

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: 11 November 2015

Original language: English

Classification: Public

IN THE CASE AGAINST

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

ORDER ON SUBMISSIONS REGARDING LEGAL REPRESENTATION

***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

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



BACKGROUND

1. On 31 January 2014 Judge Baragwanath, in his function as the initial contempt judge in this matter, issued an Order in Lieu of an Indictment in which Mr Ibrahim Mohamed Ali Al Amin and *Akhbar Beirut* S.A.L. were both charged separately with one count each of contempt and obstruction of justice.¹ Judge Baragwanath then recused himself from the proceedings. In his capacity as President of the Tribunal and pursuant to article 1.1 of the Practice Direction on Designation of Judges in Matters of Contempt, Obstruction of Justice and False Testimony, he designated me as the new contempt judge in a separate order issued the same day.²
2. On 18 March 2014, I issued a summons to appear to Mr Al Amin and *Akhbar Beirut* S.A.L. ordering their first appearance in these proceedings for 13 May 2014.³ On 8 May 2014, Mr Al Amin filed a request to adjourn the first appearance date for “a substantial period of time” in light of the “sensitivity and critical nature of the case, and the nature of the standards required for selecting legal counsel.”⁴ At the oral hearing of 13 May 2014, I rescheduled the date of the initial appearance to 29 May 2014.⁵
3. On 29 May 2014, Mr Al Amin, representing himself and *Akhbar Beirut* S.A.L (in his capacity as the company’s Chairman), attended the initial appearance hearing in the present contempt proceedings. In conformity with Rule 98 of the Rules of Procedure and Evidence (“Rules”), I advised the Accused of their fundamental rights, including the right to the assistance of or representation by legal counsel.⁶
4. During the initial appearance, the Accused declared his desire to remain silent and his refusal to retain or have appointed any lawyer to represent either himself or *Akhbar Beirut*.⁷ Thereafter, Mr Al Amin left the courtroom. Accordingly, pursuant to Rule 59 (F), I ordered the

¹ STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/CJ, F0001, Redacted Version of Decision in Proceedings for Contempt with orders in Lieu of an Indictment, 31 January 2014.

² STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/1/PRES, F0002, Order Designating Contempt Judge, 31 January 2014.

³ F0006, Summons to Appear (*Akhbar Beirut* S.A.L.), 18 March 2014; F0007, Summons to Appear (Mr Ibrahim Al Amin), 18 March 2014.

⁴ F0010, English Translation of Correspondence from the Accused, 13 May 2014.

⁵ STL, *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, STL-14-06/PT/CJ, Initial Appearance, 13 May 2014, p.12, lines 4-11.

⁶ STL-14-06/PT/CJ, Initial Appearance of *Akhbar Beirut* S.A.L. and Ibrahim Al Amin, 29 May 2014, (“Transcript of 29 May 2014”), p.3, lines 17-25; p.5, lines 7-10; p.6, lines 23-25; p.7, lines 1-18 (EN).

⁷ Transcript of 29 May 2014, p.13, lines 6-11.

Head of Defence Office to assign counsel to the Accused as it was “necessary in the interests of justice and to ensure a fair and expeditious trial”.⁸ I provided written reasons on 5 June 2014.⁹

5. On 12 June 2014, I received a Request for Certification filed by the Accused in which they argued that assigning counsel to them would deprive them of their fundamental right to self-representation and the right to a fair trial.¹⁰ They advanced five grounds on the basis of which certification should be granted and argued that an immediate resolution by the Appeals Panel would significantly expedite the proceedings.¹¹

6. 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 by being present in the courtroom, with legal assistance if necessary.¹² 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”.¹³ I therefore found “it appropriate to provide them with another opportunity to clarify their intentions”.¹⁴

7. Following the submission by the Accused on 25 June 2014 in which they failed to respond to the questions specified in my Order of 18 June 2014,¹⁵ I invited the *Amicus*¹⁶ to make

⁸ Transcript of 29 May 2014, p. 19, lines 1-5.

⁹ STL-14-06/PT/CJ, F0018, Reasons for Decision on Assignment of Counsel, 5 June 2014 (“Decision of 5 June 2014”).

¹⁰ 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, (“Request for Certification”), 12 June 2014.

¹¹ Request for Certification, pp 3-6; 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”).

¹² F0024, Decision on Requests by Head of Defence Office and Order on Further Submissions, 18 June 2014 (“Order of 18 June 2014”).

¹³ Id. at para 10.

¹⁴ Ibid.

¹⁵ F0026, Response to Demand that I Clarify My Position Pursuant to the Order of 18 June 2014, 25 June 2014

¹⁶ On 20 June 2014, the *Amicus* responded to the Request for Certification by stating that a decision on the matter would be premature as the Accused had not yet responded to questions posed in my Order of 18 June 2014: See 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.

any further submissions on the Request for Certification by 7 July 2014.¹⁷ On that day the *Amicus* filed his further response, reiterating that the issues were not ripe for appellate adjudication given that the Accused still refused to make their positions clear.¹⁸

8. On 30 June 2014, the Head of Defence Office assigned Mr Antonios Abou Kasm to represent the Accused in this case.¹⁹ Mr Abou Kasm was sworn in on 3 July 2014.²⁰

9. On 17 July 2014, I dismissed the Request for Certification on the grounds that seizing the Appeals Panel of an issue, which would neither lead to an immediate resolution nor materially advance the proceedings, would be speculative and premature in light of the fact that the Accused had not yet clearly stated their position on the issue of legal participation and that my decision to assign counsel could be revisited.²¹

DISCUSSION

10. The Tribunal's Statute, the Rules and other relevant legal provisions all ensure that any Accused before the Tribunal will receive a "fair and public hearing".²² The Accused's stated refusal to participate in the proceedings thus far underpins my previous decision to assign counsel as I found it necessary in order to safeguard the rights of the Accused.²³

11. I note that Mr Al Amin last appeared before the Tribunal on 29 May 2014. The trial date in the present contempt proceedings has now been fixed to begin on 28 January 2016, with a pre-trial conference scheduled for 11 December 2015.²⁴

12. It is therefore incumbent upon me once again to remind the Accused of their fundamental rights which are enshrined in article 16 of the Statute of Tribunal, amongst others. This includes,

¹⁷ F0036, Decision on the Request for Certification to appeal decision on assignment of counsel, 17 July 2014, para.7. (See email from a Legal Officer of the Chambers to a representative of the *Amicus*, 1 July 2014).

¹⁸ F0032, Further Response to Defence Request for Certification to Appeal "Reasons for Decision on Assignment of Counsel" Dated 5 June 2014, 7 July 2014.

¹⁹ F0028, Appointment of Counsel Pursuant to Rule 59 (F) of the Rules of Procedure and Evidence, 30 June 2014.

²⁰ 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, para. 17.

²¹ F0036, Decision on the Request for Certification to Appeal Decision on Assignment of Counsel, 17 July 2014, paras.10, 19-20.

²² Rules 60*bis* (I) and 69 STL RPE; Article 16 (2) STL St.

²³ F0018, Reasons for Decision on Assignment of Counsel, 5 June 2014; *See also* Transcript of 29 May 2014, pp. 16-17, 19.

²⁴ F0111, Scheduling Order, 14 October 2015.

inter alia, the right of an accused to be tried in his presence and to defend himself in person. However, self-representation is necessarily subject to certain conditions, including that the accused be present in the courtroom.²⁵ Moreover, on judicial order this self-representation may be complemented or substituted by the assignment of legal counsel.²⁶

13. An additional guarantee is the concomitant right of an accused to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf. This is complemented by the right of an accused to examine all evidence to be used against him during the trial in accordance with the Rules.

14. In light of the above-mentioned developments in these proceedings and considering the rights of any accused under Article 16 of the Statute, I find it appropriate to provide the Accused with a final opportunity to clarify their intentions in respect of their participation in these proceedings and the retention of legal representation before the commencement of the trial. In particular, I request the Accused to submit in writing and to answer unequivocally within seven days after receiving the Arabic translation of this Order:

- 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 at the seat of the Tribunal.

15. In the event that the Accused provide written confirmation that they intend to represent themselves and as a necessary corollary, will be present at all hearings at the seat of the Tribunal, I could reassess the need for assigned counsel. Should the Accused fail to provide any written response within the timeline outlined in this order or confirm their intention not to participate in these proceedings, my order to assign counsel will stand and the interests of the Accused will continue to be represented by the assigned counsel in all matters going forward, including the trial proceedings.

²⁵ See Rule 105.

²⁶ See Rule 59(F).

DISPOSITION

FOR THESE REASONS;

PURSUANT to Rules 60*bis* (H) and 77(A) of the Rules;

I

ORDER the Accused to make written submissions within seven days from the notification of 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 at the seat of the Tribunal.

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

Dated 11 November 2015

Leidschendam, the Netherlands



Judge Nicola Lettieri

Contempt Judge

