

Special Tribunal for Lebanon

المحكمة الخاصة بلبنان

Tribunal spécial pour le Liban

Contempt Judge

القاضي الناظر في قضايا التحقير

Juge compétent en matière d'outrage

## INTERNAL MEMORANDUM / MÉMORANDUM INTERNE

CASE NO. /AFFAIRE N°: STL-14-06/PT/OTH/R25

TO / À: Panel Designated Pursuant to Rule 25 (D)

FROM / DE: Judge Nicola Lettieri, Contempt Judge

DATE: 19 August 2014

SUBJECT / OBJET: Observations on request for disqualification submitted by the Accused

I am grateful to the Panel Designated Pursuant to Rule 25 (D) for giving me the opportunity to provide observations<sup>1</sup> on the Accused's submissions requesting my disqualification as Contempt Judge from the proceedings in case STL-14-06.<sup>2</sup>

I note that the Accused advance four grounds on which they base their request.<sup>3</sup> I do not consider that any of the issues raised could suggest bias or reasonably be perceived as giving rise to an appearance of bias on my part. In making my observations I have considered the standard of Rule 25, as well as the applicable case-law with respect to the disqualification of Judges of this and other international criminal tribunals and the European Court of Human Rights.

Under the first ground, the Accused allege that my position as Alternate Judge in the *Ayyash et al.* case "precludes my neutrality" with respect to their case.<sup>4</sup> However, I fail to see how my participation in the *Ayyash et al.* proceedings has any impact on my function as the Judge adjudicating the case against the Accused, which is legally distinct. A judge may be engaged in related matters, even in different phases of proceedings against the same individual, without this giving rise *per se* to appearance of bias.<sup>5</sup>

<sup>1</sup> STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/OTH/R25, F0052, Scheduling Order Concerning the Motion for the Disqualification and Withdrawal of Judge Lettieri, 13 August 2014.

<sup>2</sup> STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/CJ, F0026, Response to Demand that I Clarify my Position Pursuant to the Order of 18 June 2014, 25 June 2014; STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/OTH/R25, F0033, Motion for the Disqualification of Contempt Judge, 11 July 2014 ("Motion").

<sup>3</sup> Motion, para. 20.

<sup>4</sup> Motion, para. 21.

<sup>5</sup> Cf. ECtHR, *Hauschildt v. Denmark*, 10486/83, Judgment, 24 May 1989, para. 50.





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Under the second ground, the Accused claim that I have expressed “three opinions on various occasions that show *prima facie* prejudice regarding the contested matters in the case” before me.<sup>6</sup> The first “opinion” to which the Accused object relates to the reference in a decision assigning counsel to the Accused that Judge Baragwanath, as Contempt Judge, found sufficient evidence to issue an order in lieu of an indictment against the Accused.<sup>7</sup> I do not agree that making reference to the charging instrument in this case means that I “consider[] the Accused guilty before his trial”.<sup>8</sup> I note that Rule 60*bis* (F) requires a Contempt Judge to find that there are “sufficient grounds to proceed against a person for contempt”. This has happened in this case.<sup>9</sup> I also disagree that considering the charges contained in the order in lieu of an indictment in the context of a procedural decision, i.e. whether to assign counsel, creates any impression of bias. The fact remains that the Accused are charged with contempt and I merely took this fact into account. It is unclear how considering this factor would show that my impartiality is affected.

The second “opinion” which the Accused impugn relates to my alleged “holding legal persons (companies) criminally liable for the acts of their directors, employees, or partners”.<sup>10</sup> Again, the Accused rely on the reference to the Order in Lieu of an Indictment, which charges *Al Akhbar S.A.L.* under Rule 60 *bis*.<sup>11</sup> I reiterate that mere reference to the indictment in my decision cannot in my opinion evidence partiality on my part. Moreover, I have repeatedly stressed that all issues raised by the Accused (including that of the Tribunal’s jurisdiction) can and will be discussed during the proceedings.<sup>12</sup>

The third “opinion” relates to the Accused’s statements during the Initial Appearance.<sup>13</sup> Contrary to the Accused’s submissions, I merely commented on the utility of raising certain issues in that hearing that go beyond the jurisdiction of the Special Tribunal.<sup>14</sup> It is unclear how this would raise any issue of improper bias.

<sup>6</sup> Motion, para. 22.

<sup>7</sup> Motion, paras 22, 5 (referring to 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).

<sup>8</sup> Motion, para. 22.

<sup>9</sup> See STL-14-06/I/CJ, Redacted Version of Decision in Proceedings for Contempt With Orders in Lieu of an Indictment, 31 January 2014, para. 60.

<sup>10</sup> Motion, para. 22.

<sup>11</sup> *Ibid.*

<sup>12</sup> See, e.g., *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/I/CJ, F0016, Further Order on Initial Appearances Scheduled for 29 May 2014, 27 May 2014, para. 6.

<sup>13</sup> Motion, paras 21, 3.

<sup>14</sup> *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06, Transcript of 29 May 2014, p. 12 (EN).

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Finally, under the third and fourth grounds, the Accused criticize a number of my judicial rulings in this case.<sup>15</sup> However, I consider that mere disagreement with my decisions is not sufficient to demonstrate bias or the appearance of bias on my part.

<sup>15</sup> Motion, paras 23-24.

