

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: Public

IN THE CASE AGAINST

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

**DECISION ON *AMICUS CURIAE* PROSECUTOR'S REQUEST FOR
POSTPONEMENT OF PROCEEDINGS**

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

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



INTRODUCTION

1. The *Amicus Curiae* Prosecutor (“*Amicus*”) requests that I order the postponement of the trial until after the Appeals Panel has ruled on the pending appeals of the judgment in the *New TV S.A.L./Khayat* case¹ (“*Motion*”).² The Defence opposes the *Motion*.³ The *Amicus* also seeks leave to reply.⁴
2. For the reasons stated below, I dismiss the *Motion*.

DISCUSSION

I. Position of the Parties

A. Position of the Amicus

3. The *Amicus* argues that the outcome of the appeals against the judgment in the *New TV S.A.L./Khayat* case currently pending before the Appeals Panel, may practically and legally determine the outcome of this trial, given the substantial similarities of the cases. The *Amicus* avers that his theory of the case and consideration of the legal elements in count 1 of the present case are substantially similar to those in the *New TV S.A.L./Khayat* case which I, as Contempt Judge in the *New TV S.A.L./Khayat* case, found insufficient to support conviction.⁵
4. The *Amicus* states further that the Appeals Panel will also address the elements and proof required to convict a legal person, such as the corporate Accused in this case. In the *Amicus*'s view, the Appeals Panel's ruling could therefore be determinative for the present case.⁶
5. The *Amicus* alleges that a postponement is also in the interest of judicial economy as it would avoid repetitious appeals on the same or closely related issues and possible retrials.⁷

¹ STL-14-05, *In the case against New TV S.A.L. and Khayat* (“*New TV S.A.L./Khayat* case”).

² STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/CJ, F0138, Request for Postponement of Trial, 7 December 2015 (“*Motion*”). All further references to filings and decisions relate to this case number unless otherwise stated.

³ F0156, *Réponse de la Défense à la Requête du Procureur Amicus Curiae aux fins d'Ajournement du Procès*, 15 December 2015 (“*Response*”).

⁴ F0160, Request for Leave to Submit a Short Consolidated Reply to Defence Responses of 15 December 2015, 16 December 2015 (“*Reply*”).

⁵ *Motion*, para. 5.

⁶ *Id.* at para. 6.

⁷ *Id.* at para. 7.

6. The *Amicus* is of the opinion that the Appeals Panel can be expected to act with reasonable dispatch. He argues that the Accused are not in custody and will therefore not be prejudiced by a short delay in the proceedings.⁸

B. Position of the Defence

7. The Defence opposes the Motion on the grounds that a postponement of the proceedings would violate the Accused's rights to a fair and expeditious trial.⁹ The Defence argues that the *Amicus* request lacks any legal basis and that such a postponement has never been granted by any other international tribunal.¹⁰

8. The Defence further argues that two different Appeals Panels have been appointed to the two cases which could, in theory, enter different rulings even if the cases are similar.¹¹

9. The Defence asserts that the requested postponement would require asking the Appeals Panel to indicate the date on which the appeal judgment would be issued and would amount to an interference with its deliberations.¹²

10. In the Defence's view, the Motion's real purpose would be to delay the proceedings in order to allow the *Amicus*, who recently sought leave to amend the indictment, to continue his investigation.¹³

11. Finally, the Defence argues that the Motion presupposes that the Appeals Panel will overturn the *New TV S.A.L./Khayat* Judgment. However, if the adjournment were to be granted but the judgment were to be upheld, the Accused's right to be tried without undue delay would have been violated.¹⁴

C. Reply from the Amicus

12. The *Amicus* has requested leave to submit a consolidated reply to the Defence's Responses of 15 December 2015, submitting that new issues have arisen which relate to the fair

⁸ Motion, para. 8.

⁹ Response, para. 35.

¹⁰ STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/CJ, Pre-Trial Conference, 11 December 2015, Confidential ("Pre-Trial Conference") p. 5-6; Response, para. 34.

¹¹ Pre-Trial Conference, p. 6.

¹² *Id.* at p. 7.

¹³ Response, para. 32.

¹⁴ *Id.* at para. 36.

and expeditious conduct of the proceedings. He avers that it is in the interests of justice to grant leave as the Defence has inaccurately and falsely characterized the requests made by the *Amicus*, including those to which this Decision relates.¹⁵ The *Amicus* then provides submissions which reiterate arguments presented in the very Requests to which the Defence has responded.¹⁶

II. Discussion

13. With respect to the Request for Leave to Reply, I recall that the Appeals Chamber has held that a reply “‘must generally be limited to circumstances where new issues arise out of the [response]’”.¹⁷ I find that none of the *Amicus*’s reasons satisfy this requirement. Each expresses mere disagreement with Defence arguments made in response to the Motions and in turn reiterates submissions already set out in the initial Requests. The *Amicus* does not identify any new issues arising out of the Response. Nor does the *Amicus* demonstrate any exceptional basis justifying a reply. I therefore reject the Request for Leave to Reply.

14. In regards to the merits of the Motion, I note as a preliminary matter that the judgment in the *New TV S.A.L./Khayat* case was issued almost three months ago and that the *Amicus* filed his notice of appeal in that case in October. However, the *Amicus* has not provided any reason why he failed to bring his Motion, which is entirely based on the proceedings in the *New TV S.A.L./Khayat* case, immediately after the judgment in that case was issued or at least immediately after he filed his notice of appeal.¹⁸

15. In any event, I am not persuaded by the *Amicus*’s argument that any similarities between this case and the *New TV S.A.L./Khayat* case can justify a postponement of the present proceedings pending the Appeal’s Panel ruling in the *New TV S.A.L./Khayat* case. Not surprisingly, *Amicus* has not provided me with any reference to relevant case-law demonstrating that pending appellate decisions in one case should result in the stay or postponement of other allegedly similar proceedings until the appellate decision has been issued. Indeed, while both this case and the *New TV S.A.L./Khayat* case may address similar legal issues, the two proceedings

¹⁵ Reply, para. 3.

¹⁶ *Id.* at paras 5-8.

¹⁷ See STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/AC/AR126.7, F0012, Order by Judge Rapporteur on Request for Leave to File a Reply, 8 May 2014, para. 4.

¹⁸ Cf. ICTR, *Prosecutor v. Nyiramasuhuko*, ICTR-98-42-A, Judgment, 14 December 2015, para. 128 (stressing that a “matter must be raised with the court at the time the problem is perceived in order to enable the problem to be remedied”).

are procedurally distinct, as they concern different accused and different facts, and run independently both at the trial and appellate stage.¹⁹ As Contempt Judge, I am required to decide on the merits of the present case before me and find no reason to stay the proceedings pending a ruling in a separate case.

16. I further note that pursuant to Article 16 (4) (c) of the Statute of the Tribunal, the Accused have a right to be tried without undue delay. However, the date of delivery of the appeal judgment in the *New TV S.A.L./Khayat* case is as of yet, unknown. I am therefore not in a position to ascertain that the postponement requested by the *Amicus* does not constitute such an undue delay.

17. In view of the above, I reject the *Amicus's* request for a postponement of these proceedings.

DISPOSITION

FOR THESE REASONS;

PURSUANT TO Rule 77 of the Rules of Procedure and Evidence;

I

DISMISS the Motion and

DISMISS the Request for Leave to Reply.

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

Dated 18 December 2015

Leidschendam, the Netherlands



Judge Nicola Lettieri
Contempt Judge



¹⁹ See ICTY, *Prosecutor v. Martić*, IT-95-11-A, Decision on Veselin Šljivančanin's Motion Requesting Simultaneous Adjudication of the *Prosecutor v. Milan Martić* and *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin* Cases, 16 April 2008, para. 6.