



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE PRESIDENT

Case No.: STL-14-06/PT/PRES
Before: Judge David Baragwanath, President
Registrar: Mr Daryl Mundis
Date: 30 July 2014
Original language: English
Classification: Public

IN THE CASE AGAINST

AKHBAR BEIRUT S.A.L.
IBRAHIM MOHAMED ALI AL AMIN

**ORDER ON REQUEST FOR DISQUALIFICATION OF A JUDGE FROM THE
PANEL CONVENED UNDER RULE 25 (D)**

***Amicus curiae* Prosecutor:**
Mr Kenneth Scott

**Counsel for Akhbar Beirut S.A.L. and
Mr Ibrahim Mohamed Al Amin:**
Mr Antonios Abou Kasm



INTRODUCTION

1. The Accused Mr Al Amin on behalf of himself and the company *Akhbar Beirut S.A.L.* has filed a request to disqualify Judge Fransen from sitting on a Panel appointed to examine the Accused's request to disqualify Judge Lettieri as the Contempt Judge in this case.¹ The Request has been referred to me by the Panel for further determination in my *administrative* role as President.

PROCEDURAL BACKGROUND

2. On 31 January 2014, following the issue of an Order in Lieu of an Indictment,² I designated Judge Lettieri as the Contempt Judge in this case.³ At the initial appearance on 29 May 2014, Judge Lettieri ordered the Head of Defence Office to assign counsel to the Accused pursuant to Rule 59 (F) of the Rules of Procedure and Evidence, stating that "this [was] necessary in the interests of justice and to ensure a fair and expeditious trial".⁴ Judge Lettieri provided written reasons for his decision on 5 June 2014.⁵

3. On 12 June 2014, the Accused filed a request before Judge Lettieri, seeking certification and suspension of the decision to assign counsel.⁶ On 18 June 2014, Judge Letteri issued an order in which he found that "the most recent statements of the Accused, in particular their filing seeking certification of my decision to assign counsel, have created further ambiguities with respect to their intentions to participate in the proceedings."⁷ He requested

the Accused to submit in writing and to answer unequivocally whether [they] intend to participate in the proceedings against them; and if so, whether they intend to appoint counsel of their own choosing to represent them in the proceedings or whether they

¹ STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/OTH/R25, F0034, Motion for the Disqualification of Judge Daniel Fransen, 11 July 2014 ("Request").

² STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/I/CJ, F0001, Redacted Version of Decision in Proceedings for Contempt with Orders in Lieu of an Indictment, 31 January 2014.

³ STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/I/PRES, F0002, Order Designating Contempt Judge, 31 January 2014.

⁴ STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06, Transcript of 29 May 2014, p. 19 (EN).

⁵ STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/CJ, F0018, Reasons for Decision on Assignment of Counsel, 5 June 2014 ("Written Reasons of 5 June 2014"). All further references to filings and decisions relate to this case number unless otherwise indicated.

⁶ F0019/COR, Request for Certification to Appeal a Decision "Reasons for Decision on Assignment of Counsel" Date: 5 June 2014, 12 June 2014.

⁷ F0024, Decision on Requests by Head of Defence Office and Order on Further Submissions, 18 June 2014, para. 10.

intend to represent themselves, with legal assistance if appropriate, and by being present in the courtroom”.⁸

4. On 25 June 2014, without responding to Judge Lettieri’s request, the Accused filed a submission, in which they raised a number of allegations with respect to the neutrality and impartiality of Judge Lettieri in hearing the case.⁹ On 30 June 2014, Judge Lettieri issued an order directing this request to me.¹⁰ He held that while the request did not refer to any legal provisions and could be interpreted in different ways, he should nevertheless, for the avoidance of any doubt and in favour of the Accused, treat it as a motion for his disqualification under Rule 25 of the Rules of Procedure and Evidence.¹¹ On the same day, the Head of Defence Office assigned Mr Antonios Abou Kasm as counsel to the Accused to “represent” both *Akhbar Beirut S.A.L.* and Mr Al Amin.¹²

5. In my order of 3 July 2014, I decided to “treat [the filing referred to me by Judge Lettieri] as a request under Rule 25 (C) for the disqualification and withdrawal of Judge Lettieri from the case”.¹³ Consequently, pursuant to Rule 25 (D), I designated a Panel of three Judges to examine the Accused’s request for disqualification. I ordered that the Panel be composed of Judge Fransen, Judge Chamseddine and Judge Hrdličková.¹⁴

6. On 11 July 2014, the Accused filed their Request before the three-judge Panel seeking the disqualification of Judge Fransen from sitting on that Panel. The Panel referred this filing to me on 23 July 2014.¹⁵ It stated that, while not ruling on the admissibility of the application, it did not consider itself competent to examine it.¹⁶

7. On 17 July 2014, Judge Lettieri rejected the Accused’s request for certification to appeal the decision to assign counsel. In his decision he also held that “[a]s soon as such assignment was effected, counsel assumed responsibility for making submissions before the

⁸ *Ibid.*

⁹ F0026, Response to Demand that I Clarify my Position Pursuant to the Order of 18 June 2014, 25 June 2014.

¹⁰ F0027, Order Regarding Mr Al Amin’s Submission of 25 June 2014, 30 June 2014 (“Referral Order”).

¹¹ *Id.* at para. 7.

¹² F0028/COR, Assignment of Counsel Pursuant to Rule 59 (F) of the Rules of Procedure and Evidence, 30 June 2014 (“Assignment Decision”), para. 14.

¹³ STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/PRES, Order Designating Panel Pursuant to Rule 25 (D), 3 July 2014 (“Order Assigning Panel”), para. 4.

¹⁴ *Id.* at para. 6.

¹⁵ F0040, Order to Transmit the Request for the Disqualification and Withdrawal of Judge Daniel Fransen, 23 July 2014.

¹⁶ *Id.* at para. 8.

Tribunal on the Accused's behalf", and that he would therefore "no longer consider submissions from the Accused unless otherwise ordered".¹⁷

DISCUSSION

8. I note that the Request seeking the disqualification of Judge Fransen was filed by the Accused themselves. Unlike when the Accused filed their submission expressing the intention to seek the disqualification of Judge Lettieri, they are now represented by counsel assigned by the Head of Defence Office. The question has therefore arisen whether the Accused, despite having been assigned counsel to "represent" them before the Tribunal, may make submissions on their own, such as the present Request.

9. There are competing considerations in this regard. One is that the Request may arguably said to infringe orders made by Judge Lettieri in his *judicial* capacity, one assigning counsel to the Accused to represent them in the proceedings against them, and the other, made after counsel's assignment, directing that submissions from the Accused would no longer be accepted unless otherwise ordered.¹⁸ Since the Request was not made by assigned counsel, it may be contended that for me to consider it would be to act inconsistently with those orders.

10. The other is that three-Judge Panel appointed to consider the request for the disqualification of Judge Lettieri under Rule 25 (D) has referred the Request for my action. It would not have done so unless its members were sufficiently concerned about whether Judge Fransen should sit on the Panel to make a referral to the President empowered to designate a second Panel under the same Rule in order to examine this question.

11. It is fundamental that justice must be both done and seen to be done. For me to assert that the referral by a judicial panel should not have been made, because the Request infringes Judge Lettieri's order, would present the appearance of an administrative decision-maker overriding the three-judge Panel. I have concluded that the right course is simply to accept the referral of the Request as a judicial intimation that a new Panel should be constituted.

12. In this respect I note that Rule 25 addresses the disqualification of a Judge from "a trial or appeal". Because the Request seeks the disqualification of Judge Fransen not from a

¹⁷ F0036, Decision on the Request for Certification to Appeal Decision on Assignment of Counsel, 17 July 2014, para. 11.

¹⁸ See above, paras 2, 7.

trial or appeal but from a panel appointed to decide a disqualification motion, the present circumstances are not clearly encompassed within the Rule. However, the principle expressed in Rule 25 that the Tribunal's Judges must not sit in a case in which they have a personal interest or concerning which they have or have had any association that might affect or appear to affect their impartiality must also find application here.¹⁹

13. Accordingly, I designate a Panel of three Judges to examine the challenge to Judge Fransen's participation in the Panel considering the challenge to Judge Lettieri's continuing as Contempt Judge. Pursuant to my responsibility under Rule 32 (B) to coordinate the work of the Chambers, and taking into account the current workload of Judges as well as ensuring the ratio of international and Lebanese judges contemplated by the Statute,²⁰ I order that the Panel be composed of Judge Chamseddine, Judge Nsereko and Judge Hrdličková.

14. I record that I have made no determination as to any arguments pertaining to the admissibility of the Request.²¹ If on some future occasion such argument were to come before me, whether in an administrative or judicial capacity, I reserve the right to consider it on its merits. But this is not the occasion to do so.

¹⁹ See ICTY, *Prosecutor v. Šešelj*, IT-03-67-T, Decision on Vojislav Šešelj's Motion to Disqualify Judge Alphons Orié, 7 October 2010, para. 15.

²⁰ See Order Assigning Panel, para. 5.

²¹ See above, para. 9.

DISPOSITION

FOR THESE REASONS;

PURSUANT to Article 10 of the Statute and Rules 25 (D) and 32 (B) of the Rules;

I

DESIGNATE a Panel of three Judges to examine the Request; and

ORDER that this Panel be composed as follows:

Judge Afif Chamseddine

Judge Daniel David Ntanda Nsereko

Judge Ivana Hrdličková.

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

Dated 30 July 2014

Leidschendam, the Netherlands



Judge David Baragwanath

President

