



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE PRE-TRIAL JUDGE

Case No.: **STL-11-01/PT/PTJ**

The Pre-Trial Judge: **Judge Daniel Fransén**

The Registrar: **Mr. Herman von Hebel**

Date: **3 September 2012**

Original language: **English**

Classification: **Public with confidential and *ex parte* annex**

THE PROSECUTOR

v.

**SALIM JAMIL AYYASH
MUSTAFA AMINE BADREDDINE
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA**

SECOND DECISION ON VICTIMS' PARTICIPATION IN THE PROCEEDINGS

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I. Introduction

1. In this Decision, the Pre-Trial Judge rules on the Victims' Participation Unit's (the "VPU") further transmission of applications to participate in the proceedings as victims.¹ This Decision follows the Pre-Trial Judge's decision of 8 May 2012 on Victims' Participation in the Proceedings.²

II. Procedural Background

2. On 8 May 2012, the Pre-Trial Judge issued a public decision with a confidential and *ex parte* annex on the status of victims participating in the proceedings (the "VPPs" or "VPP") pursuant to Article 17 of the Statute and Rule 86 of the Rules of Procedure and Evidence (the "Rules").³ The Pre-Trial Judge authorised 58 of the 73 applicants to participate in the proceedings in the *Ayyash et al.* case.⁴

3. With respect to the remaining 15 applicants, the Pre-Trial Judge considered that because their applications were incomplete, they were not granted VPP status at that stage of the proceedings, stating that:

A finding that an Application is incomplete is related to the supporting materials which accompanied those applications, and is not equivalent to a finding that an applicant should be denied VPP status. The Pre-Trial Judge states that applicants

¹ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Further Transmission of Consolidated Applications for the Status of Victim Participating in the Proceedings, Including Supplementary Material, 8 August 2012, Confidential and *ex parte* with confidential and *ex parte* annexes (the "Further Transmission of Consolidated Applications").

² STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Decision on Victims' Participation in the Proceedings, 8 May 2012, Public with confidential and *ex parte* annex (the "Decision of 8 May 2012").

³ On 9 February 2012, the VPU filed its first transmission of applications received from persons seeking to participate in the proceedings as victims (STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Transmission of Applications for the Status of Victim Participating in the Proceedings, filed publicly with confidential and *ex parte* annexes, 9 February 2012 ("Transmission of Applications"). The VPU filed both the "Corrigendum to 'Transmission of Applications for the Status of Victim Participating in the Proceedings'" and the "Annex - Corrigendum to 'Overview of Victim Applications'" on 15 February 2012, the latter being filed confidential and *ex parte*. The VPU thereafter filed a Transmission of Consolidated Applications (STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Transmission of Consolidated Applications for the Status of Victim Participating in the Proceedings, Including Supplementary Material, 26 April 2012, Confidential and *ex parte* with confidential and *ex parte* annexes (the "Transmission of Consolidated Applications") and a Second Transmission of Consolidated Applications (STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Second Transmission of Consolidated Applications for the Status of Victim Participating in the Proceedings, Including Supplementary Material, 3 May 2012, Confidential and *ex parte* with confidential and *ex parte* annexes ("Second Transmission of Consolidated Applications")) on 26 April and 3 May 2012 respectively.

⁴ Decision of 8 May 2012, paras 103 and 104.

whose applications have been found to be incomplete may resubmit their applications for VPP status, with the assistance of the VPU, and with the supplementary materials required.⁵

4. On 8 August 2012, the VPU filed the Further Transmission of Consolidated Applications and 15 annexes pursuant to Rule 51(B)(iii), and transmitted to the Pre-Trial Judge 13 consolidated versions of applications that had been found to be incomplete in the Decision of 8 May 2012.⁶ The VPU also transmitted one new application.

III. Reasons for the Decision

5. According to Rule 86, the Pre-Trial Judge must decide whether any of the 14 applicants whose applications were transmitted to him by the VPU on 8 August 2012 may be granted VPP status.

6. The relevant legal analysis of the law applicable to a determination of VPP status was made in the Decision of 8 May 2012.⁷ That analysis applies to the Pre-Trial Judge's assessment, in this Decision, of each of the 14 individual applications before him.

7. Rule 86(B) details the criteria to be applied when determining VPP status, the first four of which the Pre-Trial Judge is required to consider. With respect to the 14 applications currently under consideration, the first three of the four mandatory criteria in Rule 86(B)(i)-(iii)⁸ are analysed for each individual application in the confidential and *ex parte* annex to this Decision. Following this analysis, nine of the fourteen applications meet these criteria. That annex is classified as confidential and *ex parte* for the reasons given in Section VI of this Decision.

8. The fourth mandatory criterion, pursuant to Rule 86(B)(iv), concerns whether the participation of any of the applicants as VPPs would be prejudicial to, or inconsistent with, the rights of the accused to a fair and impartial trial. As was the case in the Decision of 8 May 2012⁹ this criterion is analysed here and not in the annex. Having analysed the nine applications that satisfy the criteria in Rule 86(B)(i)-(iii), the Pre-Trial Judge finds that there are no reasons at this stage to conclude that granting VPP status to these nine applicants

⁵ Decision of 8 May 2012, para. 107.

⁶ The remaining two applications were discontinued by the applicants.

⁷ Decision of 8 May 2012, Sections III and IV.

⁸ Those criteria are: (i) whether the applicant has provided *prima facie* evidence that he is a victim as defined in Rule 2; (ii) whether the applicant's personal interests are affected; and (iii) whether the applicant's proposed participation is intended to express his views and concerns.

⁹ Decision of 8 May 2012, para. 101.

would be prejudicial to, or inconsistent with, the rights of the accused to a fair and impartial trial.

9. With respect to the remaining criteria which the Pre-Trial Judge may take into account in Rule 86(B)(v)-(x),¹⁰ the Pre-Trial Judge has analysed each application that meets the mandatory requirements in the same manner as he employed in the Decision of 8 May 2012.¹¹ On the basis of the information before him at this stage of proceedings, there is nothing to suggest that the participation of any of the 14 applicants currently under consideration — when seen in light of those remaining criteria — ought to be denied VPP status.

IV. Conclusions on the Assessment of Applications

10. In the Further Transmission of Consolidated Applications, the VPU re-submitted 13 of the 15 applications previously considered incomplete, with supplementary information intended to render them complete. The VPU also submitted one new application.

11. With respect to the new application, the Pre-Trial Judge recalls that in his Scheduling Order of 8 September 2011¹², he acknowledged the possibility of persons claiming to be victims of offences mentioned in the indictment to apply for VPP status beyond the stated deadline of 31 October 2011, as long as they could provide valid reasons to justify the delay. In the case of V078, V078's lawyer has informed the VPU that V078 was initially too wary of applying to participate as a victim in the proceedings. However, subsequent to seeing relatives successfully apply for VPP status, V078 decided to apply.¹³ The Pre-Trial Judge accepts that this is a valid reason which has justified the delay in V078's application.

12. Having conducted an assessment of each individual application, and following the VPU's further transmission of supplementary material, the Pre-Trial Judge is satisfied that

¹⁰ The remaining criteria in Rule 86(B) are the following: (v) whether the applicant having relevant factual information pertaining to the guilt or innocence of the accused is likely to be a witness; (vi) whether the legitimate personal interests of the applicant at stake in the trial are different from those of other victims participating in the proceedings, if any; (vii) whether the proposed participation by the applicant would jeopardise the appearance of integrity, dignity, decorum and objectivity of the proceedings; (viii) whether the proposed participation would cause unnecessary delay or inefficiency in the proceedings; (ix) whether the proposed participation would impact negatively on the security of the proceedings or of any person involved; and (x) whether the proposed participation would otherwise be in the interests of justice.

¹¹ Decision of 8 May 2012, para. 102.

¹² STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PTJ, Scheduling Order Regarding the Deadline for Filing Applications to Participate in the Proceedings as a Victim, 8 September 2011.

¹³ Further Transmission of Consolidated Applications, para. 39.

nine of the 14 applications fulfil the requirements, as set forth in the Statute and the Rules, for being granted VPP status. These nine applicants are granted VPP status.

13. The Pre-Trial Judge considers that the remaining five applications are incomplete, and that the applicants therefore cannot be granted VPP status at this stage.

V. The Common Legal Representation and Grouping of Victims

14. The principles governing the common legal representation of VPPs were clarified in the Decision of 8 May 2012, and apply *mutatis mutandis* to the present Decision.¹⁴ In particular, and according to Rule 86(C)(ii), victims shall participate in the proceedings through legal representatives, unless otherwise authorised by the Pre-Trial Judge. As was the case in the Decision of 8 May 2012, and in the absence of any reason to order otherwise, the Pre-Trial Judge considers that the victims authorised to participate in proceedings pursuant to this Decision should do so through a legal representative.¹⁵

15. Furthermore, Rule 86(D) requires the Pre-Trial Judge to determine common legal representation according to the criteria of Rule 86(D)(i)-(iii).¹⁶ This provision suggests that, unless there are valid reasons to justify not doing so, the VPPs are presumed to be treated as a single group.¹⁷

16. Having reviewed the applications, the Pre-Trial Judge finds that there appears to be no valid reason to justify either dividing those granted VPP status in this Decision into different groups, or to distinguish them from the group of VPPs whose status was recognised in the Decision of 8 May 2012.¹⁸ The VPPs applicants authorised to participate in proceedings pursuant to this Decision shall form part of the group of victims identified in the Decision of 8 May 2012.¹⁹

¹⁴ Decision of 8 May 2012, paras 108-128.

¹⁵ Decision of 8 May 2012, para. 112.

¹⁶ Decision of 8 May 2012, para. 113.

¹⁷ Decision of 8 May 2012, paras 119, 120.

¹⁸ Decision of 8 May 2012, para. 127.

¹⁹ *Ibid.*

VI. Confidentiality

17. This Decision, like the Decision of 8 May 2012, is classified as “public” even though it refers to documents in the applications which are classified as confidential and *ex parte*.²⁰ It furthermore includes the confidential and *ex parte* annex in which the individual assessments of each application are presented.²¹ The Pre-Trial Judge considers that — for the same reasons advanced in the Decision of 8 May 2012 — withholding the applications and the identities of the applicants, and their applications, is justified at this stage of proceedings in order to allow persons who have been granted VPP status to seek protective measures pursuant to Rule 133.²² A request to that end should be submitted to the Pre-Trial Judge as soon as possible, and must include a risk assessment carried out by the Victims’ and Witnesses Unit.²³

FOR THESE REASONS,

THE PRE-TRIAL JUDGE,

PURSUANT TO Rules 86 and 133 of the Rules,

ACCEPTS V078’s application to participate in the proceedings as a victim;

GRANTS the status of victims participating in the proceedings to the following persons as referred to in the annex, and who shall form part of the group of victims identified in the Decision of 8 May 2012: V008; V012; V013; V014; V018; V019, V033; V034; V078;

REJECTS as incomplete the following Applications: V011; V015; V017; V032; V039;

ORDERS the VPU to notify each applicant of the present Decision and the Decision of 8 May 2012, insofar as it relates to his application;

²⁰ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Decision on Defence Motion of 17 February 2012 for an Order to the Victims’ Participation Unit to Refile its Submission *inter partes* and Inviting Submissions on Legal Issues Related to Applications for the Status of Victim Participating in the Proceedings, 5 April 2012 (the “Decision of 5 April 2012”).

²¹ Decision of 8 May 2012, para. 129.

²² Decision of 8 May 2012, para. 131.

²³ *Ibid.*

RECALLS the Decision of 5 April 2012 ordering that the annexes to the Further Transmission of Consolidated Applications remain confidential and *ex parte* until further order;

DECLARES that the annex to this Decision remains confidential and *ex parte* until further order; and

INVITES the Victims' Legal Representative to submit any request for the appropriate measures they consider necessary to ensure the privacy and protection of victims participating in the proceedings to the Pre-Trial Judge, together with a risk assessment for the relevant VPPs carried out by the Victims and Witnesses Unit.

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

Leidschendam, 3 September 2012



Daniel Fransen
Pre-Trial Judge

