

**THE CONTEMPT JUDGE**

**Case No.:** STL-14-06/PT/CJ  
**Before:** Judge Nicola Lettieri, Contempt Judge  
**Registrar:** Mr Daryl Mundis, Registrar  
**Date:** 13 June 2014  
**Original language:** English  
**Classification:** Public

**IN THE CASE AGAINST**

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

**ORDER ON SUBMISSIONS BY HEAD OF DEFENCE OFFICE**

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

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

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



1. In the initial appearance held on 29 May 2014, pursuant to Rule 59 (F) of the Rules of Procedure and Evidence (“Rules”), I ordered the Head of Defence Office to assign counsel to the Accused “because this is necessary in the interests of justice and to ensure a fair and expeditious trial”.<sup>1</sup> I provided written reasons for my decision one week later.<sup>2</sup> As of today, more than two weeks after my decision, the Head of Defence Office has not yet assigned counsel as ordered.

2. On 10 June 2014, I directed a Legal Officer to inquire with the Deputy Head of Defence Office about the status of the assignment of counsel.<sup>3</sup> After the appropriate inquiries, it became apparent that the Head of Defence Office had not assigned counsel, possibly pending a decision by the Accused to file a request for certification to appeal.

3. More than 24 hours later, and after office hours, the Deputy Head of Defence Office further contacted me directly via e-mail. She stated the following:

En l'absence de Me Roux, je vous confirme que nous sommes informés que M. Al Amin va déposer une demande en certification d'appel de votre décision du 5 juin 2014, avec demande de suspension de son exécution, et que le Bureau de la Défense envisage de soutenir cette demande. Nous restons à votre disposition pour toutes questions que vous pourriez avoir à cet égard.<sup>4</sup>

4. She provided no explanation as to why the Head of Defence Office had failed to assign counsel to the Accused.

5. Today, I received a request by Mr Al Amin in which he seeks certification to appeal my decision on assignment of counsel under Rule 59 (F) as well as suspension of that decision.<sup>5</sup> The request is in Arabic and I will need to wait for a translation to properly address it. The Head of Defence Office also filed his own “Observations”, in which he supports the certification and suspension requests.<sup>6</sup>

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<sup>1</sup> STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06, Transcript of 29 May 2014 (“Transcript of 29 May 2014”), p. 19 (EN).

<sup>2</sup> STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/CJ, F0018, Reasons for Decision on Assignment of Counsel, 5 June 2014 (“Decision of 5 June 2014”).

<sup>3</sup> Email from Contempt Judge’s Legal Officer to Deputy Head of Defence Office, 10 June 2014.

<sup>4</sup> Email from Deputy Head of Defence Office to Contempt Judge, 11 June 2014.

<sup>5</sup> STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/CJ, F0019, Submission by the Accused Dated 12 June 2014 (Request for Certification), 12 June 2014.

<sup>6</sup> STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/CJ, F0020, *Observations du Bureau de la Défense relatives a demande en certification d'appel des « Reasons for Decision on Assignment of Counsel » déposée par Mr Ibrahim Al Amin*, 12 June 2014.

6. Regardless, under the terms of my oral order of 29 May 2014, the Head of Defence Office, as an organ of the Tribunal, had a duty to assign counsel to the Accused promptly. My order was not contingent on any conditions and had immediate effect. At present, the Head of Defence Office has provided no reasons for his failure to comply with my order. I recall that the organs of the Tribunal, just like the Parties and other participants, have a legal duty to carry out judicial orders made in the course of these proceedings. The Appeals Chamber has noted that “a request for reconsideration, just like an appeal, does not suspend the execution of an order, unless such suspension is explicitly granted by the Chamber”.<sup>7</sup> This principle is echoed by the relevant case-law of other international courts. As the Appeals Chamber of the International Criminal Court has held, “Orders of the Chambers are binding and should be treated as such by all parties and participants unless and until they are suspended, reversed or amended by the Appeals Chamber or their legal effects are otherwise modified by an appropriate decision of a relevant Chamber”.<sup>8</sup>

7. I gather from the communication received that it is the Head of Defence Office’s position not to assign counsel pending the resolution of any appeal against my decision of 29 May 2014. If this is indeed his position, it is a matter of great concern. Whether or not Mr Al Amin obtains certification or suspension of my order is immaterial to the Head of Defence Office’s legal obligation to assign counsel as ordered and without any delay.

8. Of critical importance, the self-represented Accused in this case remain without legal assistance in a complex case. This raises grave questions related to the integrity and fairness of the proceedings. In particular, the delay by the Head of Defence Office in assigning counsel has deprived the Accused of legal representation and assistance in filing his certification/suspension request. Moreover, pending the assignment of counsel, the proceedings as a whole are delayed given that any deadline under the Rules following the Accused’s initial appearance starts running as of the date of the assignment of counsel.<sup>9</sup>

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<sup>7</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC, F1258, Decision on Request by Counsel for Messrs Badreddine and Oneissi for Reconsideration of the Appeals Chamber’s Decision of 25 October 2013, 10 December 2013, fn. 4.

<sup>8</sup> ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-2582, Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I of 8 July 2010 entitled “Decision on the Prosecution’s Urgent Request for Variation of the Time-Limit to Disclose the Identity of Intermediary 143 or Alternatively to Stay Proceedings Pending Further Consultations with the VWU”, 8 October 2010 (“*Lubanga Decision*”), para. 1.

<sup>9</sup> Decision of 5 June 2014, Disposition.

9. I recall that the Head of Defence Office himself voiced his concerns as to potential negative effects of self-representation. He stressed in court that “it is absolutely vital that counsel should be there to defend the rights of the accused”.<sup>10</sup> As I recognized, I have an obligation to ensure that competent counsel is assigned and that such counsel works effectively in the best interests of the accused.<sup>11</sup> Whatever other concerns the Head of Defence Office may have, they are plainly of no relevance to his duty to assign counsel pursuant to my order. The Tribunal as a criminal court cannot operate in circumstances where its judicial orders are complied with only on a case-by-case basis. It is not for the Head of Defence Office to elect whether or not to implement judicial orders, depending on his interpretation of the law or of his obligations under the Statute and the Rules.<sup>12</sup>

10. For these reasons I order the Head of Defence Office to make written submissions by **16 June 2014, 9 am** on why he has not yet assigned counsel to the Accused as ordered.

11. In addition, I consider that the failure of the Head of Defence Office to carry out my order may amount to misconduct under Rule 60. In particular, absent any valid justification, such non-compliance may “obstruct[] the proper conduct of the proceedings”, may be “negligent” or may “otherwise fail[] to meet the acceptable standards of professional competence and/or ethics in the performance” of the Head of Defence Office’s duties. Before determining whether to issue any sanction under Rule 60 or other relevant provisions, I invite the Head of Defence Office to present his views on this matter.

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<sup>10</sup> Transcript of 29 May 2014, pp. 15-16 (EN), p. 17 (FR) (« il est toujours important qu’il y ait un avocat qui se lève pour défendre un accusé »)

<sup>11</sup> Decision of 5 June 2014, para. 23.

<sup>12</sup> See *Lubanga* Decision, para. 48.

**DISPOSITION**

**FOR THESE REASONS;**

**I**

**ORDER** the Head of Defence Office to make written submissions on why he has not yet complied with my order of 29 May 2014 to assign counsel to the Accused;

**INVITE** the Head of Defence Office to present his views on whether his non-compliance with my order amounts to misconduct;

**ORDER** that these submissions must be filed by **16 June 2014, 9 am.**

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

Dated 13 June 2014

Leidschendam, the Netherlands



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Judge Nicola Lettieri  
Contempt Judge

