



المحكمة الخاصة بلبنان
SPECIAL TRIBUNAL FOR LEBANON
TRIBUNAL SPÉCIAL POUR LE LIBAN



Q&As on the contempt cases before the Special Tribunal for Lebanon

What is meant by *contempt of court*?

Contempt of court is a common law concept rooted in a court's inherent power to control and ensure the integrity of its own proceedings. It involves situations where a party is disrespectful or disobedient of a judge, court officer, court order or court proceedings.

All international criminal courts and tribunals, including the Special Tribunal for Lebanon (STL), give their judges the power to impose criminal penalties for conduct that interferes with the administration of justice or threatens the integrity of the judicial proceedings, including interference with witnesses.

Contempt of court is defined in Rule 60 *bis* of the Tribunal's Rules of Procedure and Evidence (RPE) as the knowing and wilful interference with the Tribunal's administration of justice. The charge is also described as "obstruction of justice". Contempt of court can take a number of forms. Under Rule 60 *bis*, it may include, but is not limited to, conduct such as:

- giving false evidence before the court;
- disclosing certain information in violation of a court order;
- failing to comply with court orders; or
- threatening, intimidating or offering to bribe witnesses and other individuals, such as the Judges of the Tribunal.

The purpose of contempt proceedings is to protect the functioning of the Tribunal, compliance with court orders, protection of witnesses and the proper administration of justice.

Prohibiting actions that interfere with the administration of justice is not a unique feature to the STL. The Lebanese Criminal Code (LCC), specifically Articles 398-421, refers to "offences against the administration of justice". For example, Article 420 of the LCC forbids the publication of any document related to the investigation of a case prior to it being revealed in a public hearing. Other domestic legislations pro-

hibit interference with the administration of justice as well such as Article 434 of the French Criminal Code

and the 1981 Contempt of Court Act in England and Wales.

What does *inherent power* mean?

Rule 60 *bis*: “*The Tribunal, in the exercise of its **inherent power**, may hold in contempt those who knowingly and wilfully interfere with its administration of justice, upon assertion of the Tribunal’s jurisdiction according to the Statute*”.

Inherent power is the power that a tribunal has, even if not explicitly provided for in its statute or rules of procedure, to prosecute the crime of contempt to ensure the fair administration of justice.

The Statute of the Tribunal makes no mention of contempt, is it possible for the plenary of the Judges to expand the Tribunal’s jurisdiction and create new *crimes* in the Rules of Procedure and Evidence?

The contempt procedure in Rule 60 *bis* of the RPE is similar to how Lebanon and most domestic jurisdictions would deal with a legal issue that arises in connection with the main case. This is the core of inherent jurisdiction. This is protected, in Lebanon, in Article 30 of the new Code of the Civil Procedure and is a principle also applicable to criminal proceedings according to Article 6. Accordingly, if the new legal

issue is connected to the main trial and there is no other jurisdiction competent to resolve it, then it is up to the court that has jurisdiction in the main case to deal with the connected proceedings. This ensures the good functioning of the proceedings and avoids their fragmentation. The crime of contempt or obstruction of justice is therefore a connected question of the main case.

Why couldn’t the Lebanese courts – specifically the Lebanese Court of Publications – look into these cases?

The contempt case is connected to the main proceedings over which the Tribunal has jurisdiction. It is not related to obstruction of justice in Lebanon, or the publication of confidential information related to a case before a Lebanese court. These proceedings relate to interference with the administration of justice before the STL. The Contempt Judge has determined that there is no provision in the Lebanese laws allowing prosecution of the interference with justice in another

jurisdiction, such as courts of other countries, or the STL.

It is worth noting also that in the case STL-14-05, the Government of Lebanon did not submit any brief suggesting that the Tribunal does not have, or should not exercise, jurisdiction over obstruction of justice. The National Council for Audiovisual Media, filed an *amicus curiae* brief, but never suggested that Lebanon had the authority to launch a case related to the conduct alleged in these cases.

Since the Tribunal’s main jurisdiction is limited to crimes under Lebanese law, does Rule 60 *bis* go beyond legal provisions under Lebanese criminal law?

No. Similar provisions exist in Lebanese criminal law that penalizes conduct that interferes with or obstructs the administration of justice. For example in Article 420 of the LCC, the publication of any document

related to an investigation prior to it being revealed in a public hearing is subject to a fine. Article 53 of the Lebanese Criminal Code of Procedure also, in the same spirit, stipulates that “*the investigation remains*

confidential until such time as the case is referred for trial. Anyone who breaches the confidentiality of the investigation is liable to prosecution and is punishable by imprisonment of between one month and one year and/or a fine of between one hundred thousand and one million Lebanese pounds”.

Also, Article 3 of the Lebanese Law on Publications (Legislative Decree No. 104/77 of 30 June 1977) penalises the publication of false or deceitful information ;the publication of the facts of felony and misdemeanour investigations prior to their being revealed in a public hearing; the facts of investigations by the Central Investigation and Judicial Investigation Department; letters, documents, files or any parts of

files of any departments that are affixed with a stamp containing the word “Confidential”; Article 12 states that the proceedings of any legal case the publication of which the court has prohibited; and reports, letters, communications, articles, photographs and news items that violate public morality and decency. Article 16 of the Lebanese Law on Publications also criminalizes acts such as intimidation, and Article 17 covers acts of libel, slander and defamation.

The crimes enumerated in the Law on Publications are therefore quite extensive. They can be interpreted as also covering the intimidation of witnesses, or interference with the administration of justice, when done by means of publications.

Do the contempt cases constitute an attack on the freedom of the press in Lebanon?

The freedom of expression guarantees everyone’s right to hold opinions and expressions, receive and impart information and ideas as long as they are in accordance with the applicable laws. The freedom of expression is not absolute and journalists and media organisations must comply with the law. The Contempt Judge at the STL, stipulated in its *Decision in Proceedings for Contempt with Orders in Lieu of an Indictment* that “[t]he criminal charge of contempt is not to be abused as a cudgel to silence an independent media acting within the law.” The Tribunal welcomes criticism and opinions as long as they do not interfere with the administration of justice.

Publicising the names of confidential witnesses (purported or actual) — may have serious consequences for the STL’s functioning but may also jeopardize the

safety of those witnesses and their families. Moreover, Article 13 of the Lebanese Constitution stipulates that “[t]he freedom to express one’s opinion orally or in writing, the freedom of the press, the freedom of assembly, and the freedom of association are guaranteed within the limits established by law”.

Also, Lebanese courts—and specifically the Court of Publications—try cases of publication of confidential court filings or of the content of on-going investigations to protect their secrecy, safety and efficiency. That Court of Publications, for example, found that a general plea of freedom of expression does not validate slander. Thus, in Lebanon, just like in any other jurisdiction, freedom of expression is limited by the legitimate protection of other societal interests.

What were the charges in the two contempt cases prosecuted before the STL?

On 31 January 2014, the initial Contempt Judge, Judge David Baragwanath, issued charges of contempt against Al Jadeed [Co.] S.A.L./New TV S.A.L. (N.T.V.) [hereafter Al Jadeed S.A.L.] and Ms Karma Mohamed Tahsin Al Khayat (STL-14-05) “*for knowingly and wilfully interfering with the administration of justice by broadcasting and/or publishing information on purported confidential witnesses in the Ayyash et al. case, thereby undermining public confidence in the Tribunal’s ability to protect the confidentiality of information about,*

or provided by, witnesses or potential witnesses”. (Count 1).

Additionally, Al Jadeed S.A.L. and Ms Karma Mohamed Tahsin Al Khayat were charged for “*knowingly and wilfully interfering with the administration of justice by failing to remove from Al Jadeed S.A.L.’s website and YouTube channel information on purported confidential witnesses in the Ayyash et al. case, thereby violating an order issued by the STL Pre-Trial Judge in the Ayyash et al. case on 10 August 2012”.* (Count 2).

Ms. Al Khayat and Al Jadeed TV were subsequently acquitted.

On 31 January 2014, the Contempt Judge issued charges of contempt against Akhbar Beirut S.A.L. and Mr Ibrahim Mohamed Ali Al-Amin (STL-14-06) “for knowingly and wilfully interfering with the administration of justice by publishing information on purported confidential witnesses in the *Ayyash et al.* case, thereby

undermining public confidence in the Tribunal’s ability to protect the confidentiality of the information about, or provided by, witnesses or potential witnesses”.

Mr. Al-Amin was convicted and sentenced to a €20,000 fine and Akhbar Beirut S.A.L. convicted and sentenced to a fine of €6,000.

A third incident is still under investigation.

What was the timeline of the contempt cases at the STL?

Contempt proceedings are similar to the main criminal proceedings such that the same procedural rules generally apply to both. In international criminal trials, the parties typically make their opening statements, then present their respective case, during which they call and challenge evidence, and finally deliver closing arguments before a judgment is issued.

The trial in STL-14-05 opened before the Contempt Judge on 16 April 2015.

On 18 September 2015, the Contempt Judge issued his Judgment, finding Al Jadeed S.A.L. and Ms Khayat not guilty with respect to the charges under count 1 of the order in lieu of indictment.

Judge Lettieri found Ms Al Khayat guilty and Al Jadeed TV not guilty with respect to the charges under count 2.

On 28 September 2015, the Contempt Judge sentenced Ms Khayat to a fine of ten thousand euros (€10,000), to be paid in full by 30 October 2015.

The *Amicus* filed his appeal brief against Contempt Judge’s 18 September 2015 judgment before the Appeals Panel. On 5 November 2015, the *Amicus* submitted his appeal brief against the Contempt Judge’s sentencing judgment before the Appeals Panel. The

same day, the Defence for Ms Khayat filed an appeal brief against the Contempt Judge’s 18 September 2015 judgment.

The Appeals Panel reversed Ms Khayat’s conviction under Count 2 and set aside the fine of €10,000. The Appeals Panel also affirmed Ms Al Khayat’s acquittal under Count 1 and Al Jadeed S.A.L.’s acquittal under both counts

In the contempt case STL-14-06, the trial started on 28 January 2016.

On 15 July 2016, the Contempt Judge issued his Judgment, finding both Mr Al Amin and Akhbar Beirut S.A.L. guilty of the sole count in the Order in Lieu of an Indictment of knowingly and wilfully interfering with the administration of justice by publishing information on purported confidential witnesses in the *Ayyash et al.* case, thereby undermining public confidence in the Tribunal’s ability to protect the confidentiality of information about, or provided by witnesses or potential witnesses.

On 29 August 2016, the Contempt Judge sentenced Mr Al Amin to a twenty thousand euro (€20,000) fine and Akhbar Beirut S.A.L. to a six thousand euro (€6,000) fine.

Why are only Lebanese journalists and media organisations being charged with contempt even though confidential information that was published in the past by non-Lebanese media has not been addressed?

All allegations are taken seriously and, when required, investigated. If an investigation determines, to the requisite standard, that a particular suspect has committed

contempt, and the circumstances are sufficiently serious to merit prosecution, an indictment may be presented.

In each case, the Contempt Judge weighs the advantages and disadvantages in bringing contempt charges. For example, a case may be very serious but it will not be pursued if there is insufficient evidence to establish the responsibility of the suspect(s).

In the cases before the STL, the Contempt Judge in its *Decision in Proceedings for Contempt with Orders in Lieu of an Indictment* specifically found that “the main

proceedings before the Tribunal [in the Ayyash et al. case] concern a case of the gravest magnitude. The public interest in protecting such proceedings against undue outside influence is of the highest importance. Amicus charges that alleged criminal conduct in this matter had a detrimental effect on the Tribunal’s administration of justice. It follows that this factor militates in favour of contempt proceedings.”

What are the unique features of these two contempt cases?

It was the first time that corporations (legal persons) were prosecuted under international criminal tribunals,

namely New TV S.A.L. and Akhbar Beirut S.A.L.

Why were the contempt cases prosecuted by an independent prosecutor when the STL has its own Prosecutor?

The Rules provide the Contempt Judge with a number of options, one of which is to consider the preferences of the Prosecutor not to investigate, or whether there might be a conflict of interest between the Prosecutors other duties and the relevant conduct. In the STL-14-05 and STL-14-06 cases, the Contempt Judge

instructed the Registrar to appoint an independent *amicus curiae* because the Prosecutor declined to prosecute the contempt cases since he considered there to be a conflict of interest.

The appointment of an *amicus curiae* Prosecutor is provided for in the rules of the STL (Rule 60 *bis*).

What does an *amicus curiae* prosecutor mean?

Amicus curiae (a Latin term, which means “friend of the court”) is a third party that is not party to a case. In this case, an *amicus curiae* prosecutor is a third party, who is not a party to the main proceedings but is

assigned to assist a court on a specific issue. The *amicus curiae* prosecutor is independent from the Office of the Prosecutor at the STL.

Did the investigations conducted by *amicus curiae* prosecutor establish where the published information came from?

The *amicus curiae* prosecutor did investigate, among other things, whether the published information about the identity of alleged confidential witnesses could have been disclosed by Tribunal personnel with access to confidential documents. While it was alleged by some persons that the information was leaked from inside the Tribunal, there is no available evidence establishing that such information was “leaked” or

made available by the Tribunal or its staff members, individual contractors or consultants.

If any evidence is presented to the *amicus curiae* prosecutor or the Contempt Judge indicating who may have disclosed confidential information in violation of STL decisions, such evidence will be carefully examined and evaluated and the persons implicated prosecuted, if appropriate.

Why can't the identities of the witnesses in the *Ayyash et al.* case be public?

The principle of transparency is predominant in the STL's proceedings to guarantee a fair trial and the rights of the accused. As the public has been able to observe since the start of the trial in the *Ayyash et al.* case on 16 January 2014 and until the time of writing, most witnesses testified publically. They have been heard in open sessions and broadcasted in three languages in Lebanon and all over the world. This principle of transparency is however, subject to measures ordered by the judges for the protection of victims and witnesses. Making public the identities of certain wit-

nesses may create unnecessary risks for the persons in question.

In any event, in the contempt cases prosecuted before the STL, the question was not whether the identifying information allegedly published was that of actual witnesses. Rather, the charges are related to allegations of publishing information on purported confidential witnesses, in a manner that would undermine public confidence in the Tribunal's ability to protect the confidentiality of its information, thus interfering with the administration of justice.

Are contempt cases common at other international courts?

All international criminal courts and tribunals have rules under which persons can be held responsible for contempt. Consequently, all such courts and tribunals have held and continue to hold contempt cases.

At the International Criminal Tribunal for the former Yugoslavia, for example, there have been 25 such cases involving different kinds of prohibited behaviour.

Several individuals – including journalists – were convicted of knowingly and wilfully interfering with the administration of justice by disclosing confidential information about protected witnesses.

Some individuals were also found guilty for refusing to appear as witnesses, for refusing to answer a question as a witness before a Chamber or for providing false statements.

Defence counsel were convicted of procuring false witness statements and for bribing witnesses by encouraging false statements in exchange for payment.

The Special Court for Sierra Leone issued judgments in seven contempt cases. Individuals were charged with threatening and intimidating a protected witness and/or tampering with witnesses who had given evidence in prior proceedings by offering a bribe to him/her.

The International Criminal Court also charged individuals – including members of a Defence team – for corruptly influencing witnesses, attempting subordination of witnesses and witness tampering.

Many were sentenced to prison.

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