



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

**THE CONTEMPT JUDGE**

**Case No.:** STL-14-06/PT/CJ

**Before:** Judge Nicola Lettieri, Contempt Judge

**Registrar:** Mr Daryl Mundis, Registrar

**Date:** 5 June 2014

**Original language:** English

**Classification:** Public

**IN THE CASE AGAINST**

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

**REASONS FOR DECISION ON ASSIGNMENT OF COUNSEL**

***Amicus Curiae* Prosecutor:**  
Mr Kenneth Scott

**The Accused:**  
*Akhbar Beirut S.A.L.*  
Mr Ibrahim Mohamed Ali Al Amin

**Head of Defence Office:**  
Mr François Roux



## Procedural History

1. By Order of 22 May 2014, I rescheduled the initial appearances of the Accused in this case for 29 May 2014.<sup>1</sup> I subsequently received a letter from Mr Al Amin on 26 May 2014, on behalf of himself and *Akhbar Beirut* S.A.L., raising several concerns in relation to such appearances and requesting a postponement of the initial appearances for a “serious, sufficient period of time to carry out what is required of me”.<sup>2</sup>

2. In my Order of 27 May 2014, I reiterated the limited purpose of an initial appearance, including my duty to ensure that an accused’s right to counsel is respected. I explained that, if required, the Head of Defence Office could assign counsel to act temporarily for an accused pursuant to Rule 57 (D) (iii) of the Tribunal’s Rules of Procedure and Evidence (“Rules”). I further noted that such assignment would in no way prohibit or discourage the Accused from subsequently selecting their own counsel. In conclusion, I found that there was no reason to once again postpone the two initial appearances before me.<sup>3</sup>

3. Just prior to the initial appearances, the Tribunal’s Registry received an email from Mr Al Amin informing the Court that he would participate in the hearing from Beirut via video-conference without counsel or any other legal representative present with him or in the courtroom. In his email Mr Al Amin added that he wanted enough time to be able to give a statement during the hearing.

4. At the initial appearances, I stated that Mr Al Amin’s email read together with his letter of 26 May 2014 could be understood as a request to represent both himself and *Akhbar Beirut* S.A.L. for the purpose of the initial appearance. I then asked Mr Al Amin if he was indeed appearing as a representative of both himself and *Akhbar Beirut* S.A.L. He responded “Yes”.<sup>4</sup>

5. Although Rule 105 allows an accused to participate in hearings via video-conference provided that his counsel attends the hearing in person, I had to reconcile this provision with Rule 59 (F), which allows an accused to represent himself without the assistance of counsel.

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<sup>1</sup> STL, *Prosecutor v. Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/I/CJ, F0013, Order Rescheduling Initial Appearances, 22 May 2014. All further references to decisions and filings relate to this case number, unless otherwise stated.

<sup>2</sup> F0017, English Translation of letter from Mr Al Amin, 26 May 2014.

<sup>3</sup> F0016, Further Order on Initial Appearances Scheduled for 29 May 2014, 27 May 2014 (“Further Order”).

<sup>4</sup> STL, *Prosecutor v. Akhbar Beirut S.A.L. and Al Amin*, STL-14-06, Transcript of 29 May 2014 (“Transcript of 29 May 2014”), p. 2.

Having considered the matter, I specifically asked Mr Al Amin at the initial appearances whether he considered as waived the requirement for counsel to be present in the courtroom. He confirmed his written notification under Rule 59 (F) and declared that there was no need for the presence of counsel in the courtroom for the hearing. I considered that he had waived his right to have counsel present. Also in light of the limited scope of an initial appearance, I therefore proceeded with taking the appearances of the parties and the Head of Defence Office.

6. During the hearing, Mr Al Amin stated that his name was Ibrahim Mohamed Ali Al Amin, and not Ibrahim Al Amin as mentioned in the documents issued by the Tribunal.<sup>5</sup> I proceeded to immediately order the correction of the name.<sup>6</sup> Mr Al Amin added that the content of the indictment was confusing to him and that for this reason he had asked for clarification<sup>7</sup> (which he had done by letter of 26 May 2014). I pointed out that a criminal trial is not a discussion held between the judge and an accused from a distance, and that procedures to challenge the indictment or to request clarification exist and must be followed.<sup>8</sup> Upon satisfying myself that the Accused were once again informed about their rights under the Statute, I asked Mr Al Amin whether he intended to enter a plea or whether he reserved this decision for a future date. Mr Al Amin answered that he would not provide a direct answer to the question, but that he wished to read a statement to clarify his position in that regard.<sup>9</sup> I allowed the statement, subject to the condition that it be relevant and consistent with the topic to be discussed at the hearing, *i.e.*, the pleading in the contempt case.<sup>10</sup> In this regard, I note that the general principle underlying Rule 144 (A), but also the provisions on the control of the proceedings such as Rules 60 and 138, require the accused to limit their statements to matters relevant to the case being tried.

7. Mr Al Amin started his statement by saying that his presence at the hearing was not the result of his own free will, but resulted from a summons, which was—according to him—against the most basic procedures required to hold a fair trial.<sup>11</sup> Due to an imprecision in the interpretation from the Arabic (spoken by Mr Al Amin) into English (the language I was

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<sup>5</sup> *Id.* at p. 3.

<sup>6</sup> *Id.* at p. 3.

<sup>7</sup> *Id.* at p. 8.

<sup>8</sup> *Id.* at pp. 8-9.

<sup>9</sup> *Id.* at p. 9.

<sup>10</sup> *Id.* at p. 9.

<sup>11</sup> *Id.* at p.10.

following in the courtroom at that moment), I understood that Mr Al Amin referred to an arrest warrant, which was not the case.<sup>12</sup> This imprecision was in part caused by Mr Al Amin himself, who had provided his own English translation of his statement to the Tribunal's interpreters a few minutes before the hearing, despite the interpreters' request for the original *Arabic* version. Mr Al Amin's translation contained the term "arrest warrant." I note that the same text was also published on the website of the *Al Akhbar* newspaper,<sup>13</sup> again with a reference to the expression "arrest warrant" rather than "summons to appear". In any event, the totality of Mr Al Amin's statement implied that he believed that the Tribunal had taken forcible measures to require his presence in the courtroom, which was clearly not the case.

8. Mr Al Amin then began discussing a number of issues that related, only vaguely, if at all, to his case. Among other things, he referred to the people of Palestine and their right to self-determination. He stated that there was a lack of accountability for crimes committed against them and that "international tribunals are never created to prosecute Zionist war criminals".<sup>14</sup> He also argued that the Tribunal was established as a "political tool", but that the Security Council did not act with respect to the killings of Lebanese citizens other than those under the Tribunal's jurisdiction.<sup>15</sup> 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.<sup>16</sup>

9. After my remarks, and although I invited him to continue, Mr Al Amin informed me that, due to my interruption, he would henceforth remain silent and would refuse to appoint any lawyer to represent him or *Akhbar Beirut* S.A.L. When I again specifically asked about the plea pursuant to Rule 98, he unequivocally indicated that he would remain silent. He hastened to add that he did not recognize the Special Tribunal, that he was not willing to accept "oppressive and repressive measures", and asked for permission to leave.<sup>17</sup> I responded that, being a free man, he

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<sup>12</sup> *Ibid.*

<sup>13</sup> <http://english.al-akhbar.com/content/ibrahim-al-amins-full-speech-stl> (last visited on 4 June May 2014).

<sup>14</sup> Transcript of 29 May 2014, p. 10.

<sup>15</sup> *Id.* at pp. 10-11.

<sup>16</sup> *Id.* at p. 12.

<sup>17</sup> *Id.* at p. 13.

could choose whether to remain at the hearing, at which point Mr Al Amin left the video-conference room.<sup>18</sup>

10. I interpreted Mr Al Amin's statement and his decision to leave the hearing as a plea of not-guilty on behalf of himself and *Akhbar Beirut S.A.L.*, consistent with Rule 98 (A) (iv). I noted that entering such a plea was in favour of the Accused, since the *Amicus Curiae* Prosecutor would be required to prove his case against both Accused beyond reasonable doubt.<sup>19</sup>

11. In light of Mr Al Amin's decision to represent himself and *Akhbar Beirut S.A.L.* and his subsequent apparent refusal to further participate, I heard from the *Amicus Curiae* Prosecutor and the Head of Defence Office with respect to the possibility of my ordering the assignment of counsel for the Accused under Rule 59 (F). The *Amicus Curiae* Prosecutor submitted that there needed to be some arrangement made for counsel, either permanently or at least for an interim period until questions arising from Mr Al Amin's actions were answered.<sup>20</sup> The Head of Defence Office expressed reservations about the Rule and the general principle of self-representation in international courts and proposed consulting with the Accused about providing support by means of legal assistance according to Rule 57 (D) (viii). He further submitted that, beyond such assistance, the Tribunal should not assign a lawyer to represent the Accused. In this context, he raised the possibility that assigned counsel might have no contact with the Accused.<sup>21</sup>

12. After this, I ordered the Head of Defence Office to impose counsel to represent the Accused pursuant to Rule 59 (F), "because this is necessary in the interests of justice and to ensure a fair and expeditious trial".<sup>22</sup> I made clear that I would also issue more detailed written reasons, which are provided below.

### Applicable Law

#### *Proceedings when an accused who has appeared before the Tribunal leaves the courtroom*

13. Article 16 (4) (d) of the Tribunal's Statute provides for the right of an accused to be tried in his or her presence, subject to the provisions of Article 22 on trials *in absentia*.

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<sup>18</sup> *Id.* at p.14.

<sup>19</sup> *Id.* at p. 13.

<sup>20</sup> *Id.* at pp. 14-15.

<sup>21</sup> *Id.* at pp. 15-18.

<sup>22</sup> *Id.* at p.19.

Article 22 (1) (a) authorizes a trial in the absence of an accused—*in absentia*—if the accused has expressly and in writing waived his or her right to be present. However, the Tribunal’s Rules—and in particular Rule 104—make it clear that once an accused has appeared before the Tribunal (in person, by video-conference, or by counsel appointed or accepted by him) proceedings cannot be deemed *in absentia* in the sense of Article 22 and Rules 105 *bis* and 106. Consequently, once an accused has appeared, the pre-trial and trial proceedings must be deemed to take place in the presence of the accused or as if the accused were present, as long as he is aware of the date of the hearing and is represented by counsel.

14. The situation is similar to those cases, before other international criminal tribunals, where the accused—though in those cases detained under the tribunals’ jurisdiction—refused to attend court proceedings. The Appeals Chamber of the International Criminal Tribunal for Rwanda (“ICTR”) has ruled, for instance, that where waiver of the right of an accused to be present is free, unequivocal and done with full knowledge, the trial, though in practice carried out in the absence of the accused, cannot be considered an *in absentia* trial proper.<sup>23</sup>

#### *Self-representation and imposition of Counsel*

15. Other provisions of the Tribunal’s Statute and Rules are relevant in the situation at hand. Article 16 of the Statute protects, among other fair trial rights, the right of each accused “to defend himself or herself in person or through legal assistance of his or her own choosing”. This wording mirrors the relevant provision of the International Covenant on Civil and Political Rights and is replicated in other human rights instruments and statutes of international criminal courts and tribunals.

16. Other international criminal tribunals have consistently held that the right to self-representation is fundamental, but not absolute; rather, it is a qualified right.<sup>24</sup> Any restriction on the right to self-representation must be limited to the minimum necessary to protect a tribunal’s

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<sup>23</sup> ICTR, *Nahimana et al. v. Prosecutor*, ICTR-99-52-A, Judgment, 28 November 2007 (“*Nahimana* Appeal Judgment”), paras 94-116 (with further references to the relevant case-law).

<sup>24</sup> See ICTY, *Prosecutor v. Milošević*, IT-02-54-AR73.7, Decision on Interlocutory Appeal of the Trial Chamber’s Decision on the Assignment of Defence Counsel, 1 November 2004 (“*Milošević* Appeal Decision”), paras 11-12 (setting out the principles then followed by almost all ICTY Chambers); see also SCSL, *Prosecutor v. Norman et al.*, SCSL-04-14-T, Decision on the Application of Samuel Hinga Norman for Self Representation under Article 17(4)(d) of the Statute of the Special Court, 8 June 2004, paras 9, 14.

interest in ensuring a fair and expeditious trial.<sup>25</sup> For instance, self-representation may be curtailed to prevent the obstruction of justice (whether intentional or unintentional).<sup>26</sup> I am mindful of the experiences at these tribunals which have suffered from unreasonable delays in their proceedings for this reason. Moreover, I note that Rule 138 (C) provides that, in case of removal from the courtroom of a self-represented accused, counsel shall be appointed to represent him in accordance with Rule 59.

17. Moreover, Rule 59 (F) limits the right to self-representation more explicitly than the provisions of other courts and tribunals. It specifically states that where the accused has chosen to represent himself in person the Contempt Judge “may [nonetheless] impose counsel to represent or otherwise assist the accused in accordance with international criminal law and international human rights where this is deemed necessary in the interests of justice and to ensure a fair and expeditious trial”. In this sense, the Tribunal’s Rules grant a Judge broad discretion when faced with a self-represented accused. The Judge may allow the accused to represent himself in person, or order the assignment of counsel to either represent (*i.e.*, to speak or act in the accused’s name) or otherwise assist (*i.e.*, to provide legal advice and other support to) an accused inside and outside the courtroom.

18. Similarly, the ICTR has found that where an accused decides voluntarily not to be present at trial, it is in the interests of justice to assign counsel in order, in particular, to guarantee the effective exercise of the fundamental rights of the accused.<sup>27</sup>

### Discussion

19. Mr Al Amin is charged with conduct under the heading of “contempt and obstruction of justice”. Judge Baragwanath, acting as Contempt Judge, found enough evidence to issue an order in lieu of an indictment charging him and *Akhbar Beirut* S.A.L. with 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

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<sup>25</sup> See, e.g., *Milošević* Appeal Decision, para. 17.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Nahimana* Appeal Judgment, para. 109.

witnesses.<sup>28</sup> He further found that “[t]he public interest in protecting such proceedings against undue outside influence is of the highest importance”.<sup>29</sup> At the centre of these proceedings, which are ancillary to the main case currently before the Trial Chamber, is the Tribunal’s ability and duty to protect its witnesses.

20. Given that (i) Mr Al Amin was duly notified of the indictment and summons to appear, and, after requesting on 8 May 2014 a postponement of the original date of the initial appearance (13 May 2014), decided to appear at the hearing of 29 May 2014; (ii) that he was present at the hearing and clearly and unequivocally identified himself as the accused in the case, as well as the representative of *Akhbar Beirut* S.A.L. for the purposes of the initial appearance; (iii) that I allowed him to participate in the hearing via video-conference pursuant to Rule 105; (iv) that he confirmed that he could follow proceedings in a language he understood; (v) that he expressed his intention to represent himself and *Akhbar Beirut* S.A.L. for that specific hearing; (vi) that during the hearing he seemed to suggest that he would never agree to appoint counsel because he does not recognize the jurisdiction of the Tribunal; and (vi) that he chose to withdraw during the hearing, I find that Mr Al Amin freely, explicitly and unequivocally waived the right to be present during the conclusion of the hearing of 29 May 2014. His statements in the courtroom may further be interpreted as meaning that he refuses to participate in person in future hearings.

21. I am therefore faced with the situation of an accused (a physical person also representing the corporate accused) who, having appeared, decided to leave the courtroom and, in his words, chose “[to] remain silent during all the proceedings”, refusing “to appoint any lawyer to represent [him] or [to] represent [*Akhbar Beirut* S.A.L.]”.<sup>30</sup> This is a change in circumstances from the hearing of 29 May 2014, during which Mr Al Amin was allowed to represent himself and *Akhbar Beirut* S.A.L. because he was actually present (albeit via video-conference) and in light of the very specific and focused scope of an initial appearance.<sup>31</sup>

22. In such a case, I find that the Accused—if they indeed decide to continue to refuse to interact with the Tribunal—are evidently unable to exercise their right to represent themselves in person in an effective manner. Such “self-representation” by accused who are not appearing in

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<sup>28</sup> F0001/A02, Order in Lieu of an Indictment, 31 January 2014.

<sup>29</sup> F0001, Decision in Proceedings for Contempt with Orders in Lieu of an Indictment, 31 January 2014, para. 64.

<sup>30</sup> Transcript of 29 May 2014, p. 13.

<sup>31</sup> *Id.* at pp. 3-4.



court frustrates the requirement to hold a fair and expeditious trial.<sup>32</sup> In fact, Rule 57 (D) (viii), mentioned at the hearing by the Head of Defence Office, allows a self-represented accused to request assignment of persons to assist and support him, without representing him. This provision, however, only applies to cases in which a self-represented accused is actually present in the courtroom, whereas, once Mr Al Amin had chosen to leave, he could not represent himself and *Akhbar Beirut S.A.L.* in the proceedings anymore. On this basis, I deemed it necessary to order assignment of counsel not just to assist the Accused, but to represent them.<sup>33</sup>

23. Rule 59 (F) allows me—even when a self-represented accused is present in the courtroom—to order the appointment of counsel in accordance with international criminal law and international human rights where this is deemed necessary in the interests of justice and to ensure a fair and expeditious trial. The Head of Defence Office stated that ordering assignment of counsel to represent an unwilling accused may lead to “deontological” problems, since counsel might find themselves in the situation of representing accused who do not wish to be represented. While I understand that assisting a client who does not wish to be represented may pose certain problems to any lawyer,<sup>34</sup> I consider that when an accused does not wish to defend himself, it is actually a duty for counsel to defend him, and an obligation for the judge not just to have competent lawyers assigned, but also to ensure that such counsel works effectively in the best interests of the accused.<sup>35</sup> This is regardless of the accused’s reasons for refusing to participate in the hearings and to defend himself, even if he intends in this way to challenge the jurisdiction and undermine the credibility of the Tribunal.

24. As ICTR jurisprudence shows,<sup>36</sup> counsel can and will be appointed to a recalcitrant accused whose case is heard before the Tribunal. Failing to do so would entail one of two alternatives: (i) an accused before the Tribunal (and who actually in this case participated in the initial appearance) could effectively impede the course of justice by simply pretending to exercise his right to self-representation, while actually refusing to appear during trial; or (ii) a trial—modelled on adversarial proceedings due to the choices made when drafting the Statute—would be conducted without the *Amicus Curiae* Prosecutor having a counterpart representing the

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<sup>32</sup> Article 21(1) STL St.; see also Rules 59 (F), 89 (B) and 130.

<sup>33</sup> Transcript of 29 May 2014, pp. 16-17, 19.

<sup>34</sup> See, *mutatis mutandis*, ICTY, *Prosecutor v. Blagojević and Jokić*, IT-02-60-A, Judgment, 9 May 2007, paras 12-21.

<sup>35</sup> See generally, e.g., ECtHR, *Sannino v. Italy*, 30961/03, Judgment, 27 April 2006.

<sup>36</sup> *Nahimana* Appeal Judgment, paras 126-128.

interests of the Accused. I consider both these options unacceptable, for they would either frustrate the authority of the Tribunal to conduct proceedings, or undermine the fundamental rights of the accused to mount a defence and to challenge the prosecution strategy and theory of the case.

25. I note that in Lebanon, if an accused present in the courtroom delays appointing of counsel of his own choosing, the Presiding Judge may order the assignment of a lawyer.<sup>37</sup> This is always subject to the possibility of the accused requesting that the trial take place without a lawyer, in which case an accused present in the courtroom would represent himself. However, if the accused has been duly notified of the trial and he is not present at the hearing, the trial proceeds without counsel. In my view, such an approach would be incompatible with the procedures envisaged by the Tribunal's Statute and Rules, which require adversarial arguments in the presentation and admission of evidence.

26. Having considered the Rules, as well as international human rights law and international criminal law as mentioned above, and their application by international human rights courts as well as by the International Criminal Tribunal for the former Yugoslavia and the ICTR, I find that, in the specific circumstances of this case, I have no choice but to order the assignment of counsel to represent Mr Al Amin and *Akhbar Beirut* S.A.L., until and unless they decide to participate in hearings and effectively exercise their right to self-representation. The circumstances of this case also include the facts that the Accused are charged with interference with the administration of justice by publication of alleged confidential names and that assigned counsel would be more clearly bound by deontological and legal norms protecting confidentiality.

27. I stress that nothing in this decision should be read as restricting in any way the right of Mr Al Amin to participate in person or via video-conference in these proceedings, and to appoint counsel of his own choosing to represent him if he so wishes. In such an event, I would be ready to reconsider my decision, either upon request or *proprio motu*. But until Mr Amin, on his own behalf and on behalf of *Akhbar Beirut* S.A.L., does so, the Statute and the general principles of international criminal law require me to order the assignment of counsel to represent their interests.

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<sup>37</sup> See, in particular, Article 251 of the Lebanese Code of Criminal Procedure.

28. Finally, in my Order of 27 May 2014 I clarified that a letter is not the appropriate way to bring concerns in relation to the initial appearance to my attention.<sup>38</sup> During the initial appearance of 29 May 2014, I further pointed out that a trial is not a dialogue from a distance between the accused and the judge.<sup>39</sup> This is even more valid now that I have ordered assignment of counsel to fully represent the Accused in these proceedings. Therefore, from now onwards, I will entertain only submissions duly filed according to the relevant Rules and Practice Directions. The Head of Defence Office and the Registry shall provide guidance to Mr Al Amin in this respect if needed.

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<sup>38</sup> Further Order, para. 2.

<sup>39</sup> Transcript of 29 May 2014, p. 8.

## **DISPOSITION**

### **FOR THESE REASONS,**

**I**

**ORDERED** the Head of Defence Office to assign counsel to represent the two Accused in the current proceedings under Rule 59 (F);

**DECLARE** that the Accused are free to participate in the proceedings and to appoint counsel of their own choosing at any time, and that I am ready to reconsider this decision, in whole or in part, if this were to occur;

**ORDER** that any deadline under the Rules following the initial appearance shall start running as of the date of assignment of counsel to the two Accused;

**REQUEST** the *Amicus Curiae* Prosecutor to effectuate disclosure under Rule 110 (A) at the earliest opportunity after counsel has been assigned by the Head of Defence Office and the necessary practical arrangements are made;

**ORDER** the Registry to disregard any informal communication from Mr Al Amin in this case following his withdrawal from the hearing of 29 May 2014, unless otherwise directed by me.

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

Dated 5 June 2014

Leidschendam, the Netherlands



Judge Nicola Lettieri  
Contempt Judge

