

Bitar wins battle: appeals court rejects appeals for divestiture

The Beirut Court of Appeal yesterday issued a long-awaited decision in the case of the explosion of the port of Beirut: it rejected the two appeals for the dismissal of judge Tarek Bitar, in charge of the investigation into the double explosion at the port of Beirut, presented for the first by the deputy and former minister Nouhad Machnouk, a dozen days ago, and for the second by his colleagues in the House Ali Hassan Khalil and Ghazi Zeaiter, last Friday.

Known in judicial circles to be judges of integrity, the president of the court of appeal, Nassib Elia, and his two advisers Mariam Chamseddine and Rosine Hjeily, based their decision on a ground of “material incompetence”, indicating that the The court seised cannot rule on requests for disqualification from an examining magistrate to the Court of Justice. They underlined in substance that even if Mr. Bitar is investigating at the Beirut Courthouse on a case that has arisen in the capital, he is not subject to the authority of the first investigating judge of Beirut as are the judges of Beirut. instruction of the city.

Record speed

First effect of the judgment rendered by the Court of Appeal: Tarek Bitar will be able to look again into the case as soon as he is notified of the decision, affirms to L’Orient-Le Jour the director of the Justicia cabinet, Paul Morcos . A notification which had not been made yesterday, but which should probably intervene this morning. Judge Bitar had stopped investigating the case on September 27, as soon as Nouhad Machnouk’s appeal had been served on him. “The examining magistrate will be able to resume the investigation, that is to say start interrogations, proceed to summons, and take all the criminal measures he deems necessary”, affirms Mr. Morcos, stressing that ” he does not need Parliament’s authorization to prosecute deputies and former ministers, as Parliament is still out of session ”. Lawyer Youssef Lahoud, one of the representatives of victims and member of the complaints office set up by the council of the Beirut Bar Association, is pleased that “the court of appeal has delivered its judgment at record speed. , thus preventing procrastination before the opening of the ordinary session of Parliament on October 19 ”. The officials involved had lodged their appeal probably to save time before the opening of the ordinary session, when they would have managed to hide again behind their parliamentary immunity. Since the resignation of the government of Hassane Diab on August 10, 2020 and until the obtaining of the vote of confidence of the cabinet of Nagib Mikati on September 20, the Parliament was still in extraordinary session, in other words a period during which the parliamentary immunity of its elected representatives was preserved. Tarek Bitar had therefore taken the opportunity of the closure of this session to set hearings on September 30 and October 1 for the deputies involved, but his attempt had failed, the request for his relinquishment having had the legal effect of stopping ex officio its legal action in the case. The magistrate was therefore unable to hear either the incriminated deputies, or the former intelligence chief of the army Camille Daher, whose hearing was scheduled for September 27 at 1:30 p.m., at the precise moment of the judge’s notification. Set for the next day, the hearing of the former commander-

in-chief of the army, Jean Kahwaji, had also been automatically canceled, just like that of former Prime Minister Hassane Diab, scheduled for 10 a.m. yesterday.

A final stop

According to Rizk Zgheib, lawyer and lecturer at the Faculty of Law and Political Science of Saint Joseph University, the judgment of the Court of Appeal is final, because it cannot be appealed against under Lebanese law. What deplores Naoum Farah, the lawyer of Nouhad Machnouk. “Any court decision can however be challenged, except in dictator countries”, he notes, stressing that “international standards require to guarantee a fair trial to any person injured by a judgment”. “A judicial decision is not a judgment of divine right,” he insists.

Advocating the need for an amendment to the law in this sense, Me Farah criticizes more particularly the judgment of the Court of Appeal chaired by Mr. Elia. “This is a judicial heresy,” he says, saying he weighs his words well. “The court ruled that it is incompetent in form, although it had notified our appeal to Judge Bitar and asked us to serve it on the other parties to the trial. If she considers herself incompetent, why then had she not said it straight away at the beginning of last week rather than waiting several days? »He asks himself. For the lawyer, the fact that the court had taken such measures suggested that it considered itself competent.

Regarding the substance of his appeal, Mr. Farah indicates that he had invoked one of the cases provided for by article 119 of the Code of Civil Procedure for any request for relinquishment. “The law allows the challenge of a magistrate in the event of enmity between him and one of the parties to the trial”, he indicates, believing that the court of appeal should have looked into this point to seek to know why his client had not been heard first as a witness, like the other people implicated. The lawyer says that if the court had ruled on the merits, he might have had a chance to replace Judge Bitar, just as a legitimate suspicion appeal paves the way for replacement.

Sword of Damocles

The appeals of the former deputies, rejected yesterday by the court of appeal, are not the only legal maneuvers facing Judge Bitar. Former minister Youssef Fenianos, targeted by an arrest warrant in the same case, is also seeking to transfer the case of the double explosion at the port of Beirut to another magistrate. Almost two weeks ago, he lodged an appeal for legitimate suspicion against Mr. Bitar before the 6th criminal chamber of the Court of Cassation chaired by Randa Kfoury. As long as the decision is not yet rendered, the sword of Damocles still hovers above the head of the judge. But in the courthouse circles, it is said that the case is in good hands, Ms. Kfoury also being renowned for her integrity and independence.

Anyway, the examining magistrate does not seem to be at the end of his sentences. We learned yesterday that Mr. Fenianos presented Thursday, through his lawyers Tony Frangié and Nazih Khoury, an information note against Mr. Bitar before the Attorney General at the Court of Cassation, Ghassan Oueidate, for criminal falsification of documents. Contacted by the OLJ, Mr. Frangié affirms that the denunciation relates to “a change of the date of summons” of the

Director of General Security, Abbas Ibrahim, of the Director of State Security, Tony Saliba, and of the prosecutor. near the Court of Cassation, Ghassan Khoury. As the case does not concern him, the former minister was satisfied with a briefing note instead of a legal complaint, but it seems that all means are good to slow down the judge. Youssef Fenianos' lawyer affirms that the investigating judge had drafted his summons on Monday September 27 but made believe that he had established them on Friday September 24 by changing their date, to give the illusion that his proceedings were prior to the notification of the request for its relinquishment. However, according to a judicial source, Mr. Bitar had indeed prepared his summons on Friday afternoon, but as their drafting was carried out outside working hours, they were not sent for notification until the following Monday, in the morning. , before it was removed from the case at the beginning of the afternoon.

It remains to be seen whether Mr. Oueidate will dismiss Mr. Fenianos' request or, on the contrary, whether he intends to notify Tarek Bitar and summon him to question him. To date, the investigating judge has not been invited to appear.

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