



## 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:** 28 May 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 REDACTIONS TO PARTICIPANTS' FILINGS

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**Office of the Prosecutor:**  
Mr Norman Farrell

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

**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





1. On 15 and 18 April 2013, 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 and on which course under Rule 60 *bis* (E) I should take if this were the case. I also scheduled a hearing for 25 April 2013.<sup>1</sup>
2. Following the hearing, I decided that certain details of the proceedings at this stage are to remain confidential.<sup>2</sup> I therefore ordered the Participants to tender in draft for my consideration redacted versions of their filings excluding identification of the events which may amount to contempt and the persons allegedly involved therein.<sup>3</sup> I have now received the submissions from all Participants.<sup>4</sup>
3. In order to ensure that no information which may lead to the identification of the facts mentioned above is made public at this stage of the proceedings, I order limited additional redactions. However, to avoid redaction of information which is already in the public domain, I further order that certain proposed redactions shall not be implemented.

<sup>1</sup> STL, *Prosecutor v. Ayyash et al*, STL-11-01/PT/CJ/R60bis.1, Order on Submissions, Confidential, 15 April 2013 (all further references to filings and decisions relate to this case number unless otherwise stated); Order on Additional Submissions and Scheduling, Confidential, 18 April 2013.

<sup>2</sup> *Public Redacted Version of Decision on Allegations of Contempt*, 29 April 2013, paras 18-19.

<sup>3</sup> *Id* at p. 11.

<sup>4</sup> Registry Submission Pursuant to Rule 48(C) in Relation to Contempt Judge’s Decision on Allegations of Contempt, Confidential, 3 May 2013 (“Registry Notice”); Notice of the Legal Representative of Victims of Proposed Redactions to its 19 and 24 April 2013 Submissions Before the Contempt Judge, Confidential, 6 May 2013 (“LRV Notice”); Prosecution Notice of Proposed Public Redacted Versions of Filings before the Contempt Judge, 6 May 2013 (“Prosecution Notice”); Notice of the Defence for Mr. Badreddine Pursuant to the Order of the Contempt Judge in his Decision of 29 April 2013 with Regard to Redactions, Confidential, 6 May 2013; Proposed Redactions Following the Decision of the Contempt Judge Dated 29 April 2013, Confidential, 6 May 2013 (“HDO Notice”); Notice of the Defence for M. Oneissi Pursuant to the Order of the Contempt Judge in his Decision of 29 April 2013 Regarding Redactions, Confidential, 7 May 2013 (“Oneissi Notice”); Notice by the Defence for Salim Jamil Ayyash Pursuant to the Order of 29 April 2013 by the Contempt Judge, Confidential, 8 May 2013.

**FOR THESE REASONS****I**

**ORDER** the Registry to file as public the redacted version of the “Registry Submission Pursuant to Rule 48(C) in Relation to the Contempt Judge’s Order of 15 and 18 April 2013” dated 19 April 2013, as contained in the Confidential Annex A to the Registry Notice;

**ORDER** the Legal Representative of Victims to file as public the redacted version of the following submissions, as contained in the Confidential Annexes A and B to the LRV Notice:

- “Submission of the Legal Representative of Victims Pursuant to the 15 April 2013 Order of the Contempt Judge” dated 19 April 2013, with additional partial redactions of paragraph 13 (so that the redacted version of the paragraph shall appear as follows: “Whether the information possessed by the authors of the media report originates from protected documents of this Tribunal should be a matter investigated under the present proceedings. In any case, the LRV submits that [REDACTED] all point in the same direction: that the authors of this media report were (1) well aware of [REDACTED], (2) that they intentionally disclosed it, and that (3) the disclosure was meant to and/or capable of interfering with the proceedings and well-functioning of the Tribunal. Points (1) and (2) satisfy the *mens rea*, whereas point (3) reflects the *actus reus* of the crime of contempt, as defined in Rule 60bis(A).”);
- “Further Submissions of the Legal Representative of Victims Pursuant to the 18 April 2013 Order of the Contempt Judge” dated 24 April 2013, **without** the redactions proposed in paragraph 19 and related footnote;

**ORDER** the Prosecutor to file as public the redacted version of the following submissions, as contained in the Confidential Annexes A and B to the Prosecution Notice:

- “Prosecution Submissions On Whether Contempt Proceedings Should Be Initiated Pursuant to Rule 60bis(E)” dated 19 April 2013, **without** the redactions proposed in:
  - Paragraphs 5 and 8;



- Parts of paragraph 16 (so that the redacted version of the paragraph shall appear as follows: “In addition, as noted by the LRV, regardless of whether the individuals identified as STL witnesses [REDACTED] are or will be witnesses before this Tribunal, the very act of identifying them as such appears, in the circumstances, to constitute contempt pursuant to Rule 60bis(A)(v) [REDACTED].”);
- Parts of paragraph 26 (so that the redacted version of the paragraph shall appear as follows: “[REDACTED], the public identification of any individuals as witnesses may discourage any potential witnesses from cooperating with the Tribunal. Moreover, by associating the individuals named [REDACTED] with the Tribunal, [REDACTED] exposes these individuals to harm regardless of whether they are potential witnesses. Therefore, even individuals who may be erroneously identified as Tribunal witnesses are put at risk.”);
- Title D (p. 10) and paragraph 41;
- “Prosecution Submissions On Whether Contempt Proceedings Should Remain Confidential” dated 24 April 2013;

**ORDER** Counsel for Mr. Badreddine to file as public the following submissions:

- “Submission on Behalf of Mr. Badreddine regarding Contempt of the Tribunal” dated 19 April 2013, with the redactions of:
  - Parts of paragraph 2 (so that the redacted version of the paragraph shall appear as follows: “Accordingly, the Defence of Mr. Badreddine (“the Defence”) herewith files these submissions. These submissions are filed confidentially because the Order is confidential. However the Defence objects in principle to the “closed justice” approach which is being taken to the issue of [REDACTED]. The matter is of the utmost public interest, touching on the very credibility of the Tribunal as an institution, and so the way in which the Tribunal is dealing with the issue should be public. Open justice is the rule and closed justice the exception. No good reason has so far been advanced as to why this matter should be dealt with by the Tribunal behind closed doors, and it is submitted that it will only damage the Tribunal’s reputation further if the contempt issue is dealt with privately.”);



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- Parts of paragraph 8 (so that the redacted version of the paragraph shall appear as follows: “Finally it is submitted that for the contempt to be fully investigated, the *amicus curiae* should fully investigate two issues: (1) the issue of who published [REDACTED] and with what intent (“the publication issue”), and (2) who gave that person or persons access to [REDACTED] (“the leak issue”). It is requested, therefore, that any *amicus* appointed should have those two issues clearly spelled out as part of his or her terms of reference.”);
- “Additional Submission on Behalf of Mr. Badreddine regarding Contempt of the Tribunal” dated 24 April 2013;

**ORDER** the Defence Office to file as public the redacted version of the following submissions, as contained in the Confidential Annexes B and C to the HDO Notice:<sup>5</sup>

- “Submissions of the Defence Office Following the 15 April 2013 Order of the Contempt Judge” dated 19 April 2013, with partial redactions of paragraph 8 (so that the redacted version of the paragraph shall appear as follows: “[EXPURGÉ]. Il est aussi de notoriété publique que le 27 octobre 2010, un grave incident s’est produit à Beyrouth au cours duquel deux enquêteurs du Bureau du Procureur ont été blessés et des objets du TSL ont été dérobés.”);
- “Additional Observations from the Defence Office following the Order of the Contempt Judge of 18 April 2013” dated 23 April 2013;

**ORDER** Counsel for Mr. Oneissi to file as public the redacted version of the following submissions, as contained in the Confidential Annexes A and B to the Oneissi Notice:

- “Oneissi Response to the Order on Submissions” dated 19 April 2013, with additional partial redactions of paragraph 4 (so that the redacted version of the paragraph shall appear as follows: “In the interests of the administration of justice and, particularly, with a view to ensuring the transparency and publicity of the proceedings, the Defence wishes to record its strong reservations as to the confidential character of the current proceedings and the implicit assumption of the confidentiality of [REDACTED]. The Defence will formally state its

<sup>5</sup> With respect to the filing mentioned in Confidential Annex A of the HDO Notice, given that a public redacted version of that filing already exists, further redactions at this stage do not appear useful.



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position on this issue in its Response to the “Order on Additional Submissions and Scheduling” dated 18 April 2013.”);

- “Oncissi Response to the Order on Additional Submissions and Scheduling” dated 24 April 2013, with additional partial redactions of paragraph 11 (so that the redacted version of the paragraph shall appear as follows: “In its First Response, the Defence recorded its reservations as to the confidential character of the proceedings and the implicit assumption of [REDACTED]; and informed the Contempt Judge that it would state its position as to this issue in this Response.”);

**ORDER** Counsel for Mr. Ayyash to file as public the “Defence for Salim Jamil Ayyash’s Joinder in the Defence Office Submissions of 19 April 2013 and 23 April 2013” dated 24 April 2013.

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

Dated 28 May 2013

Leidschendam, the Netherlands

Judge David Baragwanath

Contempt Judge

