



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:** 17 July 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 THE REQUEST FOR CERTIFICATION TO APPEAL DECISION  
ON ASSIGNMENT OF COUNSEL**

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***Amicus Curiae* Prosecutor:**  
Mr Kenneth Scott**Head of Defence Office:**  
Mr François Roux**Counsel for *Akhbar Beirut* S.A.L. and  
Mr Ibrahim Mohamed Ali Al Amin:**  
Mr Antonios Abou Kasm

## INTRODUCTION

1. I am seized of a request filed by Mr Al Amin on his behalf and that of the Accused *Akhbar Beirut* S.A.L. (“the Accused”), requesting certification to appeal my decision to assign counsel to the Accused.<sup>1</sup> The *Amicus Curiae* Prosecutor (“*Amicus*”) opposes this Request.<sup>2</sup> I find that the Request does not meet the “stringent requirements of Rule 126 (C)”<sup>3</sup> of the Rules of Procedure and Evidence (“Rules”) and therefore dismiss it.

## PROCEDURAL HISTORY

2. In the initial appearance held on 29 May 2014, pursuant to Rule 59 (F), 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>4</sup> I provided written reasons on 5 June 2014.<sup>5</sup>

3. For ease of reference, I quote the following excerpts:

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. I responded that, being a free man, he could choose whether to remain at the hearing, at which point Mr Al Amin left the video-conference room. [...]

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. Any restriction on the right to self-representation must be limited to the minimum necessary to protect a tribunal’s interest in ensuring a fair and expeditious trial. For instance, self-representation may be curtailed to prevent the obstruction of justice (whether intentional or unintentional). I am mindful of the experiences at these tribunals which have suffered

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<sup>1</sup> STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/CJ, F0019/COR, Request for Certification to Appeal a Decision “Reasons for Decision on Assignment of Counsel” Date: 5 June 2014, 12 June 2014 (“Request”). All further references to filings and decisions refer to this case number unless otherwise stated.

<sup>2</sup> F0032, Further Response to Defence Request for Certification to Appeal “Reasons for Decision on Assignment of Counsel” Dated 5 June 2014, 7 July 2014 (“Further Response”).

<sup>3</sup> See STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC/AR126.1, F0012/COR, *Corrected Version of Decision on Defence Appeals Against Trial Chamber’s Decision on Reconsideration of the Trial In Absentia Decision*, 1 November 2012 (“*Trial in Absentia Appeal Decision*”), para. 8.

<sup>4</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>5</sup> F0018, Reasons for Decision on Assignment of Counsel, 5 June 2014 (“Decision of 5 June 2014”).

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. [...]

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.<sup>6</sup>

4. On 12 June 2014, I received the Request, in which the Accused argue that the implementation of my decision to assign counsel would deprive them of their fundamental right to self-representation and the right to a fair trial.<sup>7</sup> They put forth five grounds on the basis of which certification should be granted and argue that an immediate resolution by the Appeals

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<sup>6</sup> Decision of 5 June 2014 (internal citations omitted).

<sup>7</sup> Request, p. 6.

Panel would significantly expedite the proceedings.<sup>8</sup> On the same day the Head of Defence Office filed a submission “relating to the Request”.<sup>9</sup>

5. On 18 June 2014, I ordered the Accused to make written submissions on whether they intended to participate in the hearings against them and, if so, whether they would appoint counsel of their own choosing or represent themselves, with legal assistance if necessary, and by being present in the courtroom.<sup>10</sup> This Order was based on the fact that “the most recent statements of the Accused, in particular their filing seeking certification of my decision to assign counsel, [had] created further ambiguities with respect to their intentions to participate in the proceedings”.<sup>11</sup> I therefore found “it appropriate to provide them with another opportunity to clarify their intentions”.<sup>12</sup>

6. On 20 June 2014, *Amicus* responded to the Request, stating that a decision on the Request was premature as the Accused had not yet responded to the questions posed in my Order of 18 June 2014, and requested leave to respond to any remaining aspects in the Request once a response was given by the Accused.<sup>13</sup>

7. Following the submission by the Accused on 25 June 2014 in which they failed to respond to the questions specified in my Order,<sup>14</sup> I invited *Amicus* to make any further submissions on the Request by 7 July 2014.<sup>15</sup> On that day he filed his further response, submitting that the issues were not ripe for appellate adjudication, however, without responding to the specific arguments and issues identified by the Accused.<sup>16</sup>

8. On 30 June 2014, the Head of Defence Office assigned Mr Antonios Abou Kasm to represent the Accused in this case.<sup>17</sup> Mr Abou Kasm was sworn in on 3 July 2014.<sup>18</sup>

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<sup>8</sup> Request, pp 3-6.

<sup>9</sup> F0020, Observations from the Defence Office Relating to the Request for Certification to Appeal the “Reasons for Decision on Assignment of Counsel” Filed by Mr Ibrahim Al Amin, 12 June 2014 (“HDO Submission”).

<sup>10</sup> F0024, Decision on Requests by Head of Defence Office and Order on Further Submissions, 18 June 2014 (“Order on Further Submissions”).

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

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

<sup>13</sup> F0025, Response to Defence Request for Certification to Appeal a Decision “Reasons for Decision on Assignment of Counsel” Date 5 June 2014, 20 June 2014, paras 2-3.

<sup>14</sup> F0026, Response to Demand that I Clarify My Position Pursuant to the Order of 18 June 2014, 25 June 2014 (“Response of 25 June 2014”).

<sup>15</sup> Email from a Legal Officer of the Chambers to a representative of the *Amicus*, 1 July 2014.

<sup>16</sup> Further Response, para 29.

<sup>17</sup> F0028, Appointment of Counsel Pursuant to Rule 59 (F) of the Rules of Procedure and Evidence, 30 June 2014.

Subsequently, he filed a request for leave to reply to *Amicus*' further response,<sup>19</sup> attaching a reply as an annex.<sup>20</sup>

### APPLICABLE LAW

9. Rule 126 (C) specifies that interlocutory decisions are without appeal save with certification, if the decision involves “an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which an immediate resolution by the Appeals Chamber may materially advance the proceedings”. Pursuant to Rule 60 *bis* (H), Rule 126 (C) is applicable, *mutatis mutandis*, in contempt proceedings.<sup>21</sup>

10. The Tribunal's Appeals Chamber has held that certification “must necessarily be the exception”.<sup>22</sup> The Rule's high threshold requires under its first prong a serious assessment of an issue's significance.<sup>23</sup> Likewise, under the second prong, which concerns the matter of urgency, only issues for which an immediate resolution by the Appeals Panel is required may advance the proceedings.<sup>24</sup> In general, the party applying for certification must take care to ensure that it specifies the appealable issues in its request.<sup>25</sup>

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<sup>18</sup> F0035, *Demande du conseil d'office aux fins d'autorisation de répliquer à la* Further Response to Defence Request for Certification to Appeal « Reasons for Decision on Assignment of Counsel » déposée le 7 Juillet 2014 par le Procureur *Amicus Curiae*, 14 July 2014 (“Request for Leave to Reply”), para. 17.

<sup>19</sup> Request for Leave to Reply.

<sup>20</sup> The Appeals Chamber has held that it is not proper to attach the substance of a reply to the request seeking leave to file it (*see* STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC/AR126.3, F0009, Decision on Appeal by Legal Representative of Victims Against Pre-Trial Judge's Decision on Protective Measures, 10 April 2013, para. 5.) Going forward the parties should wait for my decision to grant leave before filing a reply, unless otherwise ordered.

<sup>21</sup> I note that all appeals in contempt proceedings are brought before a specially designated Appeals Panel (*see* Rule 60 *bis* (M) STL RPE; STL, Practice Direction on Designation of Judges in Matters of Contempt, Obstruction of Justice and False Testimony, STL-PD-2013-06-Rev.2, 2 July 2014; STL, Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the Special Tribunal for Lebanon, STL-PD-2013-07-Rev.1, 13 June 2013).

<sup>22</sup> Trial *in Absentia* Appeal Decision, para. 8.

<sup>23</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC/AR126.2, F0008, Decision on Appeal Against Pre-Trial Judge's Decision on Motion by Counsel for Mr Badreddine Alleging the Absence of Authority of the Prosecutor, 13 November 2012, para. 13.

<sup>24</sup> *Id.* at para. 14.

<sup>25</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC/AR90.2, F0007, Decision on Defence Appeals Against the Trial Chamber's “Decision on Alleged Defects in the Form of the Amended Indictment”, 5 August 2013 (“Indictment Appeal Decision”), paras 10-11.

## **DISCUSSION**

### **I. Preliminary issues**

#### ***A. Assignment of counsel***

11. The Accused filed their Request prior to the assignment of counsel. As soon as such assignment was effected, counsel assumed responsibility for making submissions before the Tribunal on the Accused's behalf. I will therefore, this Request excluded, no longer consider submissions from the Accused unless otherwise ordered.

#### ***B. Request for leave to file a reply***

12. As noted above, in his further response, *Amicus* did not directly address the merits of the Accused's Request. It is this further response to which counsel for the Accused seeks leave to reply. In this instance, counsel's request for leave to reply was filed outside the time-limit provided in the Rules. But given that he was only sworn in on 3 July 2014, six days before a request for leave to reply was due, as well as the importance of the issue of assignment of counsel, it is in the interests of justice for me to consider his request. It is clear, however, that counsel for the Accused's submission does not go to the merits of the Request—whether I erred in ordering assignment of counsel for the Accused—but rather to, *inter alia*, the relationship between the Accused and their counsel going forward, disclosure concerns, the presumption of innocence and the right of the Accused to be present.<sup>26</sup> Consequently, they are extraneous to and do not bear on this decision. For this reason, I reject the request for leave to reply.<sup>27</sup>

#### ***C. The standing of the Head of Defence Office***

13. The Head of Defence Office submits that he “intends, at this stage, to support that Request for certification to appeal filed by Mr Al Amin and, as necessary, is himself, for the same reasons, submitting the same request for certification to appeal”.<sup>28</sup> I recall that the Head of Defence Office is not a party to the proceedings.<sup>29</sup> Yet Rule 126 (E) makes clear that only parties

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<sup>26</sup> Request for Leave to Reply, para. 23.

<sup>27</sup> With respect to the content of *Amicus*' further response and counsel for the Accused's request for leave to reply, I will issue a separate scheduling order.

<sup>28</sup> HDO Submissions, para. 4; *see also id.* at para. 6.

<sup>29</sup> *See* Rule 2 STL RPE.

may appeal interlocutory decisions.<sup>30</sup> While the Appeals Chamber has permitted narrow exceptions to this principle with respect to the Legal Representative of Victims if the matter for which certification is sought affects the victims' personal interests,<sup>31</sup> it is somewhat unclear whether such exception would also apply to the Head of Defence Office. In any event, my decision to assign counsel to the Accused does not bear on the rights of the Head of Defence Office. I note here that the assignment of counsel is one of the Head of Defence Office's duties.<sup>32</sup> Ordering him to do so does not affect his interests. To the extent that the Head of Defence Office seeks certification of my decision, his request is therefore dismissed.<sup>33</sup>

14. It is also unclear on what legal basis the Head of Defence Office has made his filing in "support" of the Request filed by the Accused. Moreover, in his submission, the Head of Defence Office fails to provide any arguments in this respect. Nevertheless, regardless of whether the Head of Defence Office's filing is procedurally proper, and given that he does not advance any other arguments, I simply take note of the offered support.

## **II. Whether certification should be granted**

### ***A. Do the issues raised significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial?***

15. The Accused have identified five issues related to the assignment of counsel that they submit would significantly affect the fair and expeditious conduct of the proceedings.<sup>34</sup> However, none of these five purported issues (which are in essence arguments in support of their request for certification of my decision to assign counsel) in and of itself meets the certification standards set out by the Tribunal's Appeals Chamber. The Accused fail to show, and their arguments fail to otherwise demonstrate, how the purportedly distinct aspects of my reasoning they attack significantly would affect the fair and expeditious conduct of the proceedings or the outcome of the trial.

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<sup>30</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC/AR126.3, Decision on Appeal by Legal Representative of Victims Against Pre-Trial Judge's Decision on Protective Measures, 10 April 2013, para. 9.

<sup>31</sup> *Id.* at paras 10-18.

<sup>32</sup> See Art. 13 STL St.; Rules 57-59 STL RPE.

<sup>33</sup> For further support, see STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, F1472, Decision on Certification of 'Decision on Trial Management and Reasons for Decision on Joinder', 31 March 2014, paras 12-26.

<sup>34</sup> Request, pp. 3-5.

16. While I could dismiss the Request on the foregoing basis, it is clear that the issue which the Accused actually wish to identify is whether I erred in ordering imposition of counsel under Rule 59 (F). In other words, the Accused aim to appeal against my order to impose counsel, on the basis of the five arguments they raised. Given my responsibility under Rule 126 (C) to “pinpoint” any certifiable issue,<sup>35</sup> I therefore identify as the only issue that could potentially be certified whether I erred in ordering the Head of Defence Office to assign counsel to the Accused at the hearing of 29 May 2014.

17. The Appeals Chamber has held that the process of certification does not concern the question of whether the challenged decision was correct or not. Rather, the issue is whether the identified issue “would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial”.<sup>36</sup> Here, regardless of the particular factual circumstances of this case leading to my decision, the assignment of counsel against the will or at least without the consent of the Accused is an exceptional measure, which in the abstract would significantly affect the fairness of the proceedings.<sup>37</sup> As I have stated previously,<sup>38</sup> each Accused has a presumptive—though not absolute—right to self- representation, and the imposition of counsel may only occur under the strictest standards of fairness. Imposing counsel on a recalcitrant accused would ordinarily involve an issue of fair conduct of the proceedings. In this case, while Mr Al Amin has refused to explain if he indeed wants to participate in person and/or through counsel appointed by him,<sup>39</sup> I find that my order to impose counsel can be said to have an impact on the fair conduct of the proceedings.<sup>40</sup>

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<sup>35</sup> Indictment Appeal Decision, para. 10.

<sup>36</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC/AR126.2, Decision on Appeal Against Pre-Trial Judge’s Decision on Motion by Counsel for Mr Badreddine Alleging the Absence of Authority of the Prosecutor, 13 November 2012, para. 13 (italics omitted).

<sup>37</sup> I note here the holding of the Appeals Chamber of the International Criminal Court that the “expeditious conduct of the proceedings in one form or another constitutes an attribute of a fair trial”. (ICC, *Situation in the Democratic Republic of the Congo*, ICC-01/04-168, Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal, 13 July 2006, para. 11).

<sup>38</sup> Decision of 5 June 2014, paras 13-18; Order on Further Submissions, para. 8.

<sup>39</sup> Response of 25 June 2014.

<sup>40</sup> See, e.g., ICTY, *Prosecutor v. Šešelj*, IT-03-67-T, Decision on Request for Certification to Appeal Decision (No. 2) on Assignment of Counsel, 5 December 2006, para. 6 (“If the Trial Chamber [...] was erring in its decision not to allow the Accused to further represent himself this would significantly affect the fairness of the trial. The Decision to assign counsel, therefore, involves an issue that significantly affects the fair and expeditious conduct of the proceedings.”); ICTY, *Prosecutor v. Milošević*, IT-02-54-T, Order on Request for Certification to Appeal the Decision of the Trial Chamber on Court Assigned Counsel, 10 September 2004, p. 3 (“[T]he decision of the Chamber to assign counsel affects fundamentally the conduct of the trial.”).



***B. Would an immediate resolution of the issue by the Appeals Panel materially advance the proceedings?***

18. Regarding the second prong of the test for certification, the Accused submit that an immediate resolution on an appellate level would provide a definitive solution to the questions in order to materially advance the proceedings and help ensure the guarantees of a fair trial to the Accused.<sup>41</sup> However, in the particular circumstances of this case, I am not persuaded by this argument.

19. In the written reasons for my decision to impose counsel, I clearly spelled out that my decision to impose counsel is valid “until and unless [the Accused] decide to participate in hearings and effectively exercise their right to self-representation”<sup>42</sup> and 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*.<sup>43</sup>

Furthermore, on 18 June 2014,<sup>44</sup> I provided an opportunity for the Accused to state their position clearly, yet they failed to do so.<sup>45</sup> Indeed, the Accused will have yet another chance to clarify their intentions in a hearing that I will set by separate scheduling order.

20. Seizing the Appeals Panel of an appeal at this stage would therefore neither lead to an immediate resolution of the issue at hand nor materially advance the proceedings. On the contrary, any appeal would be entirely speculative as the Accused have so far refused to unambiguously clarify their intentions and the Appeals Panel would thus be forced to rule in a factual vacuum. In sum, the Accused have not met the second prong of the test under Rule 126 (C) and I dismiss their Request on this basis.

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<sup>41</sup> Request, p. 6.

<sup>42</sup> Decision of 5 June 2014, para. 26.

<sup>43</sup> *Id.* at para. 27.

<sup>44</sup> Order on Further Submissions.

<sup>45</sup> Response of 25 June 2014.

### III. Suspension of the Decision

21. The Accused also request a suspension of my decision assigning counsel pending any appeal proceedings.<sup>46</sup> However, as no issues have been certified for appeal, there is no need to grant the suspension of the proceedings.

## DISPOSITION

**FOR THESE REASONS;**

**PURSUANT** to Rules 8, 60 *bis* and 126 of the Rules;

**I**

**DISMISS** the request for leave to reply filed by counsel for the Accused;

**DISMISS** the request filed by the Accused for certification to appeal and for suspension of the proceedings; and

**DISMISS** the request for certification to appeal filed by the Head of Defence Office.

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

Dated 17 July 2014

Leidschendam, the Netherlands



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Judge Nicola Lettieri  
Contempt Judge



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<sup>46</sup> Request, p. 7.