



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: 30 June 2014
Original language: English
Classification: Public

IN THE CASE AGAINST

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

ORDER REGARDING MR AL AMIN'S SUBMISSION OF 25 JUNE 2014

***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, I ordered the Head of Defence Office to assign counsel to the Accused pursuant to Rule 59 (F) of the Rules of Procedure and Evidence of the Special Tribunal for Lebanon (“Rules” and “Tribunal”, respectively) “because this is necessary in the interests of justice and to ensure a fair and expeditious trial”.¹ I provided written reasons for my decision on 5 June 2014.² On 12 June 2014, the Accused filed a request in which they sought certification to appeal my decision as well as suspension of that decision.³ The next day, I ordered the Head of Defence Office to make submissions on why he had not yet assigned counsel as ordered.⁴ The Head of Defence Office filed his submissions on 16 June 2014.⁵

2. Since in his request for certification Mr Al Amin suggested that I misunderstood his position as to whether he would participate in proceedings before me,⁶ on 18 June 2014, I allowed the Accused another opportunity to clarify their intentions by ordering them to submit in writing and 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.⁷

3. Upon an oral request of the Head of Defence Office on 20 June 2014, I further decided that my order to assign Counsel could be suspended until a response was given by Mr Al Amin

¹ 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).

² 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”). All further references to filings and decisions relate to this case number unless otherwise stated.

³ F0019, Request for Certification to Appeal a Decision “Reasons for Decision on Assignment of Counsel” Date: 5 June 2014, 12 June 2014; *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.

⁴ F0021, Order on Submissions by Head of Defence Office, 13 June 2014.

⁵ 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*, 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.

⁶ F0019, Request for Certification to Appeal a Decision “Reasons for Decision on Assignment of Counsel” Date: 5 June 2014, 12 June 2014, para. 5 (in particular, item 1).

⁷ F0024, Decision on Requests by Head of Defence Office and Order on Further Submissions, 18 June 2014 (“Decision on HDO Requests”), para. 10.

to my request for clarifications, because the substance of his response might have an impact on the role that counsel would play, if any.

MR AL AMIN'S SUBMISSION

4. On 25 June 2014, the last day of the time limit for a response to my invitation of 18 June 2014, Mr Al Amin filed a submission.⁸ Upon examining his submission (received on the afternoon of 27 June in its English translation), it is apparent that the filing does not actually answer the above-mentioned two questions; it rather requests my disqualification and withdrawal as Contempt Judge in this case. In his submission, Mr Al Amin generally questions my impartiality and neutrality in the adjudication of these contempt proceedings.

5. Specifically, Mr Al Amin refers to my conduct during the proceedings to date, stating that I issued decisions and orders on preconceived ideas and that I unfairly requested him to only raise in the hearing issues related to the present case.⁹ He adds that I am biased because I am convinced of the existence of sufficient evidence to bring charges against him in relation to witnesses in the *Ayyash et al.* case, in which I also sit as an alternate Judge.¹⁰ Furthermore, he alleges that I exercised moral pressure on the Head of Defence Office when requesting explanations for the Head of Defence Office's non-compliance with my order to impose counsel.¹¹ Mr Al Amin also asks that I suspend my work on this case until the resolution of his request.¹²

DISCUSSION

6. First, I note that Mr Al Amin did not respond to my request for clarifications on whether he intends to participate in the proceedings. Therefore, there is no reason to modify my decision of 29 May, with written reasons filed on 5 June, to impose counsel under Rule 59 (F). In any event, as already explained, my decision to impose counsel can be modified at any point if the situation changes.¹³

⁸ F0026, Response to Demand that I Clarify My Position Pursuant to the Order of 18 June 2014, 25 June 2014 ("Response").

⁹ *Id.*, paras 1 and 4.

¹⁰ *Id.*, para. 2.

¹¹ *Id.*, para. 3.

¹² *Id.*, para. 4.

¹³ *See* Decision of 5 June 2014, para. 27.

7. I also note that Mr Al Amin does not refer to the legal provisions he relies upon in making his submission. It is therefore difficult to interpret what procedure he actually plans to set in motion when he says that he intends “to bring an action before the competent authority aimed at bringing about” my dismissal and disqualification in the hearing of this case. His submission could be read as (i) a motion pursuant to Rule 25 (C) to disqualify me, and a request to suspend the proceedings pending resolution of this motion; or (ii) an expression of Mr Al Amin’s intention to bring such a motion in the future before the competent authority. For the avoidance of any doubt, and in favour of the Accused, I take immediate action pursuant to Rule 25.

8. Rule 25 (C) states that a party may apply to the “President, or the most senior uninvolved Judge as appropriate” in requesting disqualification and withdrawal of the Contempt Judge on the grounds specified in Rule 25 (A). Accordingly, I direct that the request immediately be transferred to the President for any action he deems appropriate pursuant to Rule 25 (C).

9. The confusion in the submission as to the procedures involved and as to the competent authority Mr Al Amin intended or intends to address actually supports the need for the Accused to have counsel assigned to them. Counsel could properly advise as to the correct procedures to be followed. The Head of Defence Office should therefore implement my order to assign counsel without further delay, for the reasons expressed on 5 June 2014¹⁴ and 18 June 2014,¹⁵ as well as because of the present situation.

10. Regarding Mr Al Amin’s request that I suspend working as Contempt Judge on this case pending resolution of his motion,¹⁶ I note that there is no legal basis in the Rules for such suspension.

11. Mr Al Amin also raises, as mentioned at paragraph 5 above, concerns about the aspects of my decision of 18 June 2014 addressing the Head of Defence Office’s assertion that ethical rules prohibited the latter from providing the Court with details of his efforts to assign counsel, including any communications with the Accused.¹⁷

¹⁴ *Id.*, paras 19-26.

¹⁵ Decision on HDO Requests, paras 2-4.

¹⁶ Response, para. 4.

¹⁷ *Id.*, para. 4; Decision on HDO Requests, para. 13.

12. In rejecting the Head of Defence Office's submissions in that regard, I stated that the Head of Defence Office "is not counsel for any individual accused nor may he act as such. He therefore cannot assert privileges that attach to the relationship between a lawyer and his client. 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".¹⁸ I reiterate that, in carrying out his administrative or contract functions as an organ of the Tribunal, the Head of Defence Office cannot assert legal professional privilege. Judges need to be apprised of administrative information affecting the fairness or expeditiousness of the proceedings (for instance, problems in swiftly identifying a lawyer suitable to defend an accused, or problems concerning long negotiations or complex contractual arrangements to retain counsel). What is outside of their competence and must be outside of their knowledge (as uniquely belonging to the defence field and properly privileged) would generally be defence strategy or, for instance, the content of the legal assistance provided by the Defence Office to the defence – be it a suspect, an accused, or counsel – under Article 13 (2) of the Tribunal's Statute or Rule 57 (E). This clarification should remove any uncertainty in this respect, especially because the issue raised in my decision clearly related to the efforts undertaken by the Head of Defence Office to implement my order and to avoid further delay.

¹⁸ Decision on HDO Requests, para. 13.

DISPOSITION

FOR THESE REASONS;

I

DIRECT the Registrar to transmit the Accused's "Response to Demand that I Clarify My Position Pursuant to the Order of 18 June 2014" (F0026) to the President of the Tribunal;

REJECT the request for suspension of the proceedings;

REMIND the Head of Defence Office to proceed with the assignment of counsel to represent the Accused without delay, subject to any change in circumstances that I might decide requires reconsideration.

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

Dated 30 June 2014

Leidschendam, the Netherlands



Judge Nicola Lettieri
Contempt Judge

