



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:** 14 August 2014  
**Original language:** English  
**Classification:** Public

IN THE CASE AGAINST

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

DECISION ON URGENT DEFENCE SUBMISSIONS REGARDING DISCLOSURE  
BY *AMICUS CURIAE* PROSECUTOR AND PRELIMINARY MOTIONS

*Amicus Curiae* Prosecutor:  
Mr Kenneth Scott

Counsel for *Akhbar Beirut S.A.L.* and  
Mr Ibrahim Mohamed Ali Al Amin:  
Mr Antonios Abou Kasm



## INTRODUCTION

1. I am seized of two filings submitted by counsel assigned to the Accused.<sup>1</sup> In his Urgent Request, counsel requests that I authorize the transmission of all supporting material already disclosed to counsel by the *Amicus Curiae* Prosecutor (“*Amicus*”) to the Accused themselves.<sup>2</sup> *Amicus* responds that the Urgent Request should be dismissed.<sup>3</sup> In his Urgent Submissions, counsel appears to seek an assurance that the Defence has the right to file preliminary motions.<sup>4</sup> *Amicus* has not responded to this filing. Given that the Urgent Request and the Urgent Submissions are related, I have decided to address them together.

## BACKGROUND

2. On 29 May 2014, I ordered the Head of Defence Office to assign counsel to the Accused.<sup>5</sup> I subsequently requested *Amicus* 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”.<sup>6</sup>

3. On 12 June 2014, I received a request by the Accused for certification to appeal the decision to assign counsel.<sup>7</sup> 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

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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, F0038, Urgent Submissions by Counsel Assigned to Represent the Accused Regarding the Scheduling Order Issued in Case STL-14-05/PT/CJ, 22 July 2014 (“Urgent Submissions”); STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/CJ, F0039 Urgent Request from Assigned Counsel for Disclosure to the Accused of all the Evidence Disclosed by the *Amicus Curiae* Prosecutor Pursuant to Rule 110 (a) of the Rules of Procedure and Evidence, 22 July 2014 (“Urgent Request”). All further references to filings and decisions relate to this case number unless otherwise stated.

<sup>2</sup> Urgent Request, p. 7.

<sup>3</sup> F0041, Response to Defence “Requête urgente du conseil commis d’office relative à la communication aux accusés de l’intégralité des éléments de preuve communiqués par le procureur *amicus curiae* en vertu de l’article 110 A) du règlement de procédure et de preuve”, 24 July 2014 (“Response”), para. 14.

<sup>4</sup> Urgent Submissions, p. 3.

<sup>5</sup> STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06, Transcript of 29 May 2014, p. 19 (EN). I provided written reasons on 5 June 2014 (F0018, Reasons for Decision on Assignment of Counsel, 5 June 2014 [“Written Reasons”]).

<sup>6</sup> Written Reasons, Disposition.

<sup>7</sup> F0019/COR, Request for Certification to Appeal a Decision “Reasons for Decision on Assignment of Counsel” Date: 5 June 2014, 12 June 2014.

assistance if necessary, and by being present in the courtroom.<sup>8</sup> The Accused's response of 25 June 2014 failed to respond to the questions specified in my Order.<sup>9</sup>

4. On 30 June 2014, the Head of Defence Office assigned Mr Antonios Abou Kasm to represent the Accused in this case.<sup>10</sup> Mr Abou Kasm was sworn in on 3 July 2014.<sup>11</sup> On 17 July 2014, I denied the Accused's certification request.<sup>12</sup> In that decision I noted that "[a]s soon as [assignment of counsel] 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".<sup>13</sup>

## DISCUSSION

### **I. Urgent Request**

5. In his Urgent Request, counsel submits that on 18 July 2014 he received material disclosed by *Amicus* pursuant to Rule 110 (A) (i) of the Rules of Procedure and Evidence ("Rules"). He asserts that *Amicus* should have made such disclosure not only to him but also to the Accused themselves.<sup>14</sup> Counsel argues that Rule 110 (A) "confirms unequivocally that the accused is to be the recipient of that disclosure".<sup>15</sup> Any exceptions could only be made under the specific provisions of Rules 115 to 118.<sup>16</sup> To deprive the Accused of receiving disclosure "constitutes a violation of the principle of a fair trial and the principle of equality of arms".<sup>17</sup> *Amicus* was wrong in not disclosing the Rule 110 (A) (i) material to the Accused or for failing to seek permission under the relevant Rules for such non-disclosure.<sup>18</sup> In any event, most of the

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<sup>8</sup> F0024, Decision on Requests by Head of Defence Office and Order on Further Submissions, 18 June 2014.

<sup>9</sup> F0026, Response to Demand that I Clarify My Position Pursuant to the Order of 18 June 2014, 25 June 2014.

<sup>10</sup> F0028/COR, Assignment of Counsel Pursuant to Rule 59 (F) of the Rules of Procedure and Evidence, 30 June 2014.

<sup>11</sup> F0035, Application From Assigned Counsel for Leave to Reply to the "Further Response to Defence Request for Certification to Appeal 'Reasons for Decision on Assignment of Counsel'" Filed on 7 July 2014 by the *Amicus Curiae* Prosecutor, 14 July 2014, para. 17.

<sup>12</sup> F0036, Decision on the Request for Certification to Appeal Decision on Assignment of Counsel", 17 July 2014 ("Certification Decision").

<sup>13</sup> Certification Decision, para. 11.

<sup>14</sup> Urgent Request, paras 12-14, 19.

<sup>15</sup> *Id.* at para. 15.

<sup>16</sup> *Id.* at paras 16-17.

<sup>17</sup> *Id.* at paras 18, 23.

<sup>18</sup> *Id.* at paras 24-28, 30.

material is of a public nature and there is no reason to keep it from the Accused.<sup>19</sup> Counsel requests that I authorize disclosure to the Accused and to remind *Amicus* of his statutory duties.<sup>20</sup>

6. *Amicus* confirms that all Rule 110 (A) (i) material was disclosed to counsel for the Accused on 18 July 2014.<sup>21</sup> He states that disclosing the material to counsel was not “abusive”<sup>22</sup> and argues that “where an Accused is represented by counsel [...] disclosure is always made to counsel”.<sup>23</sup> Disclosure was effected through Legal Workflow “in full conformity with Tribunal practice to disclose documents in electronic format”.<sup>24</sup>

7. I first note that pursuant to Rule 110 (A) relevant information under this Rule must be disclosed “to the Defence in a language which the accused understands”.<sup>25</sup> Rule 2 defines “Defence” as “The accused/suspect and/or Defence counsel”. Here, I recall that pursuant to Rule 59 (F) I ordered the assignment of counsel to “represent” the Accused (and not to merely “assist”, which is another possibility under Rule 59 (F)).<sup>26</sup>

8. In addition, Article 18 (B) of the Tribunal’s Directive on the Appointment and Assignment of Defence Counsel (“Directive”),<sup>27</sup> adopted by the Head of the Defence office after approval by the Plenary of Judges,<sup>28</sup> provides, in relevant part:

The primary counsel appointed or assigned to represent a suspect or accused shall be referred to as the lead counsel and *shall be responsible for all aspects of the defence of the suspect or accused during all phases of the proceedings and any other matter relating to the defence of the suspect or accused.*<sup>29</sup>

9. It follows that once counsel is assigned to represent an accused, like in this case, counsel carries all responsibilities related to the accused’s defence. This includes receiving relevant

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<sup>19</sup> Urgent Request, para. 29.

<sup>20</sup> *Id.* at para. 31, p. 7.

<sup>21</sup> Response, paras 10-12.

<sup>22</sup> *Amicus* refers to the French original of the Urgent Request, which states that “l’attitude du Procureur au sujet de la communication des éléments à charge [...] est abusive”. (Urgent Request, para. 12). The official English translation uses the word “unreasonable”. However, it seems more appropriate in this context to translate “abusive” as “improper”.

<sup>23</sup> Response, para. 13.

<sup>24</sup> *Ibid.*

<sup>25</sup> Rule 110 (A) (i) addresses the material supporting an indictment; Rule 110 (A) (ii) deals with the statements of witnesses the Prosecution wants to call to testify at trial as well as other relevant statements.

<sup>26</sup> Written Reasons, Disposition.

<sup>27</sup> STL/BD/2009/03/REV.3, 18 March 2013.

<sup>28</sup> See Rule 57 (D) (i) STL RPE.

<sup>29</sup> Emphasis added.

disclosure. It is then for counsel to share this information with the accused. To require parallel disclosure to both an accused and counsel would defeat the purpose of legal representation.

10. I therefore dismiss the Urgent Request. In as far as counsel suggests that he needs permission to share disclosed material with the Accused, then he misunderstands my role. It is counsel's responsibility alone to make such decision, subject to ensuring that the confidentiality of the disclosed material is preserved. In this context, I recall my previous order

that the Defence, that is, the Accused and their counsel, must not disseminate material or information disclosed by *Amicus* to the public unless it is necessary for the preparation of their case or if made public in the course of public and open sessions proceedings [...]

and

that Counsel is reminded of their obligation to protect the confidentiality of the evidence and the proceedings, pursuant to Article 5 of the Code of Counsel.<sup>30</sup>

## II. Urgent Submissions

11. In his Urgent Submissions, counsel informs me of his intention to file preliminary motions in accordance with Rule 90 and notes the applicable time-limit for filings such motions, which is 30 days after disclosure of the material mentioned in Rule 110 (A) (i).<sup>31</sup> He states that “there has been no clarification as to whether all documents mentioned in Rule 110 (A) (i) of the Rules have been disclosed” and complains that no documents have been disclosed to the Accused.<sup>32</sup> In this regard, he makes reference to the Urgent Request.<sup>33</sup> Counsel adds that any decision on the preliminary motion filed in the case STL-14-05 “should not apply to the Accused in the present case”.<sup>34</sup> Otherwise, they should be allowed to make submissions before the rendering of any decision in the other case.<sup>35</sup>

12. As mentioned above, *Amicus* completed disclosure in this case on Friday, 18 July 2014.<sup>36</sup> Pursuant to Rule 7, the 30-day time-limit for the filing of preliminary motions under Rule 90

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<sup>30</sup> F0030, Decision on the *Amicus Curiae* Prosecutor's Application for Protective Measures and Non-Disclosure, 3 July 2014, Disposition.

<sup>31</sup> Urgent Submissions, para. 5.

<sup>32</sup> *Id.* at para. 6.

<sup>33</sup> *Ibid.*

<sup>34</sup> Urgent Submission, para. 8.

<sup>35</sup> *Ibid.*

<sup>36</sup> *See* above paras. 6, 10.

began to run on Monday, 21 July 2014. It therefore expires on Tuesday, 19 August 2014. If counsel intends to file preliminary motions, they are due on that date.

13. With respect to counsel's concern about decisions taken in the other contempt case currently before me, I note that the two cases are legally distinct and that each case is decided on its own merits.<sup>37</sup> Decisions I take in the other case have no direct applicability to the proceedings in this matter and in no way affect the rights of the Defence to challenge the order in lieu of an indictment as they see fit.

### **DISPOSITION**

**FOR THESE REASONS;**

**PURSUANT** to Rules 7, 59 (F), 60 *bis* (H), 90, and 110 (A) (i) of the Rules;

**I**

**DISMISS** the Urgent Request and the Urgent Submissions; and

**CONFIRM** that any preliminary motions must be filed by 19 August 2014.

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

Dated 14 August 2014

Leidschendam, the Netherlands



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Judge Nicola Lettieri  
Contempt Judge

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<sup>37</sup> See ICTY, *Prosecutor v. Martić*, IT-95-11-A, Decision on Veselin Šljivančanin's Motion Requesting Simultaneous Adjudication of the *Prosecutor v. Milan Martić* and *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin* Cases, 16 April 2008, para. 6.

