

1 Special Tribunal for Lebanon

2 In the case against Akhbar Beirut S.A.L. and

3 Mr. Ibrahim Mohamed Ali Al Amin

4 STL-14-06

5 Presiding Judge Nicola Lettieri - [Contempt Judge]

6 Friday, 15 July 2016 - [Judgement]

7 [Open Session]

8 --- Upon commencing at 4.00 p.m.

9 JUDGE LETTIERI: Good afternoon, everyone. Would the Registrar  
10 please call the case.

11 THE REGISTRAR: The Special Tribunal for Lebanon is sitting in an  
12 open session in the case against Akhbar Beirut S.A.L. and Mr. Ibrahim  
13 Mohamed Ali Al Amin, case number STL-14-06.

14 JUDGE LETTIERI: We take the appearances. We begin with the  
15 Amicus Curiae Prosecutor.

16 MR. SCOTT: Good afternoon, Your Honour. Ken Scott,  
17 Amicus Prosecutor, and I am joined today by Ms. Gaia Guastella and  
18 Mr. Hugo Lagace. Thank you.

19 JUDGE LETTIERI: The Defence.

20 MR. ABOU KASM: [Interpretation] Your Honour, the Defence team is  
21 composed today of Ms. Lucia Sipala, case manager, and Ms. Marina  
22 Yetongnon Edwards, legal officer, and myself, Antonios Farouk Abou Kasm,  
23 lead counsel assigned by this Court.

24 Your Honour, allow me first of all to present my deepest  
25 condolences and sympathy to the French people after the horrendous

1 terrorist attacks that have caused a number of casualties in France.

2 JUDGE LETTIERI: Yes, our Tribunal is a Tribunal which deals with  
3 another case of terrorism. It's appropriate in here to remember the  
4 victims of another kind of terrorism.

5 Mr. Abou Kasm, have you had any communication with the accused  
6 about today's hearing?

7 MR. ABOU KASM: [Interpretation] No, Your Honour. There has been  
8 no communication.

9 JUDGE LETTIERI: And we have the chief of the Office of Defence.  
10 Maitre Roux, Maitre François Roux.

11 I am sitting today to deliver the judgement in this case. I will  
12 summarize the procedural history, the applicable law, and finally my  
13 findings. I emphasize that this is a summary only and that the  
14 authoritative account of my findings is contained in the written  
15 judgement, which will be made available at the close of this hearing.

16 My full reasoning is contained in that judgement, which speaks  
17 more extensively about the issues at stake. The judgement will be in the  
18 working languages of these proceedings, English, but Arabic and French  
19 versions will be made available soon. However, the summary is available  
20 in all three languages. I also note that the judgement comes in a  
21 confidential version and a public version. The public version contains a  
22 number of redactions to protect confidential Tribunal information as well  
23 as the identity and the safety of certain witnesses who testified in  
24 these proceedings.

25 This case concerns the publication in Al-Akhbar newspaper of two

1 articles in Lebanon in January 2013 on purported confidential Tribunal  
2 witnesses and the articles' subsequent availability online. Akhbar  
3 Beirut company, headquartered in Beirut Lebanon, that owns the newspaper  
4 Al-Akhbar, and Mr. Ibrahim Mohamed Al Amin, who was at all relevant times  
5 Al-Akhbar's editor-in-chief and Akhbar Beirut chairman of the board, are  
6 alleged to have been responsible for the publication of the articles.  
7 For this conduct, they are charged with interfering with the Tribunal's  
8 administration of justice.

9 I now summarize the procedural history of this case.

10 On 31 January 2014, Judge David Baragwanath charged Al-Akhbar  
11 Beirut and Mr. Al Amin each with one count each of contempt pursuant to  
12 the Rule 60 bis of the Tribunal's Rules of Procedures and Evidence.

13 Mr. Al Amin appeared via video conference link from Beirut for  
14 the initial appearance on 29 May 2014. In that appearance, Mr. Al Amin  
15 confirmed that he was appearing on behalf of both himself and the  
16 corporate accused Akhbar Beirut, before declaring that he would remain  
17 silent during all the proceedings and refused to appoint any lawyer to  
18 represent either of the accused and then left the hearing.

19 I subsequently found such conduct, in addition to previous  
20 correspondence he had sent to the Tribunal, constituted not guilty pleas  
21 for both accused and then ordered the head of the Defence Office to  
22 assign counsel to represent both accused, in application of Rule 59(F),  
23 which permits such a possibility when "it is necessary in the interests  
24 of justice and to ensure a fair and expeditious trial." Mr. Abou Kasm  
25 was assigned as counsel for the accused on 3 July 2014.

1           The trial commenced on the 24th February 2016 and concluded on  
2           8 April 2016. Eleven witnesses testified live in court or by video  
3           conference link, including a proposed Amicus expert and a proposed  
4           Defence expert. The parties filed their final trial briefs on 28 April  
5           2016, and made closing arguments on 13 May 2016.

6           I now turn to the applicable law.

7           Contempt of the Tribunal is described in Rule 60 bis (A). It  
8           provides that:

9           "The Tribunal, in the exercise of its inherent power, may hold in  
10          contempt those who knowingly and wilfully interfere with its  
11          administration of justice."

12          The Rule provides a non-exhaustive, diverse list of acts which  
13          can constitute contempt.

14          The sole count under Rule 60 bis (A) charges the accused with  
15          knowingly and wilfully interfering with the administration of justice by  
16          publishing information of purported confidential witnesses in the Ayyash  
17          case, thereby undermining the public confidence in the Tribunal's ability  
18          to protect the confidentiality of information about, or provided by,  
19          witnesses or potential witnesses.

20          With respect to the actus reus of this count, the Amicus must  
21          first prove that the accused actually published information on purported  
22          confidential witnesses in the Ayyash case. The disclosed information  
23          must at least be significant enough that the relevant individual is  
24          reasonably identifiable in the circumstances.

25          In addition, the Amicus must show that such publication, when it

1 occurred, created, objectively, the likelihood of undermining the public  
2 confidence in the Tribunal's ability to protect the confidentiality of  
3 information about, or provided by, witnesses or potential witnesses.  
4 This likelihood cannot be proved in subjective terms. Under the required  
5 objective test, likelihood can only be proved through tangible  
6 information substantiated by evidentiary proof, or in other words through  
7 ascertainable facts.

8 The mens rea for this count, and indeed for any contempt charge,  
9 is a knowing and wilful interference with the administration of justice.

10 Now, given that Akhbar Beirut, a legal person, is charged, I turn  
11 to the law with respect to the attributing liability to such persons.

12 I recall the Appeals Panel's decision holding that the Tribunal  
13 has jurisdiction over legal persons in contempt proceedings. The Appeals  
14 Panel, however, provided no clear guidance as to the applicable material  
15 elements for attributing liability to legal persons charged with contempt  
16 before this Tribunal. Because of and despite this, I had to previously  
17 identify these elements, concluding that it was most appropriate in the  
18 circumstances to look to Lebanese law on corporate liability.

19 The Appeals Panel later confirmed my decision that the applicable  
20 law in relation to the elements of attributing criminal liability to  
21 legal persons is Lebanese law. Thus, Lebanese law on corporate liability  
22 is applicable to the instant case. In order for the corporate accused to  
23 be held criminally responsible for the sole count, the Amicus must:  
24 First, establish the criminal responsibility of a specific natural  
25 personal; second, demonstrate that at the relevant time such natural

1 person was a director, member of the administration, representative,  
2 meaning someone authorized by the legal person to act in its name, or an  
3 employee who has been provided by the legal body with explicit  
4 authorization to act in its name; and third, prove that the natural  
5 person's criminal conduct was done either on behalf of or using the means  
6 of the corporate accused.

7 There is no doubt that this count engages the freedom of the  
8 press, and it has been raised by the Defence as constituting a  
9 justification for any alleged conduct. However, this implication in this  
10 case is properly addressed only if and after the Amicus has proved that  
11 the elements of the count beyond a reasonable doubt. Only then would I  
12 be required to consider whether the accused's conduct was justified by  
13 their right to free expression. In such an evaluation, I must account  
14 for and balance the freedom of the press and the need to ensure the  
15 integrity of the Tribunal's proceedings. The journalistic profession may  
16 not be used as an impenetrable shield. Where different legitimate  
17 interests are involved, they must be weighed in the light of the  
18 priorities in a democratic society.

19 Having established the applicable law, I will now address my  
20 findings with respect to Mr. Al Amin.

21 With respect to the actus reus for this charge, having reviewed  
22 the evidence, I conclude that on 15 January 2013, Al-Akhbar Newspaper  
23 published the first of the impugned news articles in both the English and  
24 Arabic languages, with the first entitled in English as "STL Leaks: The  
25 Prosecution's Surprise Witnesses." The second article, entitled in

1 English as "The STL Witness List: Why We Published," was issued in  
2 Arabic on 19 January 2013 and in English on 20 January 2013. The Arabic  
3 language articles, which were reproduced on the Arabic language web site  
4 of the newspaper, provided the photographs, names, and the significant  
5 personal information of 32 individuals identified as purported  
6 confidential Tribunal witnesses. The English language articles did not  
7 include the photographs and the personal details of the purported  
8 witnesses but, rather, provided links to the Arabic language articles  
9 where such information could be located.

10 I find, therefore, that the information provided in the impugned  
11 articles permitted the identification of the 32 individuals purported to  
12 be confidential witnesses.

13 The likelihood of undermining public confidence in the Tribunal's  
14 ability to protect the confidentiality of its information must be proved  
15 through ascertainable facts. Proof of actual harm concerning an  
16 individual's business, actual loss in confidence in the Tribunal, and  
17 actions publicly taken to distance themselves from the Tribunal as a  
18 direct result of the disclosure, as well as negative public discourse in  
19 the media and in the concerned individuals' entourage, surrounding the  
20 impugned articles, constitute ascertainable facts supportive of an  
21 objective likelihood that public confidence in the Tribunal would be  
22 undermined because of the publications.

23 Three witnesses for the Amicus and two witnesses for the Defence  
24 testified about their personal exposure as purported confidential  
25 Tribunal witnesses in either of the two Al-Akhbar articles. The Amicus

1 witnesses testified that they had been afraid or concerned that their  
2 photos and personal identifying information had been widely disseminated  
3 in print and online with their association as not only Tribunal witnesses  
4 but witnesses "whose testimonies would be used to incriminate Hezbollah."  
5 In most cases, those fears were supported by ascertainable facts.

6 I accept the evidence of the witness whose fears about his  
7 exposure as a purported witness were substantiated by a loss in his  
8 business, which I conclude is a negative and direct impact of his  
9 exposure as a purported Tribunal witness in the Al-Akhbar publications.

10 The Defence witnesses who were identified as purported Tribunal  
11 witnesses in the Al-Akhbar publications testified that they experienced  
12 no negative ramifications as a result of their exposure, and both  
13 confirmed that they maintained trust in the Tribunal's ability to  
14 maintain confidentiality.

15 However, both witnesses demonstrated serious concerns that the  
16 public be left with the belief that they were key witnesses against  
17 Hezbollah and sought to distance themselves from being perceived as a  
18 witness for or against any particular political party. One witness took  
19 immediate action by sending in a clarification letter that was later  
20 published in Al-Akhbar. Such conduct demonstrates that the witness  
21 feared the negative impact that the disclosure would have on his life and  
22 his letter concretely substantiated his fears. I also accept the  
23 testimony of two witnesses who testified to having lost confidence in the  
24 Tribunal's ability to protect the confidentiality of its witness  
25 information as a result of the Al-Akhbar publications.



1 Evidence that demonstrates the existence of negative public  
2 discourse surrounding the publications, whether true or not, is also  
3 highly relevant to the question of whether the Al-Akhbar publication were  
4 objectively likely to undermine confidence in the Tribunal's ability to  
5 maintain the confidentiality of its information. Documentary evidence  
6 admitted demonstrates overwhelmingly, the existence of large-scale  
7 negative public discourse surrounding the Al-Akhbar disclosures. Media  
8 articles detailing the criticisms and negative reactions from the public  
9 are largely supported by the 19 January article written by Mr. Al Amin  
10 himself, which acknowledge the media and the public clamour following the  
11 15 January article, noting criticism from lawyers, journalists,  
12 government, and the civilians who, inter alia, stress that Al-Akhbar had  
13 broken the law in publishing purported confidential witness identities.

14 The truth of the contents of such media articles does not matter,  
15 it's the mere existence of such articles that demonstrates the negative  
16 public discourse surrounding the Al-Akhbar publications. This is  
17 furthermore supported by the evidence of several witnesses who testified  
18 that friends, families, and acquaintances approached them after their  
19 exposure as purported Tribunal witnesses with serious concerns about  
20 their safety in light of the publications.

21 Having reviewed the entirety of the documentary and the  
22 testimonial evidence, I find that the Amicus has proved that the  
23 publications of the 15 and 19 January articles were objectively likely to  
24 undermine the public's confidence in the Tribunal's ability to protect  
25 confidential information.

1 I now address Mr. Al Amin's mens rea.

2 The element of mens rea for this charge is satisfied if the  
3 Amicus demonstrates that the accused deliberately published information  
4 on purported confidential witnesses and, in doing so, knew that his  
5 conduct was objectively likely to undermine public confidence in the  
6 Tribunal's ability to protect the confidentiality of information about or  
7 provided by witnesses or potential witnesses.

8 In his suspect interview, Mr. Al Amin confirmed that he was the  
9 only person responsible for granting the orders to publish any material  
10 related to the Special Tribunal for Lebanon. I am satisfied that  
11 Mr. Al Amin authored, approved, and published the 15 and 19 January  
12 articles. The content of both articles is clear: The photograph, name,  
13 and highly identifying personal information of 32 individuals are  
14 published in the articles. All 32 individuals were characterized as  
15 confidential Tribunal witnesses whose testimony would be used to prove  
16 the Prosecution's case. Therefore, I find that he deliberately published  
17 information pertaining to purported confidential witnesses.

18 Next, I must assess whether Mr. Al Amin knew that the publication  
19 of purportedly confidential witness information was objectively likely to  
20 undermine public confidence in the Tribunal's ability to protect the  
21 confidentiality of witness information.

22 I find that the impugned articles, along with other publications  
23 issued by Al-Akhbar in and around January 2013, demonstrate Mr. Al Amin's  
24 mens rea for this offence. Indeed, I consider Mr. Al Amin's admissions  
25 in the 15 and 19 January articles concerning the confidentiality of

1 witness information and the public impact of their publication to be the  
2 strongest evidence of his mens rea.

3 In particular, I note that Mr. Al Amin quoted various negative  
4 reactions from a wide range of individuals and groups in Lebanon in  
5 response to the publication of the 15 January article in the second  
6 article that published purported confidential witness information, issued  
7 on 19 January 2013.

8 Mr. Al Amin acknowledged that, in response to the 15 January  
9 article that exposed 17 purported confidential witnesses, Al-Akhbar had  
10 received questions from politicians, jurists, journalists, and security  
11 personnel, as well as some of those whose personal details were  
12 published, focusing on the aim behind the decision to publish and whether  
13 it served a specific interested party, all while stressing that the  
14 newspaper was breaking the law. Mr. Al Amin described the clamour in the  
15 media and by several political parties who judged that Al-Akhbar was  
16 seeking to obstruct international justice. The same article acknowledged  
17 that powerful figures at the STL may bring legal action for contempt of  
18 court and that the 15 January article had compromised the fairness and  
19 integrity of the proceedings and also put peoples' lives at risk, all  
20 while acknowledging the potential legal ramification, the negative public  
21 discourse, and the concern that the publication was potentially harmful  
22 to people. Mr. Al Amin then released the photographs, names, and the  
23 detailed personal information with respect to a further 15 purported  
24 confidential witnesses.

25 Therefore, I am persuaded that Mr. Al Amin knew that the

1 publication of purported confidential witness information in the two  
2 impugned articles were objectively likely to undermine public confidence  
3 in the Tribunal's ability to protect the confidentiality of witness  
4 information.

5 Now that I have determined that the Amicus has proven beyond a  
6 reasonable doubt that Al Amin committed both the actus reus of the  
7 offence and possessed the requisite mens rea, I must determine whether  
8 the accused's conduct was justified by their rights to freedom of  
9 expression, taking into account that such a right must be balanced with  
10 the need to protect the integrity of judicial proceedings.

11 As I have noted before, the journalistic profession may not be  
12 used as an impenetrable shield. Where different legitimate interests are  
13 involved, they must be weighed in light of the priorities in a democratic  
14 society. At the international level, all of the relevant principles and  
15 rules concerning the free expression impose limits on journalists in  
16 order to safeguard other conflicting and worthy interests, including  
17 Article 19 of the International Covenant on Civil and Political Rights,  
18 observations from Human Rights Committee, and Article 10(2) of the  
19 European Convention on Human Rights. Such principles are also applied in  
20 Lebanon, and I accept that in accordance with domestic laws, Lebanese  
21 journalists are required to respect the privacy and the confidentiality  
22 of the identifying information of the parties to criminal proceedings.

23 In the case at hand, while I accept that the accused and all  
24 media are free to report on the Tribunal's work, and even criticize it, I  
25 see no journalistic value or pressing social need in the decision to

1 publish the names, photographs, and other fully identifying information  
2 of 32 purported confidential witnesses, some of whom, as the evidence at  
3 trial has shown, suffered a direct and negative impact from their  
4 identification in the publications. Furthermore, the accused did not  
5 comply with the most basic standards of investigative journalism, which  
6 prescribe a preliminary and a genuine verification of information and  
7 also prohibits the embellishment of or fabrication of facts.

8 In sum, the Defence has not demonstrated that the accused's  
9 decision to publish two media articles containing the photographs, names,  
10 and detailed personal information on purported confidential Tribunal  
11 witnesses was consistent with journalistic standards or ethics. Indeed,  
12 I find the prohibition on publishing this kind of information, that is  
13 objectively likely to undermine public confidence in the Tribunal,  
14 constitutes a proper limit on the freedom of the press as it protects a  
15 conflicting but worthy social need: The integrity and the proper  
16 functioning of judicial proceedings by ensuring the safety of witnesses  
17 called to collaborate with the justice system.

18 I will now summarize my findings with respect to the liability of  
19 the corporate accused.

20 As I mentioned earlier, to secure the conviction of a corporate  
21 accused, the Amicus needs to demonstrate the criminal conduct of a  
22 specific director, member of the administration, representative, or duly  
23 authorized employee of the corporation. Further, he needs to establish  
24 that this person's conduct was performed on behalf of the corporation or  
25 using its means.

1 I am satisfied that Mr. Al Amin authored both of the impugned  
2 articles and that in his capacity as editor-in-chief of Al-Akhbar  
3 newspaper, he was the sole person responsible for the decision to publish  
4 and disseminate the impugned articles in print and on various web sites.

5 As the chairman of the board of Al-Akhbar, the corporation which  
6 owned Al-Akhbar Newspaper at the relevant times, I am also satisfied that  
7 Mr. Al Amin was a director of the corporate accused and that such  
8 publications were carried out on behalf of the corporation, for the  
9 corporation's purposes, and using the corporation's means. As a result,  
10 I find that the requisite elements of the offence with which the  
11 corporate accused has been charged have been proven beyond a reasonable  
12 doubt.

13 I will now read out the disposition of the judgement.

14 For these reasons:

15 Pursuant to Rule 60 bis (A), 60 bis (H), and 168 of the Rules;

16 I find both the accused guilty with respect to the charge under  
17 the sole count of the Order in Lieu of Indictment;

18 Order that a sentencing hearing shall be held on a date to be  
19 determined forthwith and subject to the modalities that I will set out in  
20 a separate scheduling order to be issued on 18 July 2016;

21 Invite the accused to attend the sentencing hearing;

22 And order that the Registry provide a copy of the Arabic and  
23 English language versions of the public redacted judgement to the  
24 Lebanese authorities to serve on both accused, in accordance with  
25 Lebanese law.

1 I now ask the Registrar to distribute copies of the judgement to  
2 the parties.

3 Thank you. This concludes the hearing and we stand adjourned.

4 --- Whereupon the hearing adjourned at 4.31 p.m.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25