

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE CONTEMPT JUDGE

Case No.: STL-14-06/PT/CJ
Before: Judge Nicola Lettieri, Contempt Judge
Registrar: Mr Daryl Mundis, Registrar
Date: 30 September 2014
Original language: English
Classification: Public

IN THE CASE AGAINST

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

**DECISION ON DEFENCE COUNSEL MOTION TO DEFER THE CONTEMPT
CASE TO THE PRE-TRIAL JUDGE**

***Amicus Curiae* Prosecutor:**
Mr Kenneth Scott

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



PROCEDURAL HISTORY

1. On 18 September 2014, the assigned defence counsel for the Accused (“Counsel”) filed a motion requesting that this case be referred before the Pre-Trial Judge of the Special Tribunal for Lebanon (“Tribunal”) for the duration of the pre-trial phase of the case.¹

2. Counsel argues that the legal framework of the Tribunal (the Tribunal’s Statute (“Statute”) and Rules of Procedure and Evidence (“Rules”)) provides for a Pre-Trial Judge to ensure that the preparation towards trial is fair and diligent.² He submits, *inter alia*, that the independent role of the Pre-Trial Judge ensures that the trial proceedings are not contaminated by exposure to the evidence during the pre-trial stage.³ Counsel argues that Rule 60 *bis* (H), which governs proceedings such as the present ones, does not preclude the Pre-Trial Judge from exercising pre-trial functions for the contempt cases.⁴ Finally, he argues that the Contempt Judge cannot concurrently perform pre-trial functions and also be the judge on the merits of the case.⁵

3. The *Amicus Curiae* Prosecutor responded on 25 September 2014, requesting that I reject the Motion.⁶ The *Amicus* submits that it is vague and does not identify “real and compelling reasons” to refer the case to the Pre-Trial Judge.⁷ He also submits that Rule 60 *bis* designates the Contempt Judge for all matters during the proceedings, and that this is consistent with the practice of other international criminal tribunals.⁸

DISCUSSION

4. As a preliminary matter, I note that Counsel does not show any injustice suffered by the Accused in this case. Counsel’s arguments are, in other words, abstract petitions for a course of action. I cannot in fairness construe them as aiming to remedy any prejudice. I could reject the

¹ STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/CJ, F0066, Motion from Assigned Counsel for the Case Concerning Akhbar Beirut S.A.L. and Mr Ibrahim Mohamed Ali Amin to be Referred Before the Pre-Trial Judge (“Motion”), 18 September 2014.

² Motion, para. 9.

³ Motion, para. 14.

⁴ Motion, paras 16-23.

⁵ Motion, paras 24-30.

⁶ STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/CJ, F0067, Response to “*Requete du conseil commis d’office afin que l’affaire concernant Akhbar Beirut S.A.L. et M. Ibrahim Mohamed Ali Al Amin soit déférée devant le juge de la mise en état*” (“Response”), 25 September 2014.

⁷ Response, para. 3.

⁸ Response, paras 6-7.

Motion on this alone as being speculative in nature, because *actio popularis* is not allowed in the Statute or Rules. However, I will address the arguments of Counsel in more detail as clarification in this respect might be beneficial in the long run and thus in the interests of justice.

5. Since there is no reference to contempt and obstruction of justice in the Statute, it is Rule 60 *bis* that defines and regulates the exercise of the inherent jurisdiction for such proceedings. The Rule does not refer to a pre-trial judge. On the basis of the principle *ubi lex voluit dixit, ubi noluit tacuit*, which requires judges to infer precise consequences from the silence of the legislator, it would therefore be inappropriate to expand the interpretation of Rule 60 *bis* to encompass a separate role for a pre-trial judge distinct from the Contempt Judge. On the contrary, a reading of the Rule as a whole, according to its plain meaning and within its context, clearly evinces that one single judge should be competent for the whole first instance phase of such proceedings, from the confirmation of the charges – Rule 60 *bis* (F) and (G) – to the issuing of the first instance judgment – Rule 60 *bis* (M).

6. Rule 60 *bis* (H) does indeed state that “[t]he rules of procedure and evidence in Parts Four to Eight shall apply *mutatis mutandis* to proceedings under this Rule”. I interpret this provision as a whole to mean that pre-trial proceedings also fall under the jurisdiction of the contempt judge evidently in order to streamline the proceedings. In fact, it would appear that the intention of assigning jurisdiction to one single Contempt Judge for the entirety of the proceedings was to be able to maintain consistency and speed as well as to streamline the proceedings, given the speciality of the proceedings. It also ensures judicial economy and the efficient use of judicial resources.

7. When issuing the Practice Direction on Designation of Judges in Matters of Contempt, Obstruction of Justice and False Testimony in consultation with the Council of Judges and the Tribunal’s Principals (including the Head of Defence Office),⁹ the President also confirmed this interpretation. He decided that “[o]nce designated, the Contempt Judge remains seized of the case until it is finalized”.

⁹ STL/PD/2013/06/Rev.2, 2 July 2014, Rule 32(G).

8. The Trial Chamber stated, in another analogous context:¹⁰

It would be irrational to interpret the innovation of a dedicated Pre-Trial Judge at the Special Tribunal – meant to promote speedy and efficient case management – as a shackle upon the fair and expeditious conduct of trial proceedings, or the Trial Chamber’s management of the case before it.¹¹

9. Furthermore, I agree with the *Amicus* that this interpretation is also consistent with the practice of other international criminal tribunals. At the International Criminal Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda, the Rules of Procedure and Evidence allow for the same judge to both initiate contempt proceedings and prosecute the substantive case.¹² Generally, fundamental human rights allow consecutive roles to be performed by the same judge – such consecutive roles do not infringe *per se* on the accused’s rights unless, under the so called objective test, there are ascertainable facts which may raise doubts as to the judge’s impartiality.¹³

10. There can be no presumption of prejudice and, indeed, Counsel has not shown or even put forth any evidence of prejudice, limiting himself to state that “potential consequences” might arise from the proceedings when a single judge holds concurrently the functions of pre-trial and trial judge at the same time.¹⁴ Of course, there may be situations that might conceivably necessitate the involvement of a different judge, possibly the Pre-Trial Judge himself, such as those envisaged by Rules 118 and 119. But if one of these situations were to arise, I would consider it at that time and within the context of that situation. However, this is speculative as I am not currently seized of any issue that would require such a measure.

11. I note with disapproval the speculative nature of the Motion and I caution Counsel against such motions in the future. Motions in legal proceedings should concern live issues and not hypothetical musings or petitions brought on behalf of an alleged public and general interest.

¹⁰ See STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06, Transcript of 12 September 2014, pp 10-11 (EN).

¹¹ STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, F1424, Decision on Trial Management and Reasons for Decision on Joinder, 25 February 2014, para. 65.

¹² Rule 77 (C) (iii) and (D) (ii) ICTY RPE; Rule 77 (C) (iii) and (D) (ii) ICTR RPE; *see also*, Rule 90 (C) (iii) and (D) (ii), MICT RPE.

¹³ ECtHR, *Hauschildt v. Denmark*, 10486/83, Judgement, 24 May 1989, para. 48-50.

¹⁴ Motion, para. 28. In any event, Judge Baragwanath, as the Contempt Judge, issued and confirmed the *order in lieu of an indictment* in this case, and then determined that he should recuse himself as a judge on the merits of the case (STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali 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, paras 68-74.), therefore the first phase of the case at hand was dealt with by a different Contempt Judge.

DISPOSITION**FOR THESE REASONS;****PURSUANT TO** Rule 60 *bis* (H) of the Rules;**I****DISMISS** the Motion.

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

Dated 30 September 2014

Leidschendam, the Netherlands



Judge Nicola Lettieri
Contempt Judge

