

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: 18 December 2015
Original language: English
Classification: Confidential and *Ex Parte*

IN THE CASE AGAINST

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

**ORDER ON *AMICUS CURIAE* PROSECUTOR'S REQUEST FOR
AUTHORIZATION TO USE CONFIDENTIAL FILINGS**

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

Head of Defence Office:
Mr François Roux



1. The *Amicus Curiae* Prosecutor has filed a submission before Judge Baragwanath, the Contempt Judge in case STL-11-01/R60bis.1, for authorization to use in the STL-14-06 proceedings two confidential filings of the Head of Defence Office.¹ They are a memorandum to the Pre-Trial Judge (“First Document”)² and a submission filed before Judge Baragwanath (“Second Document”).³ The Head of Defence Office had previously opposed the Request, arguing that it should have been made to me as the Judge seized of the STL-14-06 proceedings.⁴

2. Judge Baragwanath issued an interim decision.⁵ He recalled that under Rule 133 (G) and (H) of the Rules of Procedure and Evidence (“Rules”) an application for the variation of protective measures for victims and witnesses must be made to the Judge or Chamber seized of the relevant proceedings and not to the Judge or Chamber that ordered the protective measures.⁶ Judge Baragwanath formed the provisional view that while the procedure relating to confidentiality of filings is generally governed by the relevant Practice Direction,⁷ “it is appropriate to apply the policy of Rule 133’s provisions to the present Request to limit the protection currently in force in respect of the two filings”.⁸ Accordingly, and because the *Amicus* Prosecutor requested the authorization for the purposes of this case, Judge Baragwanath has referred the Request to me.⁹ He reserved a final ruling on the Request subject to my consideration of the matter.¹⁰

3. I first note that neither the First nor the Second Document was submitted in these proceedings. Rather, they form part of the case file in the STL-11-01 and STL-11-01/R60bis.1 proceedings, respectively. The Trial Chamber is seized of the former case, whereas Judge

¹ STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/CJ/R60bis.1, F0140, *Amicus Curiae* Request for Authorization to Use Confidential Filings in the STL-14-06 Case, Confidential and *Ex Parte*, 13 November 2015 (“Request”).

² STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/PTJ, F0849, Internal Memorandum, Confidential, 12 April 2013.

³ STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/CJ/R60bis.1, F0006, Submissions of the Defence Office Following the Order for a Contempt Judge Dated 15 April 2013, Confidential, 19 April 2013.

⁴ STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/CJ/R60bis.1, F0061, Submissions of the Head of Defence Office on the “*Amicus Curiae* Request for Authorization to Use Confidential Filings in the STL-14-06” dated 13 November 2015, Confidential and *Ex Parte*, 19 November 2015 (“HDO Submissions”), paras 9-11.

⁵ STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/CJ, F0139, Interim Decision on *Amicus Curiae* Request for Authorization to Use Confidential Filings, Confidential and *Ex Parte*, 8 December 2015 (“Interim Decision”).

⁶ Interim Decision, paras 6-7.

⁷ See Article 7 (6) of the Practice Direction on Filing of Documents Before the Special Tribunal for Lebanon, 14 June 2013, STL/PD/2010/07/Rev.2 (“Practice Direction”).

⁸ Interim Decision, para. 7; see also *id.* at para. 10.

⁹ *Id.* at paras 8-9.

¹⁰ *Id.* at para. 10.

Baragwanath is seized of the latter case. Hence, they are the competent bodies to rule on the Request.

4. Respectfully, I disagree with Judge Baragwanath's assessment on the applicability of Rule 133 (H), which deals with a very specific subject matter and cannot be applied to different procedural circumstances. Indeed, the documents that are the subject of the Request do not relate to any protective measures ordered under Rule 133 but are confidential for other reasons. I also note that Rule 133 (H) constitutes an exception to the principle that each Chamber is seized of its own case. In view of its exceptional nature, the Rule cannot be applied by analogy or as a matter of policy. I note that it would indeed run contrary to the principle if I, as the Contempt Judge in the STL-14-06 proceedings, were to assume the general competence to rule on the confidentiality of filings in other cases, in particular because I am not in the best position to decide whether continued confidentiality is necessary. That role must fall to the Judge or Chamber seized of the relevant case.

5. This view also accords with the previous case-law of the Tribunal.¹¹ I therefore find that I am not competent to rule on the Request.

6. Finally, I issue this Decision with the classification of confidential and *ex parte* because the underlying Request, the HDO Response and the Interim Decision all carry the same status. I reserve a final determination of the matter until Judge Baragwanath has decided on the Request.

¹¹ See STL, *In the case against New TV S.A.L. and Khayat*, STL-14-05/PT/CJ, F0116, Decision on the *Amicus Curiae* Prosecutor's Request to Lift the Confidentiality of an Order, 31 March 2015; see also STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, F1914, Decision on *Amicus Curiae* Prosecutor's Request to Lift the Confidentiality of an Order, 17 April 2015.

DISPOSITION

FOR THESE REASONS;

PURSUANT TO Rule 60 *bis* (H) and the Practice Direction;

I

FIND that I am not competent to rule on the Request; and

ORDER that this Decision be cross-filed in the STL-11-01/R60*bis*.1 proceedings.

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

Dated 18 December 2015

Leidschendam, the Netherlands



Judge Nicola Lettieri
Contempt Judge

