



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:** 18 June 2014

**Original language:** English

**Classification:** Public

**IN THE CASE AGAINST**

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

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**DECISION ON REQUESTS BY HEAD OF DEFENCE OFFICE AND ORDER ON  
FURTHER SUBMISSIONS**

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***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



## **BACKGROUND**

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> On 12 June 2014, the last day of the time limit provided for in Rule 126 (D), the Accused filed a request in which they seek certification to appeal my decision as well as suspension of that decision.<sup>3</sup> The same day I ordered the Head of Defence Office to make submissions on why, more than two weeks after my decision, he had not yet assigned counsel as ordered, and invited his views on whether his failure to comply with my order may amount to misconduct under Rule 60.<sup>4</sup> The Head of Defence Office filed submissions on 16 June 2014.<sup>5</sup>

## **THE SITUATION AT PRESENT**

### **I. The Accused’s conduct**

2. There is no need to repeat here again the full history of the Accused’s interaction with the Tribunal. I simply recall that the Accused had initially sought postponement of their initial appearances. While I granted a first request in this regard, I denied the second request.<sup>6</sup> During the initial appearance, after I advised him to keep any statements to what was relevant for the purposes of that hearing, Mr Al Amin stated that he would henceforth remain silent and would refuse to appoint any lawyer to represent him or *Akhbar Beirut* S.A.L. He then left the hearing.<sup>7</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 (“Reasons of 5 June 2014”). All further references to filings and decisions relate to this case number unless otherwise stated.

<sup>3</sup> F0019, Request for Certification to Appeal a Decision “Reasons for Decision on Assignment of Counsel” Date: 5 June 2014, 12 June 2014, (“Certification/Suspension Request”); see also F0020, *Observations du Bureau de la Défense relatives à la demande en certification d’appel des « Reasons for Decision on Assignment of Counsel » déposée par M. Ibrahim Al Amin*, 12 June 2014.

<sup>4</sup> F0021, Order on Submissions by Head of Defence Office, 13 June 2014 (“Order of 13 June 2014”).

<sup>5</sup> F0022, *Arguments du Chef du Bureau de la Défense suite à « Order on Submissions by Head of Defence Office » et requête en obtention de délais supplémentaires*, (“HDO Submissions”), 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 (“Clarification Request”).

<sup>6</sup> F0016, Further Order on Initial Appearances Scheduled for 29 May 2014, 27 May 2014.

<sup>7</sup> See Reasons of 5 June 2014, paras 8-9.

3. In my Reasons of 5 June 2014, I found that Mr Al Amin's statements and conduct during the initial appearance of 29 May 2014 had created the untenable situation where the Accused declined to be represented by counsel while at the same time refusing to participate in the proceedings.<sup>8</sup> I held that "[s]uch 'self-representation' by accused who are not appearing in court frustrates the requirement to hold a fair and expeditious trial".<sup>9</sup> Indeed, the trial proceedings would be paralyzed if no action was taken in such a situation. I also stressed 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 [Al] 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.<sup>10</sup>

4. In their Certification/Suspension Request, the Accused seem to suggest that I misinterpreted Mr Al Amin's statements in the initial appearance. For instance, they refer to alleged errors in the interpretation of his spoken Arabic into the English language and argue that I wrongly inferred from these statements that the Accused would not participate in future hearings.<sup>11</sup> Similarly, the Head of Defence Office, without providing further details, "notes with satisfaction the willingness of the accused to continue participating in the proceedings before the Tribunal, despite the misunderstandings that occurred during his initial appearance".<sup>12</sup>

## II. The Head of Defence Office's failure to comply with my order to assign counsel

5. Although I ordered the Head of Defence to assign counsel to the Accused on 29 May 2014, he has still not done so. Despite repeated informal inquiries with his office during the last week, he did not provide any information why he had not carried out my order. I therefore ordered him to make written submissions in this regard.<sup>13</sup> I also invited his comments on whether his non-compliance with my order could amount to misconduct under Rule 60 of the Rules.<sup>14</sup>

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<sup>8</sup> *Id.* at para. 21.

<sup>9</sup> *Id.* at para. 22.

<sup>10</sup> *Id.* at para. 27.

<sup>11</sup> Certification/Suspension Request, para. 5(1)

<sup>12</sup> HDO Submissions, para. 9 (STL unrevised translation).

<sup>13</sup> Order of 13 June 2014, para. 10.

<sup>14</sup> *Id.* at para. 11.

6. In his submissions, the Head of Defence Office states that neither my order nor the written reasons specified any deadline for him to assign counsel.<sup>15</sup> He describes the efforts undertaken by him to meet with the Accused and their usual lawyer in order to find “efficient solutions”.<sup>16</sup> He argues that the provisions of Lebanese law foresee that if an accused refuses to be represented by a lawyer, the proceedings continue without the lawyer and that under those rules a lawyer should not be assigned against the will of an accused.<sup>17</sup> He further notes the “deontological” problem allegedly arising from the assignment of a lawyer to an accused who wishes to self-represent.<sup>18</sup> He also alleges that ethical rules prohibit him from providing more details at this stage on his effort to find a quick solution to the situation.<sup>19</sup> Finally, he requests an extension of time of another three weeks to comply with my order.<sup>20</sup>

7. In a separate submission, the Head of Defence Office seeks clarification with respect to my invitation to him to provide submissions on whether his non-compliance with my order may amount to misconduct under Rule 60.<sup>21</sup>

### **THE LEGAL FRAMEWORK**

8. I have set out the applicable law governing an accused’s right to self-representation, the limits to this right and in particular the possibility of assigning counsel to a self-represented accused in my Reasons of 5 June 2014<sup>22</sup> and there is no reason to re-state it here. Suffice it to say, an accused has the right to represent himself in the proceedings; but there is no right to frustrate these proceedings by not participating in them. In such circumstances, Rule 59 (F) permits the assignment of counsel—even against the express wish of the accused.<sup>23</sup>

9. With all due respect to the Head of Defence Office, it is not appropriate<sup>24</sup> to rely in this case on the provisions of Lebanese law with respect to the appointment or assignment of counsel. The Tribunal has its own Rules of Procedure and Evidence, which in many parts are different

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<sup>15</sup> HDO Submissions, para. 3.

<sup>16</sup> *Id.* at para. 8 (STL unrevised translation).

<sup>17</sup> *Id.* at paras 10-11.

<sup>18</sup> *Id.* at paras 12, 15.

<sup>19</sup> *Id.* at para. 19.

<sup>20</sup> *Id.* at paras 22, 24.

<sup>21</sup> Clarification Request, para. 1.

<sup>22</sup> Reasons of 5 June 2014, paras 13-18.

<sup>23</sup> *Id.* at para. 23.

<sup>24</sup> See Rule 3 STL RPE.

from the relevant Lebanese provisions. This is due to the special nature of the Tribunal, which is an institution operating outside the Lebanese judicial system. For instance, while Lebanese law allows for trials *in absentia* without the presence of counsel defending the interests of the accused, the Tribunal's Statute and Rules require the assignment of such a lawyer in *in absentia* proceedings before the Tribunal to guarantee the protection of an accused's fair trial rights.

#### **I. Order to Mr Al Amin / *Akhbar Beirut* S.A.L.**

10. As I have noted above, the most recent statements of the Accused, in particular their filing seeking certification of my decision to assign counsel, have created further ambiguities with respect to their intentions to participate in the proceedings. In light of these ambiguities, and considering the rights of any accused under Article 16 of the Statute, I find it appropriate to provide them with another opportunity to clarify their intentions. In particular, I request the Accused to submit in writing and to answer unequivocally:

- whether the Accused intend to participate in the proceedings against them; and
- if so, whether they intend to appoint counsel of their own choosing to represent them in the proceedings or whether they intend to represent themselves, with legal assistance if appropriate, and by being present in the courtroom.

11. Following the Accused's submissions, I will be in a position to decide whether reconsideration of my order to assign counsel is necessary. I note that if the Accused were to elect to represent themselves, they must be present at all hearings at the seat of the Tribunal. Indeed, Rule 105 makes clear that participating in hearings by video-conference is only permitted if counsel is present in the courtroom. While I exceptionally accepted the Accused's presence via video-conference during the initial appearances due to the specific nature of that hearing, which is limited in scope,<sup>25</sup> I am not inclined to grant such a general exception for the subsequent trial proceedings given the difficulties this would raise. It is hard to conceive how the Accused could properly represent and effectively defend themselves by following and intervening in the trial proceedings if they are not physically present in the courtroom.

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<sup>25</sup> Transcript of 29 May 2014, pp. 3-4 (EN).

## II. Requests by Head of Defence Office

12. With respect to the submissions of the Head of Defence Office, I am not satisfied that he has sufficiently explained why he has not complied with my order to assign counsel to the Accused. In particular, I find unpersuasive his argument that I had failed to provide a time-limit when ordering such assignment.<sup>26</sup> I reiterate that any judicial order must be complied with in good faith and without any delay.<sup>27</sup> I also stress again that the Head of Defence Office's failure to comply with my order might potentially result in prejudice to the Accused.<sup>28</sup> For example, the Head of Defence Office did not assign counsel although the deadline for requesting certification to appeal my decision was running, thus depriving the Accused of relevant legal assistance.<sup>29</sup> Other acts could have been performed if the Accused had had the benefit of counsel's representation and assistance.<sup>30</sup>

13. If the Head of Defence Office had any concerns with respect to the implementation of my order, he should have informed me immediately with a formal filing. While I appreciate the continued efforts of the Head of Defence Office to facilitate the appointment of counsel with the agreement of the Accused, this does not detract in any way from his obligation to carry out the existing judicial order to assign counsel to protect the rights and interests of the Accused in the meantime. In this context, I also reject the Head of Defence Office's claim that "ethical rules" prohibit him from providing the Court with the details of his efforts, including his interactions with the Accused.<sup>31</sup> The Head of Defence Office has not provided any legal support for this assertion. I recall that under the Statute and Rules, the Head of Defence Office is an organ of the Tribunal who is *inter alia* responsible for the appointment of counsel.<sup>32</sup> He is not counsel for any individual accused nor may he act as such.<sup>33</sup> He therefore cannot assert privileges that attach to the relationship between a lawyer and his client.<sup>34</sup> On the contrary, he has an obligation to keep the Court fully informed, in particular because such information might have an impact on the fairness and expeditiousness of the proceedings.

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<sup>26</sup> HDO Submission, para. 8.

<sup>27</sup> Order of 13 June 2014, para. 9.

<sup>28</sup> *Id.* at para. 8.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> HDO Submissions, para. 19.

<sup>32</sup> See Article 13 STL St; Rule 57 STL RPE.

<sup>33</sup> See Rule 57 (I) STL RPE.

<sup>34</sup> See Rule 163 STL RPE.

14. The Head of Defence Office has also not demonstrated how his “deontological” concerns would prevent him from assigning counsel to represent the interests of the Accused. I note that under Rule 59 (D) the Head of Defence Office has the responsibility to draw up and maintain a list of highly qualified counsel. According to Rule 59 (B), such counsel is subject to the Rules. This includes Rule 59 (F), which provides that counsel may be imposed on a self-represented accused. There is no other provision in either the Rules or the relevant codes of conduct of counsel practicing before the Tribunal which reflects the concerns raised by the Head of Defence Office. I note that he has not provided any legal support for the assertion that there is a conflict between the Rules and counsel’s deontological obligations.

15. With respect to the Head of Defence Office’s request for an extension of time of another three weeks before assigning counsel,<sup>35</sup> which in reality is a belated application to suspend my order, he fails to specify any reason for this request. Each day without counsel increases the risk of prejudice to the Accused. I therefore reiterate my order to the Head of Defence Office to assign counsel to the Accused, without any further delay. I also order him to inform me immediately in case there are any difficulties in this regard.

16. Finally, with respect to the Head of Defence Office’s request for clarification of my Order of 13 June 2014,<sup>36</sup> I note that, contrary to what the Head of Defence Office seems to suggest,<sup>37</sup> Rule 60 does not foresee any procedure separate from the proceedings in this contempt matter. Nor is the Head of Defence Office, or any other individual that may be subject to Rule 60, a “defendant”<sup>38</sup> who is “being prosecuted”.<sup>39</sup> Rule 60 does not provide for a trial within a trial, imposing another burden on the proceedings. Rather, it is a procedural mechanism to ensure the smooth and efficient running of the trial, pursuant to Article 21 (1) of the Statute.

17. I am puzzled by the Head of Defence Office’s assertion that I could not invite submissions on the effects of his non-compliance without having first established that his non-compliance indeed constituted misconduct.<sup>40</sup> Here, I issued an order under which the Head of Defence Office was required to assign counsel to the Accused without delay. Until now, he has

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<sup>35</sup> HDO Submission, para. 24.

<sup>36</sup> Clarification Request, para. 10.

<sup>37</sup> HDO Submissions, para. 2; Clarification Request, para. 9.

<sup>38</sup> Clarification Request, para. 9.

<sup>39</sup> *Id.* at para. 6.

<sup>40</sup> Clarification Request, para. 4.

not complied with this order. My repeated requests for clarification from the Head of Defence Office did not yield any direct response from him. *Prima facie*, there is non-compliance with my order. I therefore invited his view whether such non-compliance *may* amount to misconduct.<sup>41</sup> In any event, I now caution the Head of Defence Office that judicial orders must be complied with promptly unless an objective reason not to do so is clearly put forth and the order is suspended. I reserve any further steps under Rule 60.

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<sup>41</sup> Order of 13 June 2014, para. 11.



## **DISPOSITION**

### **FOR THESE REASONS;**

**I**

**ORDER** the Accused to make written submissions within three days after receiving the Arabic translation of this Order on:

- whether they intend to participate in the proceedings against them; and
- if so, whether they intend to appoint counsel of their own choosing to represent them in the proceedings or whether they intend to represent themselves, with legal assistance if appropriate, and by being present in the courtroom;

**DISMISS** the requests for extension of time and for clarification;

**REITERATE** my order to the Head of Defence Office to assign counsel to the Accused without delay.

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

Dated 18 June 2014

Leidschendam, the Netherlands



Judge Nicola Lettieri  
Contempt Judge

