rule provides a non-exhaustive, diverse list of acts which can constitute contempt.

Count 1, under Rule 60 *bis* (A), charges the Accused with knowingly and wilfully 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.

With respect to the *actus reus* of this count, the *Amicus* must first prove that the Accused actually broadcast and/or published information on purported confidential witnesses in the *Ayyash et al.* case. The disclosed information must at least be significant enough that the relevant individual is reasonably identifiable in the circumstances.

In addition, the *Amicus* must show that such broadcast and/or publication, when it occurred, created, objectively, the likelihood of undermining public confidence in the Tribunal’s ability to protect the confidentiality of information about, or provided by, witnesses or potential witnesses. This likelihood cannot be proved in subjective terms. Under the required objective test, likelihood can only be proved through ascertainable facts.

The *mens rea* for this count, and indeed for any contempt charge, is a knowing and wilful interference with the administration of justice.

Count 2, under Rule 60 *bis* (A) (iii), charges the Accused with knowingly and wilfully interfering with the administration of justice by failing to remove from *Al Jadeed* TV’s website and its YouTube channel information on purported confidential witnesses in the *Ayyash et al.* case, thereby violating the 10 August 2012 Order of the Tribunal’s Pre-Trial Judge in this respect.

The *actus reus* for this count is the disclosure of information relating to proceedings before the Tribunal, where such disclosure breaches an order of the Judge or Chamber. When, as here, the order concerns the removal of information that has already been disclosed, a failure to remove constitutes disclosure. The *Amicus* must prove that the Accused was in a position to remove or cause the removal of the information. In addition, he must show that the order was objectively breached. In the event of such breach, he need not demonstrate actual

interference with the Tribunal's administration of justice. A violation of the order *per se* suffices.

With respect to the *mens rea* for this count, the *Amicus* must prove that the Accused had knowledge that the disclosure was in violation of an order. Where knowledge of the existence of an order is shown, a finding of intent to violate the order would almost necessarily follow. In such case, it is sufficient for the *Amicus* to establish that the act which constituted the violation was deliberate and not accidental. Proof of actual knowledge of the order, satisfies this element; as does wilful blindness to its existence. For wilful blindness, the *Amicus* first must demonstrate that the Accused had a suspicion or realization of the order's existence. In addition, the Accused must have refrained from finding out whether the order did exist, so as to be able to deny knowledge of it.

Now, given that *Al Jadeed* TV, a legal person, is charged with both counts, I turn to the law with respect to attributing liability to such persons.

I recall the Appeals Panel's decision holding that the Tribunal has jurisdiction over legal persons in contempt proceedings. The Appeals Panel, however, provided no clear guidance as to the applicable material elements for attributing liability to legal persons charged with contempt before this Tribunal. Because of and despite this, I must identify these elements.

I first note that neither the Statute nor the Rules can assist me in this regard. Beyond their provisions, I also recognize that there is no relevant international convention with respect to the elements of corporate liability, nor international custom or general principles of law on which I can rely. There is indeed nothing approaching a universal model or a consensus across national systems. State practice varies significantly, particularly with respect to the crimes for which legal persons can be held responsible and the range of natural persons whose conduct can be attributed to the legal person. In these circumstances, I conclude that it is most appropriate to look to Lebanese law on corporate liability. I find significant that the corporate Accused is domiciled in and substantially operates in Lebanon and that, as the Appeals Panel held, it was foreseeable from Lebanese domestic law that certain conduct might give rise to corporate liability. Finally, I am mindful that Lebanon is where the alleged acts and conduct in this case occurred and more broadly is at the heart of the Tribunal's mandate.

The applicable provision of Lebanese law is Article 210 of the Lebanese Criminal Code. Considering this Article and the relevant case-law, in order for the corporate Accused to be held criminally responsible for either count, the *Amicus* must: (1) establish the criminal responsibility of a specific natural person; but a conviction of the natural person is not required; (2) demonstrate that, at the relevant time, such natural person was a director, member of the administration, representative (which means someone authorized by the legal person to act in its name) or an employee who has been provided by the legal body with explicit authorization to act in its name; and (3) prove that the natural person's criminal conduct was done either (a) on behalf of or (b) using the means of the corporate Accused.

Having established the applicable law, I will now address my findings for Count 1.

With respect to the *actus reus* for this charge, having reviewed the evidence, I conclude that from 6 to 10 August 2012, *Al Jadeed* TV aired five episodes, with the title "The Witnesses of the International Tribunal", purporting to reveal the identities of confidential witnesses of the Tribunal. While their names were not disclosed and their faces were pixelated, I find that the information provided in the Episodes permitted the identification of three of the individuals concerned.

The individuals who testified stated that they had been afraid or concerned after the airing of the Episodes. However, their fears or concerns were not based on ascertainable facts that could objectively be linked to the disclosures. Further, these witnesses provided no testimony from which I could assess whether their confidence in the Tribunal had been undermined. Consequently, I cannot draw any conclusion with respect to the effects of these disclosures on the general Lebanese public. Having reviewed the entirety of the evidence, which also includes expert and documentary evidence, I find that the *Amicus* has not proved that the airing of the Episodes was objectively likely to undermine the public's confidence in the Tribunal's ability to protect confidential information.

As a result, the requirements for the *actus reus* of Count 1 are not met. Therefore, I do not need to enter findings on the element of *mens rea* or with respect to the implications, if any, of the freedom of the press under this charge.

With respect to the *actus reus* for Count 2, the *Amicus* proved that the Episodes were available only on *Al Jadeed* TV's website until at least 2 October 2013. I find no evidence that the Episodes were posted on other online platforms beyond 10 August 2012.

Regarding Ms Khayat's ability to remove the Episodes from *Al Jadeed* TV's website in compliance with the 10 August 2012 Order, I am satisfied that Ms Khayat was responsible for producing and broadcasting the Episodes. Because the programmes broadcast on *Al Jadeed* TV are automatically posted online, Ms Khayat was also responsible for the publication of the Episodes on *Al Jadeed* TV's online platforms, including its website. Consequently, I find that Ms Khayat had the ability to remove the Episodes from *Al Jadeed* TV's website but failed to do so at least until 2 October 2013. I conclude that the *Amicus* has therefore proved the *actus reus* for this count with respect to Ms Khayat.

I now address Ms Khayat's *mens rea* for count 2.

I am satisfied that on 7 August 2012, Ms Khayat received by email a Cease-and-Desist Letter from the Registrar of the Tribunal requesting *Al Jadeed* TV to cease the publication of the Episodes. On 9 August 2012, *Al Jadeed* TV, through its attorney, Ms Maya Habli, informed the Registrar that *Al Jadeed* TV dismissed his Letter as non-binding. The evidence on the record proves that Ms Khayat had knowledge of the content of this Letter and of *Al Jadeed* TV's response to it.

On 10 August 2012, the Pre-Trial Judge issued an order directing *Al Jadeed* TV and its employees to cease the dissemination of information pertaining to purported confidential witnesses of the Tribunal. The evidence shows that Mr Anthony Brettel Lodge, Head of Registry and Resident Representative at the Tribunal's Beirut Office, sent this Order to Ms Khayat by email.

On 14 August 2012, two Lebanese warrant officers served this Order on Ms Mariam Al Bassam, Head of *Al Jadeed* TV's News and Political Programs.

I am satisfied beyond reasonable doubt that Ms Khayat received Mr Lodge's email attaching the Order. Indeed, this email had been sent to the same email address from which Ms Khayat had been communicating with the Tribunal's spokesperson a few days earlier with respect to the Cease-and-Desist Letter. Moreover, there is no evidence indicating that the delivery of the email failed.

Additionally, I conclude that Ms Khayat had every reason to suspect that Mr Lodge's email, received only three days after *Al Jadeed* TV's response to the Cease-and-Desist Letter, concerned the publication of the Episodes. As a result, Ms Khayat was at least wilfully blind

to the Order. I find that Ms Khayat chose to disregard Mr Lodge's email in order to be able to deny knowledge of its content.

Since Ms Khayat had the ability to remove the Episodes from *Al Jadeed TV*'s website and was wilfully blind to the Order, I conclude that she deliberately violated it. The *Amicus* has therefore proved both the *actus reus* and the *mens rea* for count 2 with respect to Ms Karma Khayat.

I will now summarize my findings with respect to the liability of the Corporate Accused.

As I mentioned earlier, to secure the conviction of the corporate Accused, the *Amicus* needs to demonstrate the criminal conduct of a specific director, member of the administration, representative, or duly authorized employee of the corporation. Further, he needs to establish that this person's conduct was performed on behalf of the corporation or using its means.

I will first determine whether Ms Al Bassam, who was served the 10 August 2012 Order, violated the Order and, if so, whether her conduct was attributable to *Al Jadeed TV*.

I am satisfied that in her capacity as Head of News and Political Programs at *Al Jadeed TV*, Ms Al Bassam wrote the introductions to and supervised *Al Jadeed TV*'s news bulletins in general. She was aware of every story broadcast daily. The evidence also shows that she was jointly responsible with Ms Khayat for certain tasks within the news department. However, because it was Ms Khayat who assumed responsibility for the Episodes, I cannot conclude that Ms Al Bassam had the ability to remove them from *Al Jadeed TV*'s website in compliance with the 10 August 2012 Order. As a result, I cannot conclude beyond reasonable doubt that Ms Al Bassam committed any criminal conduct that could be attributed to *Al Jadeed TV*.

With respect to Ms Khayat, I concluded that she violated the 10 August 2012 Order. I thus have to determine whether she qualified at the relevant time as one of the natural persons whose conduct could be attributed to *Al Jadeed TV*.

I find no evidence indicating that Ms Khayat was either a director or a member of the Administration of *Al Jadeed TV*.

I am satisfied that she had managerial competencies within the company's news department. Indeed, she was the Deputy Head of News and Political Programs at *Al Jadeed TV* and was responsible for the investigation, production and publication of the Episodes. However, I find

no evidence that Ms Khayat had managerial responsibilities beyond the news department or that she had been duly authorized to represent *Al Jadeed* TV before third parties.

Accordingly, I cannot conclude beyond a reasonable doubt that Ms Khayat qualified as a representative or duly authorized employee of *Al Jadeed* TV in line with the Lebanese Criminal Code, and that her conduct can be attributed to the company.

In sum, the *Amicus* has not proved that one of the natural persons enumerated in Article 210 of the Lebanese Criminal Code as capable of representing *Al Jadeed* TV committed a criminal act attributable to the corporate Accused.

I will now read out the disposition of the Judgment:

**PURSUANT** to Rules 60 *bis* (A), 60 *bis* (A) (iii), 60 *bis* (H) and 168 of the Rules;

**I**

**FIND** both Accused **NOT GUILTY** with respect to the charges under Count 1 of the Amended Order in Lieu of Indictment;

**FIND** the Accused Ms Karma Khayat **GUILTY** and the Accused *Al Jadeed* TV **NOT GUILTY** with respect to the charges under Count 2 of the Amended Order in Lieu of Indictment;

**AND**

**ORDER** that a sentencing hearing shall be held on 28 September 2015 subject to the modalities that I will set out in a separate scheduling order.