



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

## THE CONTEMPT JUDGE

**Case No.:** STL-11-01/PT/CJ/R60bis.1

**Before:** Judge David Baragwanath, Contempt Judge

**Registrar:** Mr Daryl Mundis, Acting Registrar

**Date:** 24 April 2013

**Original language:** English

**Classification:** Public

## THE PROSECUTOR

v.

**SALIM JAMIL AYYASH  
MUSTAFA AMINE BADREDDINE  
HUSSEIN HASSAN ONEISSI  
ASSAD HASSAN SABRA**

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## ORDER ON CONFIDENTIALITY

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**Prosecutor:**  
Mr Norman Farrell

**Counsel for Mr Salim Jamil Ayyash:**  
Mr Eugene O'Sullivan  
Mr Emile Aoun

**Head of Defence Office:**  
Mr François Roux

**Counsel for Mr Mustafa Amine Badreddine:**  
Mr Antoine Korkmaz  
Mr John Jones

**Legal Representatives of Victims:**  
Mr Peter Haynes  
Ms Nada Abdelsater-Abusamra  
Mr Mohammad F. Mattar

**Counsel for Mr Hussein Hassan Oneissi:**  
Mr Vincent Courcelle-Labrousse  
Mr Yasser Hassan

**Counsel for Mr Assad Hassan Sabra:**  
Mr David Young  
Mr Guénaél Mettraux





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1. It is public knowledge that the Head of Defence Office, the Legal Representative of Victims and the Prosecutor have filed requests before the Pre-Trial Judge to refer certain matters to the President for referral to a Contempt Judge under Rule 60*bis* of the Rules of Procedure and Evidence (“Rules”).<sup>1</sup> In their filings, they have argued that the publication of purported witness information on three different occasions might constitute contempt of the Tribunal.

2. By confidential Orders, the Pre-Trial Judge referred the three matters to the President.<sup>2</sup> Acting in my capacity as President, I designated myself Contempt Judge in relation to these matters.<sup>3</sup> This was both pursuant to Rule 60 *bis* (C) of the Rules and Article 1 of the relevant Practice Direction of 11 March 2013.<sup>4</sup> In particular, the Practice Direction provides that the President designates the Contempt Judge from a pre-determined roster of all Judges of the Tribunal. This roster is organized by Judges’ names and provides for each Judge of the Tribunal to be the Contempt Judge within a pre-determined calendar month. Once designated, the Contempt Judge remains seized of the matter until it is finalized.<sup>5</sup> For the month of April 2013, the roster provides that I am the Contempt Judge.

3. As Contempt Judge, I ordered the Prosecutor, Defence counsel, the Head of Defence Office, the Registrar and the Legal Representative of Victims (“Participants”) to make submissions on *inter alia* whether there is reason to believe that any person has committed contempt of the Tribunal. I also scheduled a hearing for tomorrow afternoon to discuss this and

<sup>1</sup> STL, *Prosecutor v Ayyash et al*, STL-11-01/PT/PTJ: *Version publique expurgée du mémorandum déposé le 12 avril 2013 auprès du Juge de la mise en état*, 15 April 2013, Public Redacted Version of the Request on Behalf of the Legal Representative of Victims to the Pre-Trial Judge to Refer Certain Facts to the President under Rule 60*bis*(D), 15 April 2013; Public Redacted Request to Refer Matters to Contempt Judge Pursuant to Rule 60*bis*(D), filed 16 April 2013, 17 April 2013.

<sup>2</sup> STL, *Prosecutor v Ayyash et al*, STL-11-01/PT/PRES/R60bis.1, Order referring the facts brought to his attention on 12 April 2013 by the Head of the Defence Office to the President of the Tribunal for referral to a Contempt Judge, Confidential, 12 April 2013; STL, *Prosecutor v Ayyash et al*, STL-11-01/PT/PRES/R60bis.1, *Ordonnance renvoyant devant le Président du Tribunal aux fins de saisine d’un juge compétent en matière d’outrage, les faits qui ont été portés à sa connaissance par le Représentant légal des victimes et le Procureur*, Confidential, 18 April 2013.

<sup>3</sup> STL, *Prosecutor v Ayyash et al*, STL-11-01/PT/PRES/R60bis.1, Order Designating Contempt Judge, Confidential, 15 April 2013, STL, *Prosecutor v Ayyash et al*, STL-11-01/PT/PRES/R60bis.2, Order Designating Contempt Judge, Confidential, 18 April 2013.

<sup>4</sup> Practice Direction on Designation of Judges in Matters of Contempt, Obstruction of Justice and False Testimony, STL/PD/2013/06, 11 March 2013 (“Practice Direction”), available at <http://www.stl-tsl.org>.

<sup>5</sup> See Art. 1 (1)-(2) of the Practice Direction.



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other related issues with the Participants. Finally I inquired about their views on whether these proceedings—including the hearing—should continue to be conducted in confidentiality.<sup>6</sup>

4. It is apparent from the submissions I have received so far that there is no agreement among the Participants on whether and to which extent these contempt proceedings should remain confidential. I expect to discuss this issue in more detail with the Participants during tomorrow's hearing.

5. However, as I have held in my capacity as President,

[t]here is no question that the public in general, and the people of Lebanon in particular, are presumptively entitled to follow the litigation within the Special Tribunal for Lebanon. The principle of open justice, that this Tribunal and its Appeals Chamber have emphasized time and again, does not need reiteration.<sup>7</sup>

Of course, this principle is subject to exceptions.<sup>8</sup> Indeed, in a matter like the one before me, I must consider whether certain details of the proceedings must remain confidential in the interests of justice. While I reserve judgment on what such details may be, I see no reason to keep the existence of these contempt proceedings from the public at this stage.

6. I therefore order that the hearing tomorrow will commence in open session but stress that it may be necessary to go into closed session. In light of this decision, I will also issue public versions of my previous orders in this matter, subject to the necessary redactions. The Participants' submissions should remain confidential for now. Their status will be comprehensively addressed once I decide on the particulars of the required confidentiality, if any, in these proceedings.

<sup>6</sup> STL, *Prosecutor v Ayyash et al.*, STL-11-01/PT/CJ/R60bis.1, Order on Submissions, Confidential, 15 April 2013; STL, *Prosecutor v Ayyash et al.*, STL-11-01/PT/CJ/R60bis.1, Order on Additional Submissions and Scheduling, Confidential, 18 April 2013

<sup>7</sup> STL, *Prosecutor v Ayyash et al.*, STL-11-01/PT/PRES, Public Redacted Version of Order on Request to Redact Transcript of Hearing; 12 April 2013, para. 6 (referring *e.g.* to STL, *In the matter of El Sayed*, CH/AC/2013/01, Public Redacted Version of Decision on Appeal by the Prosecutor Against Pre-Trial Judge's Decision of 11 January 2013, Dated 28 March 2013, para. 9 [referring to STL, *Prosecutor v Ayyash et al.*, Case No STL-11-01/PT/AC, *Corrected Version* Decision on the Pre-Trial Judge's Request Pursuant to Rule 68(G), 29 March 2012, para. 12]).

<sup>8</sup> *See id.* at para. 7.



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## DISPOSITION

**FOR THESE REASONS;**

**PURSUANT** to Rule 60 *bis* and 136 of the Rules;

**I**

**ORDER** that the hearing before me in the Antonio Cassese Courtroom on 25 April 2013, 2 pm will commence in open session.

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

Dated 24 April 2013

Leidschendam, the Netherlands

Judge David Baragwanath

Contempt Judge

