

**THE CONTEMPT JUDGE**

**Case No.:** STL-14-06/PT/CJ  
**Before:** Judge Nicola Lettieri, Contempt Judge  
**Registrar:** Mr Daryl Mundis, Registrar  
**Date:** 1 September 2014  
**Original language:** English  
**Classification:** Public

**IN THE CASE AGAINST**

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

**DECISION ON DEFENCE REQUEST FOR RECONSIDERATION OF DECISION  
ON CERTIFICATION**

***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. Counsel for the Accused has filed a motion requesting that I grant leave to submit a request for reconsideration of a previous decision, in which I denied certification to appeal the decision to assign counsel to the Accused.<sup>1</sup> The *Amicus Curiae* Prosecutor (“*Amicus*”) responds that I should dismiss the Motion.<sup>2</sup> I find that counsel’s arguments do not meet *prima facie* the criteria necessary for reconsideration of a decision and for this reason dismiss the Motion.

## **BACKGROUND**

2. A detailed procedural history is contained in the decision denying certification to appeal the decision to assign counsel to the two Accused.<sup>3</sup> In short, following my decision to assign counsel to the Accused given the Accused Mr Al Amin’s statements during the initial appearance and his withdrawal from the hearing,<sup>4</sup> the Accused filed a request asking for certification to appeal this decision. I ordered the Accused to make written submissions on their willingness to participate in the proceedings. However, they failed to respond to my questions in this regard. In the meantime, the Head of Defence Office assigned Mr Abou Kasm to represent the Accused in this case.

3. In the Certification Decision, pursuant to Rule 126 (C) of the Rules of Procedure and Evidence (“Rules”), I dismissed the Accused’s request for certification of the decision to assign counsel to them. I found that the issue which the Accused sought to bring before the Appeals Panel, namely, whether I erred in ordering the Head of Defence Office to assign counsel, was not

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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, F0043, Request from Assigned Counsel for Leave to Submit a Request for Reconsideration of the “Decision on the Request for Certification to Appeal Decision on Assignment of Counsel” Rendered on 17 July 2014, 1 August 2014 (“Motion”) (with F0043/A01, Annex A: Request from Assigned Counsel for Reconsideration of the “Decision on the Request for Certification to Appeal Decision on Assignment of Counsel” Rendered on 17 July 2014, 1 August 2014). All further references to filings and decisions relate to this case number unless otherwise stated.

<sup>2</sup> F0050, Consolidated Response to Defence “Request from Assigned Counsel for Leave to Submit a Request for Reconsideration of the “Decision on the Request for Certification [*sic*] to Appeal Decision on Assignment of Counsel” Rendered on 17 July 2014” and “Annex A: Request from Assigned Counsel for Reconsideration of the “Decision on the Request for Certification to Appeal Decision on Assignment of Counsel” Rendered on 17 July 2014”, 12 August 2014 (“Response”), para. 13.

<sup>3</sup> F0036, Decision on the Request for Certification to Appeal Decision on Assignment of Counsel, 17 July 2014 (“Certification Decision”), paras 2-8.

<sup>4</sup> See STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06, Transcript of 29 May 2014, p. 19 (EN); F0018, Reasons for Decision on Assignment of Counsel, 5 June 2014 (“Written Reasons”).

one for which an immediate resolution by the Appeals Panel may materially advance the proceedings.<sup>5</sup> I based this conclusion on the following considerations:

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” 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*.

Furthermore, on 18 June 2014, I provided an opportunity for the Accused to state their position clearly, yet they failed to do so. 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.<sup>6</sup> [...]

4. I also decided that I would no longer consider submissions from the Accused themselves unless otherwise ordered, because the Accused are now represented by counsel.<sup>7</sup>

5. Counsel now seeks leave to request reconsideration of my decision in two aspects. He argues that I made an error when finding that an interlocutory appeal is speculative at this stage.<sup>8</sup> He also contends that I erred when deciding “that any submissions filed by the Accused would no longer be taken into account”.<sup>9</sup>

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<sup>5</sup> Certification Decision, para. 20.

<sup>6</sup> *Id.* at paras 19-20 (footnotes omitted).

<sup>7</sup> *Id.* at para. 11.

<sup>8</sup> Motion, paras 27-28

<sup>9</sup> *Id.* at para. 29; *see also* paras 30-33.

## APPLICABLE LAW

6. Rule 140 of the Rules provides the following:

A Chamber may, *proprio motu* or at the request of a Party with leave of the Presiding Judge, reconsider a decision, other than a Judgement or sentence, if necessary to avoid injustice.

Pursuant to Rule 60 *bis* (H), Rule 140 is applicable, *mutatis mutandis*, in contempt proceedings.

7. Rule 140 establishes a bifurcated procedure. The party requesting reconsideration must first obtain leave of the Presiding Judge of Chamber to file a reconsideration request. If such request is filed before a single Judge, previous practice has been to require that leave must be granted by that Judge.<sup>10</sup> The step of first seeking leave serves as a filter to prevent the filing of unwarranted requests for reconsideration.<sup>11</sup> Any request for leave must therefore undergo a *prima facie* examination of the merits of the sought reconsideration and will be dismissed if it is manifestly unfounded.<sup>12</sup>

8. In this regard, I recall the applicable standards for reconsideration. In particular, the Appeals Chamber has held that:

[R]econsideration is an exceptional measure and subject to strict requirements. A party seeking the remedy must demonstrate that reconsideration is necessary to avoid an injustice. What constitutes an injustice is case-dependent, but “[a]t a minimum, it involves prejudice.” The party must allege prejudice on specific grounds, which may include that a decision is “erroneous or [. . .] constituted an abuse of power on the part of the Chamber” or that “new facts or a material change in circumstances” have arisen after the decision is made. We recall that “the presence of these grounds is not sufficient per se. The party seeking reconsideration must also show that they resulted in prejudice”.<sup>13</sup>

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<sup>10</sup> See STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/PTJ, F0172, Decision on the Prosecution’s Request for Partial Reconsideration of the Pre-Trial Judge’s Order of 8 February 2012, 29 March 2012, para. 30, fn. 33.

<sup>11</sup> See STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC, F1214, Decision on Request by Defence for Messrs Badreddine and Oneissi for Authorization to Seek Reconsideration of the Appeals Chamber’s Decision of 25 October 2013, 13 November 2013, para. 4; STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, F1603, Decision on Leave to Reconsider Two Decisions on Challenges to the Form of the Indictment (Merhi Defence), 30 June 2014, paras. 4-5.

<sup>12</sup> *Ibid.* In some systems, this would be spelled out as an examination as to the *fumus boni juris* of the request (assessment of the possibility of success) and the *periculum in mora* (possible prejudice).

<sup>13</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC, 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, para. 10 (footnotes referring to other case-law omitted).

## DISCUSSION

### **I. Whether leave should be granted to request reconsideration of my finding that an appeal is speculative in nature**

9. Counsel first argues that the assignment of counsel against the will of the Accused is an “exceptional fact” which affects the rights of the Accused and which, by itself, requires that certification to appeal should be granted.<sup>14</sup> While the procedural situation of the Accused may change, this should not prevent an appeal at this stage, given the immediate and direct impact on the Accused.<sup>15</sup> *Amicus* responds that counsel has not demonstrated an error in the Certification Decision or that there are new facts or a change in circumstances warranting reconsideration.<sup>16</sup>

10. I first recall that Rule 126 (C) requires a finding that the contested issue is not only significant under the terms of the Rule but that it is one “for which an immediate resolution by the Appeals Chamber may materially advance the proceedings”. I also recall that the Accused Mr Al Amin during his initial appearance stated that, due to my interruption, he would henceforth remain silent and would refuse to appoint any lawyer to represent him or *Al Akhbar* S.A.L.<sup>17</sup> After that, and stating that he did not recognize the authority of the Tribunal, Mr Al Amin proceeded to walk out of the courtroom. Furthermore, the Accused have until now—despite a number of opportunities given to them—failed to clearly state their intentions as to whether and under which modalities they intend to participate in the proceedings. In this light I found that any appeal at this stage would be speculative.<sup>18</sup>

11. Counsel has failed to demonstrate *prima facie* any injustice resulting from this finding. In particular, there is no prejudice to the Accused. The assignment of counsel provisionally ensures that the rights of the Accused are safeguarded especially in their absence from the courtroom;<sup>19</sup> in the meantime they are free to inform me whether they are willing to represent themselves in the proceedings, actively and in accordance with the Rules. I have made clear a number of times that I would be willing to reconsider my decision to assign counsel to represent the Accused if

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<sup>14</sup> Motion, para. 27.

<sup>15</sup> *Id.* at para. 28.

<sup>16</sup> Response, paras 7-9.

<sup>17</sup> See Certification Decision, para. 3 (referring to Written Reasons, para. 9).

<sup>18</sup> *Id.* at para 20.

<sup>19</sup> See Written Reasons, paras 21-25.

they provide unequivocal answers in this respect. (For example, the next opportunity for the Accused to do so will be in an upcoming status conference.<sup>20</sup>) The matter is therefore still pending at the first instance-level and not ripe for appellate review.<sup>21</sup> Reconsideration of this aspect of the Certification Decision is manifestly unwarranted and I dismiss the Motion in this regard.

## **II. Whether leave should be granted to request reconsideration of my decision not to accept further filings from the Accused**

12. Counsel next claims that my decision not to accept further filings from the Accused deprives the Accused of one of their fundamental rights under Article 16 (4) (d) of the Statute. He submits that I took my decision without any request or debate in this regard and that this alone meets the criteria for reconsideration.<sup>22</sup> He adds that derogations from the right under Article 16 (4) (d) should only be made under exceptional circumstances<sup>23</sup> and argues that it is crucial that the Accused are authorized to file their own submissions in this case.<sup>24</sup> *Amicus* responds that I have not absolutely rejected the Accused's right to participate in the proceedings and that the Accused will have an opportunity to make observations at the next status conference.<sup>25</sup> He adds that the Accused have made no commitment to participate in the proceedings in good faith and to obey court orders and rules.<sup>26</sup> As they are represented by counsel, all submissions are made by and through counsel.<sup>27</sup>

13. I first note that counsel's arguments are based on the false premise that "any submissions filed by the Accused would no longer be taken into account".<sup>28</sup> That is not what I decided in the Certification Decision. On the contrary, I held that I will "no longer consider submissions from the Accused *unless otherwise ordered*".<sup>29</sup> In other words, while the Accused are free to make

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<sup>20</sup> See F0037, Scheduling Order, 17 July 2014, para. 5.

<sup>21</sup> See MICT, *In the matter of Sebureze and Turinabo*, MICT-13-40-AR90 & MICT-13-41-AR90, Decision on ICTR Prosecutor's Interlocutory Appeal and Maximilien Turinabo's Motion to Strike, 2 May 2013, p. 3 (with further references to other case-law in fn. 11). In this respect, I note that the ICC decision cited by counsel in support of his submissions (Motion, para. 28) can be distinguished given the entirely different factual circumstances in this case.

<sup>22</sup> Motion, para. 29.

<sup>23</sup> *Id.* at para. 30.

<sup>24</sup> *Id.* at para. 31.

<sup>25</sup> Response, para. 10.

<sup>26</sup> *Id.* at para. 11.

<sup>27</sup> *Id.* at para. 12.

<sup>28</sup> Motion, para. 23.

<sup>29</sup> Certification Decision, para. 11.

submissions, I will consider on a case-by-case basis whether I should accept them, when appropriate.

14. This is in line with the practice of other international tribunals.<sup>30</sup> Indeed, unless otherwise ordered assigned counsel carries all responsibilities related to the Accused's defence.<sup>31</sup> It would hardly be in the interests of justice to permit the Accused represented by assigned counsel to make submissions in parallel, on their own.<sup>32</sup> Such parallel submissions would carry the risk of creating conflicts and confusion as to what constitutes the position of the Defence. While there could be limited exceptions to this principle (for instance with respect to litigation regarding the assignment and conduct of counsel as such) they must however be narrow. Otherwise, effective representation of an accused by counsel, and indirectly also the trial management, would be made difficult if not impossible.<sup>33</sup>

15. It also follows that there was no need to further hear the Parties.<sup>34</sup> My decision flowed directly from the fact that I had ordered the assignment of counsel, a matter on which I have been encouraging submissions. No further arguments were required on a mere consequence of that order once it was made.

16. In sum, no injustice could conceivably arise from my decision not to accept further submissions from the Accused unless otherwise ordered. The request for reconsideration is manifestly unfounded and I dismiss the Motion also in this respect.

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<sup>30</sup> Cf. ICTR, *Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Judgement, 28 November 2007, para. 267, fn. 651 (“Where an accused is represented by counsel, and except in special circumstances, it is for Counsel to conduct cross-examination on his behalf. [...] [W]here an accused (or appellant) has legal assistance, his Counsel “shall deal with all matters arising out of the representation of the accused or of the conduct of his Defence”: Article 15(A) of the [ICTR] Directive on the Assignment of Defence Counsel.”); see also ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-AR73.11, Decision on Slobodan Praljak's Appeal of the Trial Chamber's Decision on the Direct Examination of Witnesses Dated 26 June 2008, 11 September 2008, para. 19 (fn. 40).

<sup>31</sup> See F0053, Decision on Urgent Defence Submissions Regarding Disclosure by *Amicus Curiae* Prosecutor and Preliminary Motions, 14 August 2014, paras 8-9.

<sup>32</sup> The decisions cited by counsel (Motion, fn. 26) are not of assistance in this case and can be distinguished. Unlike in these cases, the Accused here have not stated unequivocally that they are willing to participate in the proceedings against them and in accordance with the applicable Rules.

<sup>33</sup> See F0051, Decision on Motion for the Disqualification of Judge Fransen, 12 August 2014, paras 26, 31.

<sup>34</sup> *Contra* Motion, para. 29.

## DISPOSITION

**FOR THESE REASONS;**

**PURSUANT TO** Rules 60 *bis* (H), 126 and 140 of the Rules;

**I**

**DISMISS** the Motion.

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

Dated 1 September 2014

Leidschendam, the Netherlands



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Judge Nicola Lettieri  
Contempt Judge

