

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:** 21 January 2016

**Original language:** English

**Classification:** Public

**IN THE CASE AGAINST**

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

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**DECISION ON DEFENCE REQUEST FOR THE APPLICATION OF THE MODE OF  
PROCEEDING IN THE QUESTIONING OF WITNESSES PROVIDED BY RULE 145  
(A) OF THE RULES OF PROCEDURE AND EVIDENCE**

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***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 Defence requests that I adopt for the trial the mode of proceedings stipulated in Rule 145 (A) of the Rules of Procedure and Evidence (“Rules”), which provides that the examination of witnesses commences with questions from the Chamber, followed by questions from the Parties (“Request”).<sup>1</sup> The *Amicus Curiae* Prosecutor (“*Amicus*”) opposes the Request.<sup>2</sup>
2. For the reasons provided below, I dismiss the Request.

## **APPLICABLE LAW**

3. Article 20 (2) states that “[u]nless otherwise decided by the Trial Chamber in the interests of justice, examination of witnesses shall commence with questions posed by the presiding judge, followed by questions posed by other members of the Trial Chamber, the Prosecutor and the Defence.”
4. Rule 145, which pursuant to Rule 60 *bis* (H) is applicable, *mutatis mutandis*, in contempt proceedings, states in the relevant parts:

(A) Where the Trial Chamber considers that the file submitted by the Pre-Trial Judge enables it to adopt the mode of proceeding outlined in Article 20(2) of the Statute, after the opening statements of the Parties and of any victim participating in the proceedings, each witness shall first be questioned by the Presiding Judge and any other member of the Chamber, then by the Party that has called the witness, and subsequently cross-examined by the other Party, if the other Party elects to exercise its right of cross-examination. The witness may also subsequently be re-examined by the calling Party.

(B) Where the Trial Chamber considers that the file submitted by the Pre-Trial Judge is not such as to enable it to adopt the mode of proceeding envisaged in Article 20(2) of the Statute, after the opening statements of the Parties and of any victim participating in the proceedings, the witnesses called before the Trial Chamber shall first be examined by the Party that called them, then cross-examined by the other Party, if the other Party elects to exercise its right of cross-examination. The witness may also subsequently be re-examined by the calling Party. The Presiding Judge and other members of the Trial Chamber may at any time ask questions.

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<sup>1</sup> STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/CJ, F0101, Defence Request for the Application of the Mode of Proceeding in the Questioning of Witnesses Provided by Rule 145 (A) of the Rules of Procedure and Evidence, 21 July 2015 (“Request”). All further references to filings and decisions refer to this case number unless otherwise stated.

<sup>2</sup> F0102, Response to Defence Request for the Application of the Mode of Proceeding in the Questioning of Witnesses Provided by Rule 145 (A) of the Rules of Procedure and Evidence, 30 July 2015 (“Response”).

## **DISCUSSION**

### **I. Position of the Defence**

5. The Defence requests that I adopt the mode of questioning witnesses set out in Rule 145 (A)—providing for questioning of the witnesses first by the Judge and then by the Parties—for the trial in this case.<sup>3</sup> The Defence argues that this would align closest to Lebanese law; likewise, that this mode is most familiar to the Accused, assigned counsel for the Accused and, in all probability, most of the witnesses.<sup>4</sup>

6. The Defence concedes that Rule 145 (B)—which provides for examination of a witness first by the Parties—was applied in the *New S.A.L./Khayat* case<sup>5</sup> and the *Ayyash et al.* case<sup>6</sup> but avers that these cases can be distinguished from the present proceedings.<sup>7</sup>

7. Finally, the Defence submits that I am “[...] already familiar with a significant part of the case file, since, with the exception of the evidence, [I have] knowledge of the remaining part of the case file in its entirety, including the materials filed by the parties in accordance with Rule 91 of the Rules.”<sup>8</sup> It notes that I have been seized of this case from the pre-trial proceedings.<sup>9</sup> Further, the Defence argues that as a Judge who presided over the *New TV S.A.L./Khayat* case, I am already aware of the legal issues in the present proceedings insofar as they are almost the same in both cases.<sup>10</sup>

### **II. Position of the *Amicus***

8. The *Amicus* opposes the Request.<sup>11</sup> The *Amicus* avers that the Tribunal’s entire practice to date and at most of the international criminal courts, is that the party calling a witness conducts the examination-in-chief, followed by cross-examination by the opposing party and then any re-examination by the calling party. Judges are free to intervene with questions at any

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<sup>3</sup> Request, para. 1.

<sup>4</sup> *Id.* at para. 7.

<sup>5</sup> STL, *In the case against New TV S.A.L. and Khayat*, STL-14-05/PT/CJ, Pre-Trial Conference, 3 November 2014, pp. 31-32.

<sup>6</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01, Pre-Trial Conference, 29 October 2013, pp. 4-5.

<sup>7</sup> *Id.* paras 9-11.

<sup>8</sup> *Id.* para. 13.

<sup>9</sup> *Id.* para. 12.

<sup>10</sup> *Id.* para. 14.

<sup>11</sup> Response, para. 7.

time, pursuant to Rule 145 (B).<sup>12</sup> The *Amicus* submits that there were no special or unique conditions in the *Ayyash et al.* case or *New TV S.A.L./Khayat* case which caused or required a variation from Rule 145 (A). Nor is there anything different in this case which warrants a departure from the establishing Tribunal practice.<sup>13</sup>

9. The *Amicus* argues that the same reasons that led me to opt for the Rule 145 (B) procedure in *New TV S.A.L./Khayat* case apply here.<sup>14</sup> In neither of the cases had there been a report by a Pre-Trial Judge. Also, the unique peculiarities of contempt cases cannot be disregarded.<sup>15</sup>

10. The *Amicus* avers that while Contempt Judge Baragwanath and I took on some of the functions of a Pre-Trial Judge in these cases, no “detailed report” was produced in accordance with Rule 95. Such reports are important as they are normally produced by the Pre-Trial Judge who plays an active role in the pre-confirmation phase and confirms the indictment after having assessed all of the available evidence.<sup>16</sup>

11. Consequently, the *Amicus* argues that at the date of his Response, I had no access to Prosecution evidence, except for single pieces of evidence connected to specific filings and I did not receive disclosure from either the Prosecution or Defence.<sup>17</sup>

### III. Discussion

12. Under Rule 145 (A), if the file submitted by the Pre-Trial Chamber permits it to do so, the Trial Chamber shall adopt the mode of proceeding outlined in Article 20 (2), *i.e.* the Chamber shall examine the witnesses first, followed by questioning by the Parties. The application of Rule 145 (A) is preconditioned on the Judge(s) having received all relevant material pertaining to the case. This in turn would require at a minimum the materials compiled by the Pre-Trial Judge pursuant to Rule 95. However, I recall that contempt proceedings at the

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<sup>12</sup> Response, para. 2.

<sup>13</sup> *Id.* para. 2.

<sup>14</sup> *Id.* para. 3.

<sup>15</sup> *Id.* para. 4.

<sup>16</sup> *Id.* para. 5.

<sup>17</sup> *Id.* para. 6.

Tribunal are conducted by a single Judge.<sup>18</sup> Hence, there simply is no “case file” which would assist in the application of Rule 145 (A).<sup>19</sup>

13. With respect to the Defence’s argument that I am familiar with a “significant part of the case file”, I recall that I have so far received the material filed by the *Amicus* in application of Rule 91 (G), which includes the pre-trial briefs and the Prosecution’s exhibit and witness lists. However, this material is not akin to a “case file” which is required to justify the application of Rule 145 (A).

14. Moreover, I note that it is the Parties who determine the strategy for their respective cases and decide what evidence to tender to support their case. Therefore, in these circumstances, while I may put questions to the witnesses at any time, it would be more efficient for witnesses to be examined first by the Party calling them and then cross-examined by the other Party if it elects to do so.<sup>20</sup>

15. Finally, I am not persuaded by the Defence’s argument that I am already aware of the legal issues present in this case, in light of their similarities to the issues raised in the *New TV S.A.L./Khayat* case over which I presided. Indeed, while both cases may address similar legal issues, the two proceedings are procedurally distinct, as they concern different Accused and different facts.<sup>21</sup>

16. In view of the above considerations, I find it is not appropriate to adopt the mode of questioning witnesses provided in Rule 145 (A) in this trial.

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<sup>18</sup> F0068, Decision on Defence Counsel Motion to Defer the Contempt Case to the Pre-Trial Judge, 30 September 2014, paras 5-6.

<sup>19</sup> STL, *In the case against New TV S.A.L. and Khayat*, STL-14-05/PT/CJ, Pre-Trial Conference, 3 November 2014, pp. 31-32; see also 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 (“*Ayyash et al.* Decision”), fn. 117 (noting that “[e]vidence before the Special Tribunal is general submitted by the Parties, and never through a case file prepared by the Pre-Trial Judge.”)

<sup>20</sup> See *Ayyash et al.* Decision, fn. 117.

<sup>21</sup> F0163, Decision on the *Amicus Curiae* Prosecutor’s Request for Postponement of Proceedings, 18 December 2015, para. 15; see also F0053, Decision on Urgent Defence Submissions regarding Disclosure by *Amicus Curiae* Prosecutor and Preliminary Motions, 14 August 2014, para. 13.

**DISPOSITION**

**FOR THESE REASONS;**

**PURSUANT** to Rules 60 *bis* and 145 of the Rules;

**I**

**DISMISS** the Request.

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

Dated 21 January 2016

Leidschendam, the Netherlands



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Judge Nicola Lettieri  
Contempt Judge

