

**THE CONTEMPT JUDGE**

**Case No.:** STL-14-06/S/CJ  
**Before:** Judge Nicola Lettieri, Contempt Judge  
**Registrar:** Mr Daryl Mundis, Registrar  
**Date:** 5 September 2016  
**Original language:** English  
**Classification:** Public

**IN THE CASE AGAINST**

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

**REASONS FOR SENTENCING JUDGMENT**

***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. On 15 July 2016, I pronounced the judgment in this case,<sup>1</sup> where I convicted Ibrahim Mohamed Ali Al Amin and *Akhbar Beirut S.A.L.* of the charge as set out in the Order in Lieu of an Indictment.<sup>2</sup>

2. On 29 August 2016, I heard the Parties' submissions on sentencing with respect to the Accused's convictions. I pronounced my decision on sentencing on the same day, imposing on Mr Al Amin a fine of 20,000 Euros and imposing on *Akhbar Beirut S.A.L.* a fine of 6,000 Euros, both amounts to be paid no later than 30 September 2016.<sup>3</sup> I clarified that I would issue the written reasons for my decision as soon as practicable.<sup>4</sup> Below are the reasons for the sentencing judgment.

## **ARGUMENTS OF THE PARTIES**

### **I. Position of the *Amicus***

3. The *Amicus Curiae* Prosecutor ("*Amicus*") argued that short of direct physical interference with a witness, there are no more egregious facts for an obstruction of the administration of justice than the present case.<sup>5</sup>

4. The *Amicus* acknowledges that the two main considerations in this sentence are the punishment of the Accused and deterring similar conduct by others.<sup>6</sup> With respect to the aggravating factors, the *Amicus* has characterized that the Accused's conduct is particularly grave given Mr Al Amin's stated defiance of the Tribunal and its rules (particularly Rule 60 *bis* which was well known to him), the specific intent inferred by the publication of a second article that identified additional persons as purported confidential Tribunal witnesses despite public outcry and criticism from other media outlets, the availability online of the impugned articles for more than three years, his complete disregard for the witnesses' safety, the Accused's lack of

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<sup>1</sup> STL, *In the case of Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/T/CJ, F0262, Public Redacted Version of the Judgment, 15 July 2016 ("Judgment"). All further references to filings refer to this case number unless otherwise stated.

<sup>2</sup> F0001, Order in Lieu of an Indictment, Annex 2, 31 January 2014.

<sup>3</sup> STL, *In the case of Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/S/CJ, Sentencing Hearing, 29 August 2016, p. 34 ("Transcript of Sentencing Hearing").

<sup>4</sup> *Ibid.*

<sup>5</sup> Transcript of Sentencing Hearing, p. 5.

<sup>6</sup> *Ibid.*

cooperation and remorse and the fact that actual harm was found to have been caused as a result of the publications.<sup>7</sup>

5. The *Amicus* submitted that there were no mitigating factors in the present case. Although Mr Al Amin voluntarily attended for a suspect interview with the initial *Amicus* and his team, he refused to answer any questions posed to him and, in essence, has failed to cooperate with the Tribunal throughout the proceedings. In reply, he insisted that the Accused not be given credit for the limited impact the publications may have had on the willingness of witnesses to continue to testify in the main proceedings.<sup>8</sup> Indeed, he argues that the Accused's specific intent to obstruct justice and place witnesses at risk merits serious punishment.<sup>9</sup>

6. In light of these considerations, the *Amicus* requested that I sentence Mr Al Amin to two years imprisonment and a \$75,000 fine.<sup>10</sup> With respect to *Akhbar Beirut S.A.L.*, he submitted that a fine of 127,000€ was appropriate,<sup>11</sup> being a fine of 100€ for each of the 1,027 days that the impugned articles were available online.

## II. Position of the Defence

7. The Defence argued that the *Amicus's* position on sentence was arbitrary and disproportionate to the offence for which the Accused were convicted.<sup>12</sup> It notes that this case is the first where a legal person has been convicted by an international criminal court and that the nature of the contempt charges is unlike any other preceding international contempt case.<sup>13</sup> Instead, it argues that the conviction alone constitutes moral condemnation which is sufficient to achieve the objectives of sentencing, noting that Mr Al Amin (and as a result, *Akhbar Beirut S.A.L.*) will suffer widespread media coverage of his conviction and sentencing, leading to the sully of his professional reputation.<sup>14</sup> The Defence also emphasised that the imprisonment of journalists for media-related crimes is prohibited in Lebanese law.<sup>15</sup>

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<sup>7</sup> Transcript of Sentencing Hearing, pp. 10-14.

<sup>8</sup> *Id.* at pp. 29-30.

<sup>9</sup> *Ibid.*

<sup>10</sup> Transcript of Sentencing Hearing, p. 17.

<sup>11</sup> *Id.* at p. 18.

<sup>12</sup> *Id.* at p. 20.

<sup>13</sup> *Ibid.*

<sup>14</sup> Transcript of Sentencing Hearing, pp. 20, 24-26.

<sup>15</sup> *Id.* at p. 25.

8. Contrary to the *Amicus*'s assertion, the Defence contends that there are a number of mitigating factors present in this case. The Defence noted that Mr Al Amin voluntarily attended a suspect interview with the initial *Amicus* team in order to provide an explanation for the impugned articles.<sup>16</sup> It also notes that no evidence was presented to show that anyone was injured or killed or suffered actual material harm as a result of the publications, and that the ongoing investigations and trial proceedings in the *Ayyash et al.* matter<sup>17</sup> have not been obstructed in any way by the publication of the impugned articles. It underlined that protective measures in the main proceedings continue to be requested and granted, demonstrating that public confidence in the Tribunal's ability to protect the confidentiality of its information has not actually been undermined.<sup>18</sup> It added that a judicial order to cease the publications, issued more than three years after their initial appearance, was immediately observed by the Accused. Finally, the Defence cautioned that the media must not be muzzled by this sentence and that it is problematic to condemn the Accused for simply reporting on purported leaks from inside the Tribunal (the perpetrator of which remains unknown), when they lacked any intention to endanger people.<sup>19</sup>

9. The Defence presented an exhibit with the aim of demonstrating that print media in Lebanon is currently suffering from a nation-wide dire financial crisis.<sup>20</sup> It asserted that a high financial penalty on the corporate Accused would be tantamount to penalizing the individuals and families who work for *Akhbar Beirut S.A.L.*, without distinction as to their involvement or responsibility for the impugned articles.<sup>21</sup>

10. Finally, the Defence argued in its reply submissions that Mr Al Amin's absence must not be construed as an aggravating factor, noting that I have previously reasoned that the corollary of the right to be present is the right not to be present, and that my previous decisions have invited rather than obliged Mr Al Amin to be present in the courtroom.<sup>22</sup>

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<sup>16</sup> Transcript of Sentencing Hearing, p. 21.

<sup>17</sup> STL, *Prosecutor v. Ayyash, Merhi, Oneissi & Sabra*, STL-11-01/T/TC.

<sup>18</sup> Transcript of Sentencing Hearing, p. 23.

<sup>19</sup> *Id.* at p. 26.

<sup>20</sup> *Id.* at p. 24; *see also* D00060.

<sup>21</sup> Transcript of Sentencing Hearing, pp. 24-25.

<sup>22</sup> *Id.* at p. 30.

11. Accordingly, the Defence argues that a conviction is sufficient punishment *per se* and no sentence should be imposed.<sup>23</sup>

### **APPLICABLE LAW**

12. Rule 60 *bis* (J) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) states that “(t)he maximum penalty that may be imposed on a person found to be in contempt of the Tribunal shall be a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 Euros, or both.”

13. Rule 171 (D), which applies *mutatis mutandis* in contempt proceedings<sup>24</sup>, provides that the Trial Chamber shall impose a sentence in respect of each count in the indictment upon which the accused has been convicted (...).”

14. Rule 172 (B), which also applies *mutatis mutandis*, provides that, in determining a sentence, the Trial Chamber shall take into account the factors mentioned in Article 24 (2) of the Tribunal’s Statute—namely, the gravity of the offence and the individual circumstances of the convicted person—as well as factors such as: any aggravating circumstances; any mitigating circumstances, including substantial cooperation with the Prosecutor by the convicted person before or after conviction; the general practice regarding prison sentences in Lebanon; and the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served.

15. As I have noted previously<sup>25</sup>, I am also guided by the well-established sentencing practice of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) in contempt matters. I agree with the ICTY’s case-law that the most important factors in determining the appropriate penalty in a contempt case are the gravity of the conduct and the need to deter repetition and similar conduct by others.<sup>26</sup> In short, in determining the penalty I will essentially focus on its retributive and deterrent functions.<sup>27</sup>

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<sup>23</sup> Transcript of Sentencing Hearing, pp. 250-27.

<sup>24</sup> Rule 60 *bis* (H) RPE.

<sup>25</sup> STL, *In the case of New T.V. S.A.L. and Al Khayat*, STL-14-05/S/CJ, Reasons for Sentencing Judgment, 6 October 2015, para. 15 (“Khayat Sentencing Judgment”).

<sup>26</sup> Khayat Sentencing Judgment, para. 15; *see also* ICTY, *Prosecutor v. Jović*, IT-95-14 & IT-95-14/2-R77, Judgement, 30 August 2006, para. 26; *see also* ICTY, *Prosecutor v. Marijačić and Rebić*, IT-95-14-R77.2, Judgement, 10 March 2006, para. 46; *see also* ICTY, *Prosecutor v. Margetić*, IT-95-14-R77.6, Judgement on

## DISCUSSION

### **I. Sentence of Mr Al Amin**

16. As a preliminary issue, I note that Mr Al Amin was absent from the sentencing hearing, as he was equally absent from the entirety of the trial proceedings. While I recall that, pursuant to Rule 171 (E), a sentence shall be pronounced, wherever possible, in the presence of the convicted person, I am satisfied that Mr Al Amin was aware of the date of the sentencing hearing,<sup>28</sup> continued to unequivocally waive his right to be physically present and was, in any event, fully represented by Defence counsel who had been appointed *ex officio*, for the duration of the trial and sentencing proceedings. However, his absence from this hearing will have no bearing on the determination of the sentence in this case, except insofar that Mr Al Amin will not receive mitigation for cooperating with the Prosecution.

17. With respect to the nature and gravity of the offence for which Mr Al Amin is convicted, I find that the contemptuous behaviour here was particularly egregious: Mr Al Amin published the names, photographs and significant personal details of 17 purported confidential Tribunal witnesses and, after what was acknowledged by Mr Al Amin as public outcry and claims from various members of the public that his previous publication had infringed the law, he then published a second article with the photographs, names and personal information of a further 15 purported witnesses.<sup>29</sup>

18. Nor can I say, as the Defence appears to imply by invoking the journalistic duty to inform, that Mr Al Amin acted for reasons of particular moral or social value, which might constitute mitigating circumstances. Indeed, no such finding can be attributed to professional journalistic conduct which targets, on the basis of mere conjectures, the first serious attempt to

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Allegations of Contempt, 7 February 2007, para. 84; *see also* ICTY, *Prosecutor v. Haraqija and Morina*, IT-04-84-R77.4, Judgement on Allegations of Contempt, 17 December 2008, para. 103.

<sup>27</sup> *Cf.* ICTY, *Prosecutor v. Hartmann*, IT-02-54-R77.5, Judgment on Allegations of Contempt, 14 September 2009, para. 88; ICTY, *Prosecutor v. Šešelj*, IT-03-67-R77.3, Public Redacted Version of “Judgment” Issued on 31 October 2011, paras. 77, 80; ICTY, *Prosecutor v. Šešelj*, IT-03-67-R77.4, Public Redacted Version of Judgment Issued on 28 June 2012, 28 June 2012, para. 52.

<sup>28</sup> Even though the Accused refused formal service of the documents concerning the date of the sentencing hearing, materials were brought to my attention which unequivocally showed that the Accused were aware of such a date and that they did not intend to take part in the hearing (*see*, ECtHR, *Sejdovic v. Italy*, Application No. 56581/00, Judgment, GC, 1 March 2006, para. 99); *see* F264, Registry Submission Pursuant to Rule 48(C) in relation to the Service of the Judgment on the Accused, Public with Confidential Annexes, 26 August 2016, para. 3; *see* Transcript of Sentencing Hearing, p. 2; *see also* P00154, Interview Transcript, p. 1.

<sup>29</sup> Judgment, paras 120, 146.

shed light on the appalling attacks which bloodied Lebanon in the period beginning October 2004.<sup>30</sup> Furthermore, I have already concluded that portraying the 32 individuals as witnesses against Hezbollah is generally prohibited by principles governing the media and serves no journalistic value or pressing social need<sup>31</sup>, and that in the impugned articles the author did not place himself as a neutral observer simply reporting on the results of an investigative inquiry but rather as a political advocate.<sup>32</sup> Moreover, ample evidence demonstrates that the Accused's actions were inconsistent with investigative journalism.<sup>33</sup> Consequently, I rejected the Defence argument that the publication of the impugned articles was simply investigative journalism.<sup>34</sup> While simply criticizing the Tribunal (which is holding proceedings that could deliver justice for the victims and the broader public and shape collective memory of horrible events) is of course not a crime<sup>35</sup>, nor an aggravating circumstance, it also cannot have a mitigating effect on sentence.

19. The evidence at trial that I have accepted also demonstrated that a certain number of witnesses experienced fear, that there was overwhelming negative public discourse surrounding the *Al Akhbar* publications, that two witnesses actually lost confidence in the Tribunal's ability to maintain the confidentiality of its witness information, and that at least one of the exposed purported witnesses suffered direct harm in the loss of business.<sup>36</sup> All of these factors are aggravating for the purposes of sentencing.

20. Given the repeated nature of the Accused's conduct and the need to deter such behaviour, with all of the other circumstances of this case taken in account, a fine of 20,000 Euros is appropriate.

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<sup>30</sup> In the period covered by the jurisdiction of the Tribunal, 1 October 2004-12 December 2005 (article 4.3 of the Statute), 15 terrorist bomb attacks were carried out against similar targets and with the same *modus operandi* (murder of the former premier Hariri and of other 21 persons, as well as other 14 bomb attacks). In addition, a further five bomb attacks and one shooting attack occurred in the period November 2006-January 2008, where an investigator involved in the investigation of the Hariri murder was also killed.

<sup>31</sup> Judgment, para 161.

<sup>32</sup> *Id.* at para. 111.

<sup>33</sup> *Id.* at para 162.

<sup>34</sup> *Id.* at paras 162-163.

<sup>35</sup> Provided that this is done without exceeding the limits imposed by Rule 60 *bis* (vii).

<sup>36</sup> Judgment, paras 116-120.

## II. Sentence of *Akhbar Beirut S.A.L.*

21. I note that this is the first occasion in which a legal person has been convicted of the obstruction of justice in an international criminal setting. I find, however, that the same sentencing principles of retribution and deterrence that apply to natural persons, must equally apply to legal persons.

22. The *Amicus* has requested that I sentence *Akhbar Beirut S.A.L.* to a fine of 127,000€ in order to account for the fact that the impugned articles were available online for a total of 1,027 days.<sup>37</sup> He argues that, as a “continuing offence”, I would be justified in imposing a sentence that exceeds the maximum penalty contemplated for a single offence in the Rules, on the basis that the continued availability of the impugned articles thereby constitutes separate acts of contempt.<sup>38</sup> I disagree in light of the Tribunal’s Rules, which are clear: as contemplated in Rules 60 *bis* and 171 (D), I may only impose a sentence in respect of each count in the indictment upon which the Accused has been convicted, and the maximum fine that I may impose for a single count of contempt is 100,000€. The corporate Accused has been convicted of a sole count of contempt in this matter and will be sentencing accordingly. Therefore, the length of time that the impugned articles were available to the public is just one of the factors that I must weigh in determining the relative gravity of the single offence committed and the corresponding penalty.

23. In determining the quantum of a fine to be imposed, I find relevant that Lebanese law contemplates a fine in the range of 10 to 30 million Lebanese Pounds<sup>39</sup> for similar conduct, such as in cases where confidential judicial information is published.<sup>40</sup>

24. Given the novelty of sentencing a legal person for contempt of an international tribunal, the foreseeability of the range of fines as set out in the Lebanese Law of Publications, as well as

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<sup>37</sup> Transcript of Sentencing Hearing, pp. 17-18.

<sup>38</sup> *Id.* at p. 18.

<sup>39</sup> On the basis of mid-market rates on the morning of 29 August 2016, the minimum fine of LBP 10 million was valued at 5,935€, whereas LBP 30 million was valued at 17,820€.

<sup>40</sup> Law on Publications, Legislative Decree No. 104/77 – 30 June 1977, Article 12-1, as amended by Law No. 89/91 and Article 11 of Law No. 330/94. prohibits the publication of the facts of felony and misdemeanour investigations prior to their being revealed in a public hearing, with any perpetrator of a violation of the article’s provisions to be penalised by imprisonment of three months to a year and a fine of LBP 10 million to 30 million, or by one of those two penalties. Article 16, as amended by Law No. 89/91 and Law No. 330/94, provides that anyone who threatens a person by means of publications, advertisement, or any kind of photograph, with exposing, revealing or informing about a matter that diminishes the dignity and honour of such a person...shall be penalised by imprisonment of six months to two years and a fine of LBP 20 million to 30 million, or one of those two penalties.

the separate penalty already imposed on Mr Al Amin as an individual, I find that a fine of 6,000 Euros - a quantum roughly equivalent to the minimum fine contemplated for a similarly-positioned Accused in Lebanese law – is appropriate in the circumstances to achieve the principles of retribution and deterrence of the corporate Accused's conduct.

### **DISPOSITION**

#### **FOR THESE REASONS;**

**PURSUANT** to Article 24 (2) of the Statute of the Tribunal and Rules 60 *bis* (J) and 172 (B);

#### **I**

**SENTENCED** Mr Al Amin to a fine of 20,000 Euros, to be paid in full by 30 September 2016;

**SENTENCED** *Akhbar Beirut S.A.L.* to a fine of 6,000 Euros, to be paid in full by 30 September 2016; and

**ORDER** the Registry to provide an English and Arabic-language copy of this Sentencing Judgment to the Lebanese authorities to serve on both Accused, in accordance with Lebanese law.

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

Dated 5 September 2016

Leidschendam, the Netherlands



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Judge Nicola Lettieri  
Contempt Judge

