

**THE CONTEMPT JUDGE**

Case No.: STL-14-06/ES/CJ
Before: Judge Nicola Lettieri, Contempt Judge
Registrar: Mr Daryl Mundis, Registrar
Date: 12 October 2018
Original language: English
Classification: Public

IN THE CASE AGAINST

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

**PUBLIC REDACTED VERSION OF "ORDER ON SEIZURE OF ASSETS" OF
6 DECEMBER 2016**

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

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

The authorities of the Lebanese Republic



INTRODUCTION

1. As Contempt Judge, I am in receipt of the “Registry Submission Pursuant to Rule 48(C) in Relation to the Order on Payment of Fine Pursuant to Rule 135” filed on 17 November 2016.¹
2. On 15 July 2016, I issued the Judgment in this case², in which I convicted Mr Ibrahim Mohamed Ali Al Amin and *Akhbar Beirut* S.A.L. of a count of interference with the administration of justice for the publication of two articles in print and online purporting to identify a total of 32 alleged confidential Tribunal witnesses. On 29 August 2016, a sentencing hearing was held and I imposed a fine of 20,000 Euros on Mr Al Amin and a fine of 6,000 Euros on *Akhbar Beirut* S.A.L., to be paid by 30 September 2016.³ I issued the Sentencing Judgment on 5 September 2016.⁴
3. On 11 October 2016 I issued the Order on Payment of Fine Pursuant to Rule 135⁵ which required Mr Al Amin and *Akhbar Beirut* S.A.L. to provide written submissions with respect to their failure to pay their fines within the stipulated timelines. I ordered the Registry to provide an Arabic and English-language copy of the Fine Order to the Lebanese authorities for service on both Accused in accordance with Lebanese law. I also invited the Parties and the Registry to provide their submissions on the consequences of the Accused’s failure to pay the fines no later than 28 October 2016.⁶
4. As ordered, the Registrar provided the English and Arabic-language copies of the Fine Order to the Lebanese authorities, for service on both Accused, on 27 October 2016.⁷
5. On 28 October 2016, the *Amicus Curiae* Prosecutor⁸ (“*Amicus*”) and the Defence⁹ both filed their submissions pursuant to the Fine Order.

¹ STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/ES/CJ, F0272, Registry Submission Pursuant to Rule 48(C) in Relation to the Order on Payment of Fine Pursuant to Rule 135, 17 November 2016 (“Registry Submission”). All further references to filings and decisions refer to this case number unless otherwise stated.

² STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/T/CJ, F0262, Public Redacted Version of the Judgment, 15 July 2016 (“Judgment”).

³ STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/S/CJ, Sentencing Proceedings, 29 August 2016, p. 34.

⁴ STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/S/CJ, F0265, Reasons for Sentencing Judgment, 5 September 2016 (“Sentencing Judgment”).

⁵ F0269, Order on Payment of Fine Pursuant to Rule 135, 11 October 2016; Corrigendum to “Order on Payment of Fine Pursuant to Rule 135”, 12 October 2016; Corrected Version of “Order on Payment of Fine Pursuant to Rule 135”, 12 October 2016 (“Fine Order”).

⁶ *Id.* at p. 3.

⁷ Registry Submission, para. 3.

6. On 15 November 2016, the Registry received correspondence from the Lebanese Ministry of Justice which contained a letter from the Lebanese Prosecutor General of the Court of Cassation, dated 14 November 2016, enclosing reports on the attempted service of the Fine Order on the Accused.¹⁰ The Lebanese authorities relayed that their attempts to serve the corporate officers of *Akhbar Beirut* S.A.L. were thwarted when those individuals either failed to respond to phone calls from the Judicial Police or declined to accept service of any documents emanating from the Tribunal or the Judicial Police.¹¹ The reports also related that after several attempts to contact Mr Al Amin by telephone, Mr Al Amin himself called the Judicial Police and advised them that he refused to accept service of documents from or meet with the Judicial Police, in both his personal and corporate capacities.¹²

DISCUSSION

I. Submissions of the Parties

A. Defence submissions

7. The Defence notes that Rule 135 of the Rules of Procedure and Evidence (“Rules”), which sets out the procedure for the modalities, payment and enforcement of fines imposed under Rule 60 *bis*, provides a non-exhaustive list of measures that can be taken in the event that a fine is not paid within its stipulated timelines.¹³ Consequently, the Defence suggests that I have the discretion to use creative and appropriate measures to execute the sentence in this matter, including having recourse to Lebanese law.¹⁴ It underlines that “Lebanese law precludes custodial sentences for journalists for publishing offences” and requests that I continue to take this into consideration when determining the appropriate measures to take.¹⁵

8. Furthermore, the Defence argues that any measures taken must be proportionate to the nature and quantum of the penalty imposed which, in this case, constituted a single count of interference with the administration of justice. It submits that to convert the fine into a term

⁸ F0271, *Amicus Curiae* Prosecutor’s Submissions on the Consequences of the Accused’s Failure to Pay the Fines, Confidential, 28 October 2016; Redacted Version of *Amicus Curiae* Prosecutor’s Submissions on the Consequences of the Accused’s Failure to Pay the Fines, 28 October 2016 (“*Amicus* Submissions”).

⁹ F0270, Defence Submissions Filed Pursuant to the Order of 11 October 2016, 28 October 2016 (“Defence Submissions”).

¹⁰ Registry Submission, para. 4.

¹¹ *Id.* at para. 6.

¹² *Id.* at para. 6.

¹³ Defence Submissions, para. 2.

¹⁴ *Id.* at paras 3-4.

¹⁵ Defence submissions, para. 5.

of imprisonment would be wholly disproportionate with regards to the crime committed and would also be inconsistent with Lebanese law.¹⁶

9. The Defence also emphasizes that Rule 135 is ill-suited to the enforcement of sentences on legal persons, given the impossibility of converting *Akhbar Beirut* S.A.L.'s fine into imprisonment.¹⁷ Therefore, the Defence requests that I consider the concurrent jurisdiction of this Tribunal with Lebanese domestic law, as enshrined in Article 4 (1) of the Tribunal's Statute and which applies *mutatis mutandis* to contempt proceedings.¹⁸ Thus, the Defence argues that at this stage of the proceedings, it would be appropriate to transfer the matter to the Lebanese authorities who, once seized of the case, would be able to enforce the sentence in accordance with Lebanese law.¹⁹ It submits that to do so would save the Tribunal's logistical and financial resources and would contribute significantly to the strengthening of the Lebanese judicial system.²⁰

10. Finally, the Defence underlines the "fragile" economic situation affecting the Lebanese press generally and *Akhbar Beirut* S.A.L. specifically, pointing to media articles reporting that the company recently had to lay off 15 employees.²¹ It asserts that requiring *Akhbar Beirut* S.A.L. to pay its fine would only further aggravate its precarious economic situation and that any funds seized could be taken from funds vested in the payment of salaries for staff.²² The Defence argues that the Accused's "attitude" in relation to payment of the fine appears justifiable.²³ Also, the Defence submits that the imprisonment of Mr Al Amin would have a disastrous effect on the economic status of the *Al Akhbar* newspaper, could lead to its closure or the loss of advertisers and other sources of financial support, which in turn would only further aggravate the difficult situation of the newspaper and consequently undermine the freedom of the press in Lebanon.²⁴

B. Position of the Amicus

11. The *Amicus* argues that Mr Al Amin's public statements together with the Registrar's report of service leaves no doubt that the Accused are well aware of the sentences imposed

¹⁶ *Id.* at para. 6.

¹⁷ *Id.* at para. 7.

¹⁸ *Id.* at para. 8.

¹⁹ *Id.* at paras 11, 13.

²⁰ *Id.* at para. 14.

²¹ *Id.* at para. 15.

²² *Id.* at para. 16.

²³ *Ibid.*

²⁴ Defence submissions, para. 17.

upon them and have voluntarily and deliberately refused to comply with them.²⁵ The *Amicus* recalls that disagreeing with a decision or refusing an institution's authority does not constitute a valid excuse to fail to comply with a judicial order.²⁶ Conversely, he argues that non-payment of the fines is further aggravated by the fact that Mr Al Amin refused service [REDACTED].²⁷ Moreover, the *Amicus* asserts that no compelling reasons or circumstances exist to justify the non-payment of the Accused's fines or otherwise extend the time for payment or permit that it be paid in instalments.²⁸ Thus, the *Amicus* argues that the Accused's position is not based on any alleged inability to pay but rather on a refusal to pay.²⁹

12. As a result, the *Amicus* requests that (i) I find the Accused to have committed a new act of contempt and that I impose additional penalties pursuant to Rule 135 (D); (ii) I request the cooperation of the Lebanese government to enforce the sentence through the freezing, seizure or confiscation of assets belonging to Mr Al Amin and *Akhbar Beirut S.A.L.* or any other instrument available in the Lebanese legal framework; or, alternatively, (iii) I convert the fine to a term of imprisonment pursuant to Rule 135 (c) (iv).³⁰

C. Registry Submission

13. The Registrar filed a submission in order to notify me of the documents that the Registry received from the Lebanese authorities relevant to this case and, in particular, the attempted service of documents on the Accused in accordance with the Fine Order.³¹ The Registrar did not provide any submissions on the consequences of the Accused's failure to pay fines.

II. Discussion

14. First, I am satisfied that both Accused were aware of their conviction and the sentences imposed against them in this matter. Although actual service of the Fine Order was not effected on either Accused in a formal manner, I am also satisfied that the Accused were wilfully blind³² to the Fine Order given their refusal to receive service of it. In other words, I

²⁵ *Amicus* submissions, paras 3-4.

²⁶ *Id.* at para. 5.

²⁷ *Ibid.*

²⁸ *Amicus* submissions, para. 6.

²⁹ *Ibid.*

³⁰ *Amicus* Submissions, para. 6 (iii).

³¹ Registry Submission, para. 1.

³² "Wilful blindness" is a term used to describe the state of mind of an individual who seeks to avoid civil or criminal liability for the consequences of an act by intentionally being unaware of facts or documents that would

find that the Accused intentionally refrained from finding out about the content of the Fine Order, so as to be able to deny knowledge of it. This conduct is indeed consistent with the procedural approach adopted by the Accused thus far, based on the “*rupture defence*” strategy,³³ wherein the Accused have challenged the legality and legitimacy of this Tribunal including its international jurisdiction over them, while setting forth arguments grounded in politics rather than in the law (often on the basis of *tu quoque* arguments³⁴). Accordingly, I find that the Accused have implicitly waived their right to make written submissions on the reasons for which they have failed to pay the fines as required.

15. Next, the Defence has not demonstrated that compelling reasons or circumstances exist that would justify the non-payment of the fines or non-execution of my Sentencing Judgment. As neither Mr Al Amin nor any representative for *Akhbar Beirut* S.A.L. have complied with my order to provide their written submissions explaining the reasons for which the fines have not been paid, I am unable to accept the Defence’s bare and unsupported assertion that both Accused have failed to pay their fines because of financial difficulties. Nor could I accept that financial difficulties justify a failure to pay the fine or a systematic refusal to engage with this Tribunal.

16. Although Lebanese law informed my determination of an appropriate penalty in the circumstances, the charges of which the Accused have been found guilty originated in the Tribunal’s inherent jurisdiction to take measures to protect the integrity of its own proceedings. I will then remain seized of this matter until enforcement has been executed to the furthest extent possible and therefore dismiss the Defence’s submissions that I should transfer jurisdiction over this matter to the Lebanese authorities.

17. The Defence argument that Lebanese law does not permit the imprisonment of journalists is equally inapplicable to the present case of circumstances. Mr Al Amin and *Akhbar Beirut* S.A.L. were both convicted and sentenced pursuant to Rule 60 *bis*.

render him or her liable. In other words, wilful blindness occurs when a person deliberately engineers a situation to be ignorant of material facts or documents.

³³ The *rupture defence* (*procès de rupture*) was theorized and adopted by the lawyer Jacques Vergès in national and international trials from the 1950s through the 1980s. The strategy involves challenges to the existing legal framework. These “politics of refusal” call into question the justiciability of a purported crime by challenging the legal, moral and political jurisdiction of the legal order itself.

³⁴ A “*tu quoque*” argument is a logical fallacy that allegedly appeals to hypocrisy. For example, see STL, STL-14-06/PT/CJ, Transcript of Initial Appearance, 29 May 2014, where Mr Al Amin argued that “the Security Council established this Tribunal as a political tool”(p. 10), noted that other massacres and crimes had been committed in Palestine and Lebanon where “no one was held accountable” (p. 10-11), and then concluded, “I do not recognize the existence of this Tribunal so that I can entitle it to charge me” (*sic*) (p. 13).

Imprisonment of up to seven years is explicitly contemplated by this Rule for crimes of interfering with the administration of justice of this Tribunal and particular groups of individuals, including journalists, are not immune. Moreover, in the event that a fine imposed under Rule 60 *bis* is not paid within the specified time, Rule 135 (C) (iv) explicitly contemplates the measure of converting the whole or part of the fine to a term of imprisonment not exceeding twelve months.

18. Notwithstanding, imprisonment is a serious penalty that shall not be imposed without due consideration for the individual circumstances of each case, having in mind the retributive and deterrent functions of criminal sentencing. Moreover I agree that, as a legal person, *Akhbar Beirut S.A.L.* cannot be sentenced to a term of imprisonment. Consonantly, I consider that to institute new contempt proceedings against the Accused for failing to comply with the Fine Order is a serious step that must not be invoked without due consideration for all of the circumstances of the case, after all other options to enforce a sentence have been exhausted. Finally, the tenor of Rule 135 (C) of the Tribunal's Rules, in particular the word *including*,³⁵ militates in favour of interpreting this Rule as encompassing a non-exhaustive list of measures. Therefore, I possess the discretion to order that appropriate measures other than those explicitly envisaged be taken in order to enforce payment of fines imposed for a conviction of interference with the administration of justice.³⁶ In this regard, it is important to recall that Article 18 (2) of the Statute as well as Rules 60 *bis* (H) and 77 (A) empower me as the Contempt Judge, at the request of a party, to issue such orders as may be necessary for the conduct of the proceedings. I consider that such a rule equally applies to the enforcement of a sentence.

19. I consider that the enforcement of a penalty imposed by this Tribunal is vital to achieving the sentencing principles of retribution and deterrence of crimes against the administration of justice. A judgment destined to remain on paper is nothing more than a useless exercise in style. In fact, to permit a sentence to remain unenforced would be to undermine and even subvert the integrity of the administration of justice that the contempt proceedings sought to uphold in the first place. Taking into consideration the language of

³⁵ Rule 135 (C) STL RPE: "After affording the person on whom the fine is imposed an opportunity to be heard, the Contempt Judge may make a decision that appropriate measures be taken, including: (i) extending the time for payment of the fine; (ii) requiring the payment of the fine to be made in instalments; [...] (iv) converting the whole or part of the fine to a term of imprisonment not exceeding twelve months."

³⁶ *Amicus* submissions, fn. 15; Defence Submissions, paras 2-3.

Article 21 (4) of the Statute of this Tribunal,³⁷ I hold that, among the different options available to me, to enforce the payment of the imposed fines is that which “best favour a fair determination of the matter before [the Tribunal] and [is] consonant with the spirit of the Statute and the general principles of law”. In other words, in light of the particular circumstances of the case and the Accused’s refusals to engage with the Tribunal or to acknowledge their sentences as well as the need to ensure that the retributive and deterrent functions of the sanction are met, I find it desirable that further action be taken to compel the payment of the fines imposed on both Accused. In light of the circumstances and given that all avenues towards enforcement of the Fine Order have not yet been exhausted, I decline to make a new finding of contempt pursuant to Rule 135 (D).

20. As for the authorities best equipped to assist with the enforcement of the Sentencing Judgment, I recall the obligation of the Government of Lebanon, under Security Council resolution 1757 (2007), to cooperate with all organs of the Special Tribunal at all stages of the proceedings and Article 15 (2) of the Agreement between the United Nations and Lebanon which entered into force on 10 June 2007 following the adoption of resolution 1757 (2007), according to which the competent authorities of the Lebanese Republic shall comply without undue delay with any order issued by the Chambers.

21. In this vein, I ask that the Lebanese authorities provide their full cooperation in the enforcement of the Sentencing Judgment, by taking all necessary steps in accordance with Lebanese law to collect the funds from both Accused towards full payment of the fines to the Tribunal’s Registrar, and in the event that the full amount is not paid immediately, by adopting all necessary measures including the freezing, seizure or confiscation of assets belonging to each Accused or any other legal measure available in Lebanese law, with any and all amounts collected to be forwarded to the Tribunal’s Registry.

22. Finally, I note that the Lebanese authorities forwarded correspondence and attached reports to the Tribunal’s Registry with copy to the Trial Chamber.³⁸ As only the Contempt Judge is currently seized of this matter, I decline to direct the Registrar to provide a courtesy copy to the Trial Chamber.

³⁷ Article 21 (4) STL St.: “In cases not otherwise provided for in the Rules of Procedure and Evidence, a Chamber shall apply rules of evidence that will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law”.

³⁸ Registry Submission, para. 8; *see also* F0272, Annex B to Registry Submission Pursuant to Rule 48(C) in Relation to the Order on Payment of Fine Pursuant to Rule 135, Confidential, 17 November 2016.

DISPOSITION

FOR THESE REASONS,

IN APPLICATION of Article 18 (2) of the Statute, Article 15 (2) of the Agreement between the United Nations and Lebanon and Rules 60 *bis* (H), 77 (A) and 135 (C),

I

REQUEST the competent authorities of the Lebanese Republic to collect the equivalent funds of 20,000 Euros from Mr Ibrahim Ali Al Amin and 6,000 Euros from *Akhbar Beirut* S.A.L. through the freezing, seizure or confiscation of assets belonging to each Accused or any other legal measure available in Lebanese law, and to forward any and all amounts collected to the Tribunal's Registry;

REQUEST that the competent authorities of the Lebanese Republic provide me with a report on their efforts and success, if any, towards collecting the fine amounts, within sixty days of receiving this Order;

ORDER the Registrar of the Tribunal to transmit to the competent authorities of the Lebanese Republic, (1) an English and Arabic-language copy of the present Order; and (2) a certified copy in the English and Arabic-language, bearing the official seal of the Tribunal, of the Fine Order (F0269) and Sentencing Judgment (F0265); and,

DISMISS, at this stage, the *Amicus's* request to find the Accused to have committed a new act of contempt and to impose additional penalties pursuant to Rule 135 (D).

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

Dated 12 October 2018

Leidschendam, the Netherlands



Judge Nicola Lettieri
Contempt Judge

