



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE PANEL DESIGNATED PURSUANT TO RULE 25 (D)

Case No.: STL-14-06/PT/OTH/R25

Before: Judge Daniel Fransen, presiding
Judge Afif Chamseddine
Judge Ivana Hrdličková

Registrar: Mr Daryl Mundis

Date: 5 September 2014

Original language: French

Classification: Public

IN THE CASE AGAINST

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

DECISION ON THE MOTION FOR DISQUALIFICATION OF JUDGE LETTIERI

Amicus Curiae Prosecutor:
Mr Kenneth Scott

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

Akhbar Beirut S.A.L.

Mr Ibrahim Mohamed Ali Al Amin



I. INTRODUCTION

1. The Panel has been seised of a motion filed by Mr Al Amin in his personal capacity and in his capacity as representative of the company *Akhbar Beirut S.A.L.* (“Accused”), requesting the disqualification of Judge Lettieri, Contempt Judge. After examining the admissibility and the merits of the motion, the Panel finds it to be unfounded and dismisses the motion.

II. PROCEDURAL BACKGROUND

2. On 31 January 2014, Judge Baragwanath, President of the Tribunal (“President”), acting in his capacity as Contempt Judge, issued an order in lieu of an indictment against the Accused¹. By way of another order of the same day, the President designated Judge Lettieri as Contempt Judge in accordance with the provisions of Rule 60 *bis* (C) of the Rules of Procedure and Evidence (the “Rules”).²

3. The initial appearance in the contempt case against *Akhbar Beirut S.A.L.* and Mr Al Amin took place on 29 May 2014. During that hearing, Mr Al Amin decided, after making a preliminary statement, to leave the hearing without entering a plea to each of the charges. As a consequence, Judge Lettieri interpreted the statement made by Mr Al Amin and his departure as a not guilty plea³ and ordered counsel to be assigned to represent and assist the Accused “in the interests of justice and to ensure a fair and expeditious trial”⁴ pursuant to Rule 59 (F) of the Rules.

4. On 12 June 2014, the Accused sought certification to appeal Judge Lettieri’s decision on the assignment of counsel as well as the suspension of that decision.⁵ On 13 June 2014, noting that the Head of Defence Office had not complied with the order to assign counsel, Judge

¹ STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/I/CJ, F0001, Redacted version of Decision in Proceedings for Contempt with Orders in lieu of an Indictment, 31 January 2014.

² STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/I/PRES, F0002, Order Designating Contempt Judge, 31 January 2014.

³ STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06, Transcript of 29 May 2014, p. 15 (FR) (“Transcript of 29 May 2014”).

⁴ *Id.*, p. 20. The Contempt Judge provided written reasons for his decision on 5 June 2014. See, STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/CJ, F0018, Reasons for Decision on Assignment of Counsel, 5 June 2014, (“Decision of 5 June 2014”).

⁵ STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/CJ, F0019, Request for Certification to Appeal a Decision “Reasons for Decision on Assignment of Counsel” Date: 5 June 2014, 12 June 2014. Judge Lettieri dismissed that request. See, STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/CJ, F0036, Decision on the Request for Certification to Appeal Decision on Assignment of Counsel, 17 July 2014 (“Decision on certification”).

Lettieri ordered him to file submissions to explain the reasons for the delay.⁶ The Head of Defence Office filed his submissions on 16 June 2014.⁷

5. By way of a decision of 18 June 2014, Judge Lettieri requested the Accused to clarify their position on whether they intended to participate in the proceedings brought against them.⁸ The Accused responded on 25 June 2014, without however clarifying their intention as regards their representation. They contested the impartiality and neutrality of Judge Lettieri and stated their intention to file a motion for his disqualification.⁹

6. On 30 June 2014, Judge Lettieri deemed that the Response of 25 June 2014 could be interpreted in several ways, but in order to avoid any confusion and in the interests of the Accused, he ordered the Registry to forward the Response to the President.¹⁰ He furthermore pointed out that as Mr Al Amin had not answered his request for clarification, there was nothing to justify reconsidering his decision to assign him counsel.¹¹ On the same day, the Head of Defence Office assigned Mr Antonios Abou Kasm to represent the Accused.¹² By way of the Order of 3 July 2014, pursuant to Rule 25 (D) of the Rules, the President found that the Response of 25 June 2014 constituted a motion for the disqualification and withdrawal of Judge Lettieri and designated a panel composed of Judges Fransen, Chamseddine and Hrdličková (the

⁶ STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/CJ, F0021, Order on Submissions by Head of Defence Office, 13 June 2014 (“Order of 13 June 2014”).

⁷ STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/CJ, F0022, Submissions from the Head of Defence Office Further to the “Order on Submissions by Head of Defence Office” and Request for Additional Time, 16 June 2014; F0023, Request from Head of Defence Office for Clarification Following the “Order on Submissions by Head of Defence Office”, 16 June 2014.

⁸ STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/CJ, F0024, Decision on Requests by Head of Defence Office and Order on Further Submissions, 18 June 2014 (“Decision of 18 June 2014”).

⁹ STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/PRES, F0029, Response to Demand that I Clarify my Position Pursuant to the Order of 18 June 2014, 25 June 2014 (“Response of 25 June 2014”).

¹⁰ STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/CJ, F0027, Order Regarding Mr Al Amin's Submission of 25 June 2014, 30 June 2014, para. 7 (“Order of 30 June 2014”).

¹¹ *Id.*, para. 6.

¹² STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/CJ, F0028, Appointment of Counsel Pursuant to Rule 59 (F) of the Rules of Procedure and Evidence, 30 June 2014.

“Panel”) to examine the matter of the disqualification of Judge Lettieri that was raised in the Response of 25 June 2014.¹³

7. The Accused filed a “Motion for the Disqualification of the Contempt Judge” on 11 July 2014,¹⁴ to which the *Amicus Curiae* Prosecutor responded on 15 August 2014.¹⁵ In accordance with a scheduling order inviting him to submit his observations on the motion for disqualification,¹⁶ Judge Lettieri filed those submissions on 19 August 2014.¹⁷

8. On 11 July 2014, the Accused also filed a motion for the disqualification of Judge Fransen from the Panel.¹⁸ A second panel designated by the President¹⁹ examined that request and dismissed it as unfounded on 12 August 2014.²⁰

III. APPLICABLE LAW

9. The impartiality of judges is a general principle of the administration of justice, adopted by the majority of legal systems as well as in Lebanon, and included in all the founding instruments of the international tribunals.²¹ The Panel recalls that judges are assumed to be impartial and that, according to the well-established principle of the burden of proof being

¹³ STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/PRES, F0031, Order Designating Panel Pursuant to Rule 25 (D), 3 July 2014 (“Order of 3 July 2014”).

¹⁴ STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/OTH/R25, F0033, Motion for the Disqualification of the Contempt Judge, 11 July 2014 (“Motion of 11 July 2014”). This motion was allowed by the Panel on 15 July 2014.

¹⁵ STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/OTH/R25, F0046, Response to Motion for Disqualification of Contempt Judge, 5 August 2014 (“Response from the *Amicus Curiae* Prosecutor”).

¹⁶ STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/OTH/R25, F0052, Scheduling Order Concerning the Motion for the Disqualification and Withdrawal of Judge Lettieri, 13 August 2014.

¹⁷ STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/OTH/R25, F0056, Observations on Request for Disqualification Submitted by the Accused, 19 August 2014 (“Observations from Judge Lettieri”).

¹⁸ STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/OTH/R25, F0034, Motion for the Disqualification of Judge Daniel Fransen, 11 July 2014.

¹⁹ STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/PRES, F0042, Order on Request for Disqualification of Judge from the Panel Convened Under Rule 25 (D), 30 July 2014.

²⁰ STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/OTH/R25.2, F0051, Decision on Motion for the Disqualification of Judge Fransen, 12 August 2014 (“Decision on the disqualification of Judge Fransen”).

²¹ See Art. 17 (2) of the Statute of the International Court of Justice; Art. 13 of the Statute of the International Criminal Tribunal for the Former Yugoslavia (“ICTY”); Art. 12 of the Statute of the International Criminal Tribunal for Rwanda (“ICTR”); Rule 15 (A) of the Rules of Procedure and Evidence of the ICTY and ICTR; Art. 41 of the Rome Statute and Rule 34 of the Rules of the International Criminal Court; Art. 11 (2) of the Statute of the Residual Special Court for Sierra Leone; Art. 9 (1) du Statute of the International Residual Mechanism for Criminal Tribunals. See also Art. 120 of the Lebanese Code of Civil Procedure; Art. 668 of the French Code of Criminal Procedure.

incumbent upon the person making the allegation, it is for the party calling into question that assumption to demonstrate the contrary.²²

10. According to Rule 25 (A) of the Rules:

“[a] Judge may not sit on a trial or appeal in any case in which he has a personal interest or concerning which he has or has had any association that might affect or appear to affect his impartiality. The Judge shall, in any such circumstance, withdraw, and the President shall assign another Judge to the case.”

11. Rule 25 (A) of the Rules thus establishes two criteria to justify the disqualification of a judge: the existence of a “personal interest” or the existence of an “association that might affect or appear to affect” the impartiality of that judge.²³ As regards the existence of an association with a given legal case, “it must be demonstrated that such an association or interest has an effect on the Judge’s impartiality or the appearance of his impartiality”²⁴ assessed by “a hypothetical fair-minded observer with sufficient knowledge of the actual circumstances to make a reasonable judgement”.²⁵

IV. DISCUSSION

A. Preliminary questions

1. The reservation expressed by the Accused with respect to the appointment of the Panel by the President

12. As a preliminary matter, the Panel notes that the Accused expressed a reservation regarding the formation by the President of a Panel of three judges to examine the issue of Judge Lettieri’s disqualification although the President had withdrawn from the on-going contempt case.²⁶ The Panel considers that its formation by the President does not fall within the scope of examining the motion for the disqualification of Judge Lettieri. The Panel dismisses that request as it does not fall within its jurisdiction. In any case, the Panel recalls that the Statute and the

²² See, STL, *In the matter of El Sayed*, CH/PRES/2010/08, Decision on Mr El Sayed’s Motion for the Disqualification of Judge Riachy from the Appeals Chamber pursuant to Rule 25, 5 November 2010 (“Decision on the Disqualification of Judge Riachy”), para. 31 (including other references to the case law of the ICTR and ICTY).

²³ See, Decision on the Disqualification of Judge Fransen, para. 35.

²⁴ Decision on the Disqualification of Judge Riachy, para. 16.

²⁵ *Id.*, para. 31 (which refers to other decisions).

²⁶ Motion of 11 July 2014, para. 13.

Rules confer on the President several functions, judicial as well as administrative, and that it is in this latter capacity that the President acted when designating the Panel.

2. The request to stay the contempt proceedings

13. The Accused request the Panel to direct Judge Lettieri to suspend the trial until the motion for disqualification has been examined.²⁷ The Panel notes first that Judge Lettieri, who has been seised of that same request, has already rejected it on the basis that there was no provision in the Rules for such suspension.²⁸ Moreover, it should be pointed out that the Panel does not act as an appeals court for the decisions rendered by Judge Lettieri and has no jurisdiction in that regard. As a consequence, the Panel does not have jurisdiction to consider a request to stay proceedings which are currently ongoing before Judge Lettieri.

B. Whether the motion for disqualification is admissible

14. The Panel recalls that in his Order of 30 June 2014, Judge Lettieri deemed the Response of 25 June 2014 to be either a motion for disqualification as referred to in Rule 25 (C) of the Rules, or the expression of intent to bring such an action before the competent authority in the future.²⁹ In the interests of the Accused, Judge Lettieri decided to take measures pursuant to Rule 25 and ordered that the motion be transferred to the President for him to take the appropriate action. The same day, counsel was assigned for the Accused.

15. In his Order of 3 July 2014 designating the Panel, the President concluded that the Response of 25 June 2014 was in this case a request for the disqualification and withdrawal of Judge Lettieri in application of Rule 25 (C) of the Rules³⁰ and assigned a Panel to examine it. However, on 11 July 2014, as they had stated, the Accused filed, before the Panel, new submissions which supplemented the Response of 25 June 2014 and set out the reasons why they were seeking the disqualification of Judge Lettieri. At that point, counsel had already been assigned to them and Judge Lettieri had decided that he would no longer accept submissions filed directly by the Accused after counsel had been assigned.

²⁷ Response of 25 June 2014, para. 4; Motion of 11 July 2014, para. 14.

²⁸ Order of 30 June 2014, para. 10.

²⁹ Order of 30 June 2014, para. 7.

³⁰ Order of 3 July 2014, para. 4.

16. In principle, after having been properly seised of a request, in order to rule, a judge examines the arguments contained therein, in a response and in any reply, when such is authorised in accordance with Rule 8 of the Rules.³¹ Accordingly, for considerations in respect of the proper administration of justice, arguments which might be set out in subsequent submissions, the filing of which has not been previously authorised, should not be considered by the judge, except under exceptional circumstances. In the case at hand, on 25 June 2014, the Accused called into question the impartiality of Judge Lettieri and stated that they intended to file a motion for his disqualification within ten days. As a consequence, the Motion of 11 July 2014, being the document of which notice was given in the Accused's Response of 25 June 2014, should be considered as the development and logical pursuance of that Response insofar as it was treated administratively as a request for disqualification both by Judge Lettieri and by the President.

17. The Panel is thus of the opinion, given the particular circumstances of the case and the complexity of the proceedings, that the interests of justice require that the submissions of 25 June and 11 July 2014 be considered as forming the request for the disqualification of Judge Lettieri and that they be examined jointly, even though the Motion of 11 July 2014 was filed by the Accused and not by their counsel.

18. Lastly, the Panel emphasises that this decision shall not be considered as calling into question the principle whereby an accused represented by counsel may not, unless otherwise authorised by a chamber, intervene directly in the proceedings without that counsel being involved.

³¹ See for example, ICTY, *Prosecutor v. Kordić and Čerkez*, Bureau Decision on Participation of Trial Chamber Judges in the Hearing of the Case of *Prosecutor v. D. Kordić and M. Čerkez*, Case No. IT-95-14-T/2-PT, 4 May 1998, p. 1 (the decision refers to a single application from the Defence and to one response from the Prosecutor); ICTY, *Prosecutor v. Galić*, Decision On Galic's Application Pursuant to Rule 15(B), Case No. IT-98-29-T, 28 March 2003, paras 3, 5; ICTY, *Prosecutor v. Martić*, Report to the Vice-President Pursuant to Rule 15(B)(ii) Concerning Defence Motion to Disqualify Judge Schomburg from Sitting on Appeal, Case No. IT-95-11-A, 19 October 2007, p. 1 (the decision refers to one motion from the Defence, one response from the Prosecutor and one reply), annexed to *Prosecutor v. Martić*, Order on Defence Motion to Disqualify Judge Wolfgang Schomburg from Sitting on Appeal, Case No. IT-95-11-A, 23 October 2007; *Prosecutor v. Karadžić*, Decision on Motion to Disqualify Judge Picard and Report to the Vice-President Pursuant to Rule 15(B)(ii), Case No. IT-95-05/18-PT, 22 July 2009, paras 2-3 (the decision refers to a single motion from the Defence); ICTR, *Ntawukulilyayo v. The Prosecutor*, Decision on Motion for Disqualification of Judges, Case No. ICTR-05-82-A, 8 February 2011, paras 1, 3 (this decision refers to a single motion from the Defence and to one response from the Prosecution); ICTR, *Prosecutor v. Nyiramasuhuko et al.*, Decision on Motion for Disqualification of Judge Fausto Pocar, Case No. ICTR-98-42-A, 2 October 2012, para. 4 (the decision refers to a single motion from the Defence, one response from the Prosecution and one reply).

C. The merits of the request for the disqualification of Judge Lettieri

19. The Accused raise three main points which, according to them, compromise or appear to compromise Judge Lettieri's impartiality: (1) his participation as Alternate Judge in the *Ayyash et al.* case, from which the contempt case is derived; (2) preconceived opinions that Judge Lettieri issued relating to the guilt of the Accused and the jurisdiction of the Tribunal; (3) decisions rendered by Judge Lettieri which represent a biased interpretation of the facts and the law. The Panel shall examine these three points in turn.

1. The role of Judge Lettieri as Alternate Judge in the *Ayyash et al.* case

20. The Accused submit that the fact that Judge Lettieri sits as an Alternate Judge in the *Ayyash et al.* case, from which the contempt case derives, constitutes a manifest conflict of interest and an appearance of bias. They consider that Judge Lettieri may be influenced by confidential information to which he has access in the *Ayyash et al.* case, or by the conduct of the trial, which may lead him to make hasty and harsh decisions or to draw certain conclusions in the contempt case without being able to explain them before the Accused.³² The *Amicus Curiae* Prosecutor considers those allegations to be unfounded, in particular because the two cases are separate. Judge Lettieri considers that his role in the *Ayyash et al.* case in no way affects his impartiality or his appearance of impartiality in considering the contempt case, which is legally distinct from the other case.³³

21. Moreover, as has already been established by a number of tribunals: "a Judge's prior judicial contact with the facts of a case (or indeed with the accused) alone would generally not be sufficient to find an unacceptable appearance of bias. A fair-minded observer would know that a Judge's role can differ from one judicial context to another".³⁴ Thus, the fact of having access to confidential information regarding the witnesses in the *Ayyash et al.* case is in no way an association of a kind that could lead Judge Lettieri to prejudge the guilt or innocence of the

³² Motion of 11 July 2014, para. 21.

³³ Observations from Judge Lettieri, p. 1.

³⁴ Decision on the disqualification of Judge Riachy, para. 32 (referring to other decisions). See in particular ICTY, *Prosecutor v. Šešelj*, Case No. IT-03-67-T, Report to the President Pursuant to Rule 15(B)(ii) Concerning the Prosecution Application for Disqualification and Withdrawal of Judge Frederik Harhoff, 14 January 2008, para. 24, annexed to *Prosecutor v. Šešelj*, Case No. IT-03-67-T, Order on the Prosecution Motion for the Disqualification of Judge Frederik Harhoff, 14 January 2008; ICTY, *Prosecutor v. Karadžić*, Case No. IT-95-05/18-PT, Decision on Motion to Disqualify Judge Picard and Report to the Vice-President Pursuant to Rule 15(B)(ii), 22 July 2009, para. 24.

Accused or prevent him from considering the evidence in this contempt case in an impartial manner. The Accused have not provided any evidence to that effect. Consequently, the argument is dismissed.

2. The opinions of Judge Lettieri

22. The Accused submit that Judge Lettieri has expressed at least three opinions which are prima facie preconceived ideas on contentious issues in the contempt case. First, they consider that Judge Lettieri, in his Decision of 5 June 2014, “submitted that Judge Baragwanath had found sufficient evidence to charge Mr Al Amin and *Akhbar Beirut*, S.A.L. with wilfully interfering with the work of the Tribunal”,³⁵ thus disregarding the principle of the presumption of innocence and proving that he is biased. They then infer that Judge Lettieri has already also ruled on the question of the criminal liability of legal persons, referring to the existence of sufficient evidence to indict the company *Akhbar Beirut* S.A.L.³⁶ Lastly, they submit that the fact of having considered the issues raised by Mr Al Amin during his initial appearance to be not relevant to the case at hand proves that Judge Lettieri “had separated the case completely from its general context”³⁷ and is prejudiced with respect to the preliminary questions relating to the legitimacy and the jurisdiction of the Tribunal.³⁸ The *Amicus Curiae* Prosecutor considers these allegations to be unfounded. Judge Lettieri considers that referring to the indictment brought against the Accused in a procedural context is not equivalent to a judgement carrying a conviction. Moreover, the comment by Judge Lettieri in relation to the statement made by the Accused during his initial appearance cannot be seen as demonstrating a predisposition against him.³⁹

23. The Panel considers, as Judge Lettieri pointed out in his observations, that making reference to the conclusions drawn by Judge Baragwanath, acting in his capacity as Contempt Judge at the time, cannot be interpreted as finding the Accused guilty. Judge Lettieri, in his Decision of 5 June 2014, simply recalled the procedure which led Judge Baragwanath to issue an order in lieu of an indictment against Mr Al Amin and against *Akhbar Beirut* S.A.L., without drawing any conclusions or evidence from it to confirm or otherwise the crimes attributed to the

³⁵ Motion of 11 July 2014, para. 5; See, Response of 25 June 2014, para. 2.

³⁶ Motion of 11 July 2014, para. 22.

³⁷ *Ibid.*

³⁸ Response of 25 June 2014, para. 4; Motion of 11 July 2014, para. 22.

³⁹ Observations from Judge Lettieri, p. 2.

Accused, or to deprive them of their right to represent themselves.⁴⁰ These allegations are therefore entirely unfounded.

24. As regards Judge Lettieri's position with respect to the issues raised by Mr Al Amin during his initial appearance, a review of the transcript of the hearing of 29 May 2014,⁴¹ and of the decisions rendered by Judge Lettieri that followed,⁴² shows there is nothing that might cast any doubt on the impartiality of Judge Lettieri. Indeed, during the initial hearing, Mr Al Amin stated that he was not present at the hearing voluntarily, rather that his presence "result[ed] from the execution of an arrest warrant".⁴³ He declared that he does not acknowledge the legitimacy of the Tribunal, which according to him is a political tool created by the Security Council, and referred to the absence of prosecutions in relation, amongst others, to the crimes committed by Israel against the Palestinian and Lebanese peoples.⁴⁴ Judge Lettieri then interrupted Mr Al Amin, after having clarified that no arrest warrant had been issued against him and that he had chosen to appear voluntarily:

"We don't have jurisdiction over these facts that you are mentioning. You can challenge our jurisdiction over this fact which we are trying on; that is, the contempt case. You have the right to challenge. But – and in fact, I ordered that possible *Amicus Curiae* lodge briefs about our possible lack of jurisdiction so that we – nobody has the truth in this case. But it's useless speaking about problems, about topics which are beyond our jurisdiction. Because this is a courtroom, this isn't a talking show, so that you are speaking about some facts, yes, we are – we all are sorry about them, but what is our powers about? So that I pray you to take into account this recommendation. Go on, please."⁴⁵

The Panel considers that Judge Lettieri's intervention is a matter of courtroom management that is incumbent upon judges. Inviting a party to bring the discussion back to the facts which are the subject of the proceedings he has been seised of, and the manner in which Judge Lettieri did so, cannot be interpreted as demonstrating bias on his part.

⁴⁰ See, Decision of 5 June 2014, para. 19.

⁴¹ Transcript of 29 May 2014.

⁴² Transcript of 29 May 2014, pp. 15-20 (FR).

⁴³ Transcript of 29 May 2014, p. 10 (FR).

⁴⁴ Transcript of 29 May 2014, pp. 10-12 (FR).

⁴⁵ Transcript of 29 May 2014, p. 13 (FR).

25. Likewise, in the Decision of 5 June 2014, recalling that: “Mr Al Amin [...] began discussing a number of issues that related, only vaguely, if at all, to his case [...]. At this point, I reassured Mr Al Amin that some of these issues could be raised at the appropriate time. However, I also reminded him that it was not helpful to raise matters that go beyond the Tribunal's jurisdiction [...]”,⁴⁶ Judge Lettieri showed no bias.

26. The Panel is of the opinion that the terms used by Judge Lettieri, in the context of managing the hearing and in the Decision of 5 June 2014, cannot in any way be likened to expressions of bias to justify his disqualification.

3. The decisions of Judge Lettieri

27. The Accused allege that Judge Lettieri issued several “hasty orders that were full of contradictions or without any legal or factual basis”, showing him to be hostile and biased with regard to Mr Al Amin and *Akhbar Beirut S.A.L.*⁴⁷ They refer in particular to:

- the decision by Judge Lettieri to assign counsel to represent the Accused;⁴⁸
- the Order of 13 June 2014, requiring the Head of Defence Office to file written submissions stating the reasons why he had not yet assigned counsel to the Accused in accordance with the aforementioned decision;
- the Decision of 18 June 2014, by which Judge Lettieri asked the Accused to clarify their position regarding their representation.

28. According to the Accused, Judge Lettieri applied a biased interpretation of the facts and the law. As an example, he incorrectly interpreted Mr Al Amin's act of leaving the courtroom as a refusal to participate in all proceedings before the Tribunal. Furthermore, the hasty decision to appoint counsel to them is an interpretation in bad faith of Rule 59 (F) of the Rules but is also contrary to the case law of the ICTY, which considers it to be the responsibility of the

⁴⁶ Decision of 5 June 2014, para. 8.

⁴⁷ Motion of 11 July 2014, paras 23, 24; Response of 25 June 2014, paras 1, 3-4.

⁴⁸ The decision to assign counsel to represent the Accused was made during the hearing of 29 May 2014; the reasons were then set out in the Decision of 5 June 2014.

judge to inform the accused of the consequences of his actions before assigning him counsel and depriving him of his right to represent himself. Likewise, they allege the unsupported view expressed by Judge Lettieri that the international tribunals experience excessive delays as a result of the right of the Accused to represent themselves,⁴⁹ “is tantamount to prejudgement and necessarily affects fairness”.⁵⁰ The Accused also claim that Judge Lettieri “used the provisions of law”, that is Rule 60 of the Rules on misconduct, to intimidate the Head of Defence Office and force him to execute the order to assign counsel to the Accused.⁵¹

29. The *Amicus Curiae* Prosecutor considers that the allegations of the Accused are without merit and that Judge Lettieri acted in accordance with the Rules, which confer on him the responsibility to issue any directions that may be necessary to ensure a fair, impartial and expeditious trial.⁵² In his observations, Judge Lettieri also states that to simply disagree with his decisions is not sufficient to demonstrate bias or appearance of bias on his part.⁵³

30. The Panel recalls that, seised with disqualification proceedings, its task is to examine whether or not the judge acted in a biased manner and is not to conduct itself as an appeal court for the decisions of the judge whose disqualification is requested. In any case, the fact of rendering decisions which do not suit a party, even on several occasions, is not in itself an indication of bias.⁵⁴ As was affirmed by the ICTR, the review of judicial decisions cited as evidence of bias:

“[...] is not to detect error, but rather to determine whether such errors, if any, demonstrate that the judge or judges are actually biased, or that there is an appearance of bias based on the objective test described above. Error, if any, on a point of law is insufficient: what must be shown is that the rulings are, or would reasonably be perceived as, attributable to a pre-

⁴⁹ Decision of 5 June 2014, para. 16 (“I am mindful of the experiences at these tribunals which have suffered from unreasonable delays in their proceedings for this reason”).

⁵⁰ Motion of 11 July 2014, para. 23.

⁵¹ Motion of 11 July 2014, para. 24.

⁵² Response from the *Amicus Curiae* Prosecutor, para. 18.

⁵³ Observations from Judge Lettieri, p. 3.

⁵⁴ ICTY, *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.2-A, Decision on Motion for Disqualification of Judges Fausto Pocar and Theodor Meron from the Appeals Proceedings, 2 December 2009, para. 13.

disposition against the applicant, and not genuinely related to the application of law (on which there may be more than one possible interpretation) or to the assessment of the relevant facts.”⁵⁵

31. In the case at hand, the Panel considers that the Accused have provided no evidence that supports their allegations; the simple expression of their disagreement with the decisions rendered by Judge Lettieri cannot be a reason to justify calling into question his impartiality. Indeed, in relation to the Accused’s representation before the Tribunal, the Panel notes that Judge Lettieri asked the Accused several times to clarify their position in that regard. Thus, in the Decision of 5 June 2014, Judge Lettieri declared that “the Accused are free to participate in the proceedings and to appoint counsel of their own choosing at any time, and that [he is] ready to reconsider this decision, in whole or in part, if this were to occur”.⁵⁶ Later, Judge Lettieri announced that the Accused would be given a further opportunity to clarify their intentions during a status conference which would take place after the judicial recess.⁵⁷ Those decisions demonstrate, if needed, Judge Lettieri’s impartiality, but also his readiness to reconsider his own decisions in the interests of the Accused, as and when appropriate.

32. As a consequence, nothing in the cited decisions reveals the slightest appearance of bias by Judge Lettieri in the performance of his duties.

33. As regards the decisions rendered by Judge Lettieri with respect to the Head of Defence Office, in particular the Order of 13 June 2014 and the Decision of 18 June 2014, the Panel considers that Judge Lettieri simply exercised the powers conferred on him by Rule 130 of the Rules, in order to have his decisions complied with and to ensure the fair, impartial and expeditious conduct of the trial. The fact that Judge Lettieri stressed to the Head of Defence Office the need to implement the judicial decisions relating to him and voiced concern that, 15 days after having been issued, his oral order of 29 May 2014 had not been executed, does not reveal bias with respect to the Accused.

⁵⁵ ICTR, *Prosecutor v. Seromba*, Case No. ICTR-2001-66-T, Decision on Motion for Disqualification of Judges, 25 April 2006, para. 12.

⁵⁶ Decision of 5 June 2014, Disposition.

⁵⁷ Decision on certification, para. 19; STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/CJ, F0037, Scheduling Order, 17 July 2014, para. 5.

D. Conclusion

34. The Panel finds that none of the claims submitted by the Accused calling into question the impartiality or the appearance of impartiality of Judge Lettieri are proven. The request for the disqualification of Judge Lettieri is consequently unfounded.

V. DISPOSITION**FOR THESE REASONS,**

By virtue of Rule 25 of the Rules,

THE PANEL DESIGNATED PURSUANT TO RULE 25 (D)

DECLARES the motion for the disqualification of Judge Lettieri, as well as all other aspects of the motion, to be unfounded.

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

Leidschendam, 5 September 2014

[signature]

Daniel Fransen, Presiding Judge

[signature]

Afif Chamseddine, Judge

[signature]

Ivana Hrdličková, Judge

