

PUBLIC

R128344



STL-11-01/PT/PTJ  
F0436/20120927/R128344-R128358/EN/nc

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: **27 September 2012**  
Original language: **English**  
Classification: **Public**

**THE PROSECUTOR**

v.

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

**DECISION ON THE DUTY LEGAL REPRESENTATIVE'S MOTION FOR  
REVIEW OF THE REGISTRAR'S DESIGNATION OF THE  
LEAD LEGAL REPRESENTATIVE FOR VICTIMS**

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Mr. Eugene O'Sullivan

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Mr. Peter Haynes

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**Duty Legal Representative for V027, V028**  
Mr. Christopher Gosnell

**Counsel for Mr Hussein Hassan Oneissi:**  
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**Counsel for Mr Assad Hassan Sabra:**  
Mr. David Young



## **I. Introduction**

1. In the present decision, the Pre-Trial Judge rules on the Duty Legal Representative's motion for review of the Registrar's Designation of the Lead Legal Representative for Victims, in which he argues that the victims authorised to participate in the proceedings were not sufficiently consulted as to their representation.<sup>1</sup>

## **II. Procedural Background**

2. On 8 May 2012, the Pre-Trial Judge issued a decision on Victims' Participation in the Proceedings and granted the status of Victim Participating in the Proceedings ("VPP" or VPPs") to 58 applicants, including Victims V027 ("V027") and V028 ("V028").<sup>2</sup>

3. With regard to the representation of the victims authorised to participate in the proceedings, the Pre-Trial Judge stated that "there are no valid reasons to justify dividing the VPPs into more than one group" and that "there are no conflicting interests that may hinder common representation."<sup>3</sup> Accordingly, he ordered the Registrar to designate a common legal representative and as many co-counsel as he deemed appropriate to represent the group of victims, in accordance with Rule 51(G) of the Rules of Procedure and Evidence (the "Rules").<sup>4</sup>

4. On 16 May 2012, pursuant to Rule 51(G), the Decision of 8 May 2012 and the Directive on Victims' Legal Representation (the "Directive"),<sup>5</sup> the Registrar designated one Lead Legal Representative and two Co-Legal Representatives to represent the group of VPPs.<sup>6</sup>

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<sup>1</sup> STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/PTJ, Motion for Review of Registrar's Designation of Lead Legal Representative for Victims, 13 August 2012 (Confidential and *Ex Parte*) (the "Motion for Review")

<sup>2</sup> STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/PTJ, Decision on Victims' Participation in the Proceedings, 8 May 2012, (the "Decision of 8 May 2012"), para. 104.

<sup>3</sup> Decision of 8 May 2012, para 127.

<sup>4</sup> *Id*, para. 128

<sup>5</sup> Directive on Victims' Legal Representation, STL/BD/2012/04/Corr.1, adopted on 4 May 2012 and corrected on 21 June 2012 (the "Directive").

<sup>6</sup> STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/PTJ, Designation of Victims' Legal Representatives, 16 May 2012 (the "Designation")

5. Having been notified on 5 July 2012 of the Designation, V027 expressed his intention to seek a review thereof, pursuant to Article 22 of the Directive.<sup>7</sup> Similarly, on 19 July 2012, V028 also indicated the wish to seek review of the Designation.<sup>8</sup>
6. On 19 July 2012, the Registrar designated a Duty Legal Representative for V027 for the purpose of seeking review of the Designation.<sup>9</sup> On 25 July 2012, the Registrar designated the same Duty Legal Representative to represent V028 for the same purpose.<sup>10</sup>
7. On 25 July 2012, the Duty Legal Representative filed a request before the Pre-Trial Judge, seeking *inter alia* authorisation to file a joint motion for review on behalf of V027 and V028.<sup>11</sup>
8. After having been granted authorisation to file a joint motion by the Pre-Trial Judge on 27 July 2012<sup>12</sup>, the Duty Legal Representative filed his Motion for Review on 13 August 2012.<sup>13</sup>
9. On 15 August 2012, the Pre-Trial Judge invited the Registrar to respond to the Motion for Review.<sup>14</sup> The Registrar filed his Submissions in response on 21 August 2012.<sup>15</sup>
10. On 24 August 2012, the Duty Legal Representative filed a request before the Pre-Trial Judge seeking leave to reply to the Registrar's Submissions.<sup>16</sup> Upon being notified of the

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<sup>7</sup> STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/PTJ, Designation of Duty Legal Representative for Victim 027, 19 July 2012, (the "Designation of Duty Legal Representative for Victim 027"), para. 4.

<sup>8</sup> STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/PTJ, Designation of Duty Legal Representative for Victim 028, 25 July 2012, (the "Designation of Duty Legal Representative for Victim 028"), para. 7.

<sup>9</sup> Designation of Duty Legal Representative for Victim 027.

<sup>10</sup> Designation of Duty Legal Representative for Victim 028

<sup>11</sup> STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/PTJ, Request for Extension of Time and Joinder, 25 July 2012, paras 5-6

<sup>12</sup> STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/PTJ, Decision on Duty Legal Representative's Request for Extension of Time and Joinder, 27 July 2012.

<sup>13</sup> Motion for Review.

<sup>14</sup> STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/PTJ, Order Inviting the Registrar to Respond to the Duty Legal Representative's Motion for Review of Designation, 15 August 2012

<sup>15</sup> STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/PTJ, Registrar's Submissions in Response to the Duty Legal Representative's Motion for Review of Designation, 21 August 2012 (the "Submissions").

<sup>16</sup> STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/PTJ, Request for Leave to Reply to Registrar's Submissions, 24 August 2012 (Confidential and *Ex Parte*).

authorisation to file a reply on 27 August 2012,<sup>17</sup> the Duty Legal Representative filed his Reply on 30 August 2012.<sup>18</sup>

### III. The Motion for Review

11. On the basis of Article 22(A) of the Directive, the Duty Legal Representative requests the Pre-Trial Judge to: (i) quash the Designation by the Registrar of the Lead Legal Representative, thereby invalidating the designation of the two Co-Legal Representatives; and (ii) order the Registrar to re-appoint a Lead Legal Representative in compliance with the Directive, in particular the principle of adequate and equal consultation of victims.<sup>19</sup>

12. The Duty Legal Representative submits that the standard of review of an administrative decision of the Registrar, as developed by the practice of international tribunals, applies to the Designation.<sup>20</sup> Thus, a decision should be quashed if it:

- (a) failed to comply with [...] legal requirements, or
- (b) failed to observe any basic rules of natural justice or to act with procedural fairness towards the person affected by the decision, or
- (c) took into account irrelevant material or failed to take into account relevant material, or
- (d) reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached (the last being the “unreasonableness” test).<sup>21</sup>

13. The Duty Legal Representative avers that, in designating the Lead Legal Representative, the Registrar did not consider “any views or preferences expressed by the victims who are to be represented regarding their legal representation”, as prescribed by Articles 19(C) and 20(A) of the Directive. By failing to consult V027 and V028 regarding their representation prior to the designation of the Lead Legal Representative, the Registrar failed to comply with these provisions.<sup>22</sup>

14. According to the Duty Legal Representative, Articles 19(C) and 20(A) of the Directive should be interpreted in light of the jurisprudence and the Rules of Procedure and

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<sup>17</sup> STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/PTJ, Order Granting the Duty Legal Representative’s Request for Leave to Reply to the Registrar’s Submissions, 27 August 2012

<sup>18</sup> STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/PTJ, Reply to Registrar’s Submissions, 30 August 2012 (the “Reply”):

<sup>19</sup> Motion for Review, para 37

<sup>20</sup> *Id*, para. 12.

<sup>21</sup> *Ibid*

<sup>22</sup> *Id*, paras 15-18.

Evidence of the International Criminal Court (the “ICC Rules”). He submits that Rule 90 of the ICC Rules provides that victims have a determinative role in choosing their legal representation. Only if victims are unable to choose a legal representative, may the Registrar choose a common legal representative for them.<sup>23</sup> Furthermore, ICC jurisprudence indicates that “victims’ preferences and interests should be the paramount consideration in organizing common legal representation.”<sup>24</sup> The Duty Legal Representative adds that by not consulting V027 and V028 prior to the Designation, the Registrar violated the principle of consultation, as developed by the ICC.<sup>25</sup>

15. In addition, the Duty Legal Representative argues that the simultaneous designation of the Lead and Co-Legal Representatives violates the scheme implied by Articles 19(D) and 23 of the Directive.<sup>26</sup> The requirement set out in Article 19(D) of the Directive to consult the Lead Legal Representative prior to the designation of the Co-Legal Representative stipulates a two-step process. The simultaneous designation deprives the Lead Legal Representative of his right to challenge the Co-Legal Representative’s designation pursuant to Article 23 of the Directive.<sup>27</sup>

16. The Duty Legal Representative suggests that the appropriate remedy is to quash the Designation and order the Registrar to re-appoint a Lead Legal Representative, after consultations with the VPPs.<sup>28</sup> The Lead Legal Representative would then have the opportunity to express his views as to the suitability of the Co-Legal Representatives before their appointment by the Registrar, pursuant to Article 19(D) of the Directive.<sup>29</sup>

17. In the event that the Pre-Trial Judge dismisses this proposed remedy, the Duty Legal Representative offers three alternative remedies that all relate to V027 and V028’s opposition to being represented by the Co-Legal Representatives.<sup>30</sup> According to V027 and V028, the Co-Legal Representatives are “concerned primarily with furthering a particular political

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<sup>23</sup> *Id.*, para 18

<sup>24</sup> *Id.*, para 19, the Duty Legal Representative cites an ICC Registry’s submission in *The Prosecutor v. Banda & Jerbo*, Case No. ICC-02/05-03/09-337, Report on the Implementation of the Chamber’s Order Instructing the Registry to Start Consultations on the Organisation of Common Legal Representation, 21 June 2011, para. 10.

<sup>25</sup> *Id.*, paras 14-24.

<sup>26</sup> *Id.*, para. 26.

<sup>27</sup> *Id.*, paras 28-29.

<sup>28</sup> *Id.*, para. 30.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Id.*, paras 31-36

agenda, as reflected by their previous actions.”<sup>31</sup> In this regard, the Duty Legal Representative refers to the close ties between one of the Co-Legal Representatives and the Hariri family, and the alleged efforts of this Co-Legal Representative to prolong the detention of Jamil El-Sayed.<sup>32</sup> Due to this political agenda, V027 does not trust this Co-Legal Representative to “represent his interests and views loyally and accurately before this Tribunal.”<sup>33</sup> The Duty Legal Representative made no submissions substantiating any allegations with respect to the second Co-Legal Representative.

18. As such, the Duty Legal Representative alternatively requests the Pre-Trial Judge to either (i) recognise the existence of two groups of victims due to the conflicting views on “the strategy of the case and the identity of the lawyers”;<sup>34</sup> (ii) exercise his discretion under Rule 86(C)(ii) and allow V027 and V028 to participate in the proceedings without a legal representative,<sup>35</sup> or (iii) authorise V027 and V028 to withdraw their participation in the current proceedings.<sup>36</sup>

#### **IV. The Registrar’s Submissions**

19. In response to the motion for Review, the Registrar submits that due to the administrative nature of the decision on Designation, a review should involve an “assessment of the procedures followed in the making of the Designation, rather than of its merits”.<sup>37</sup> Hence, the Registrar agrees with the Duty Legal Representative’s evaluation that an administrative decision of the Registrar can only be quashed if a procedural error in its making can be shown.<sup>38</sup>

20. The Registrar further observes that the Duty Legal Representative’s arguments concerning procedural errors are founded on the idea that the legal requirements of Articles 19(C) and 20(A) of the Directive were not met.<sup>39</sup> With respect to the Duty Legal Representative’s argument addressing the Registrar’s failure to consult with victims prior to the designation of a Lead Legal Representative, the Registrar notes that this argument is

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<sup>31</sup> *Id.*, para. 32.

<sup>32</sup> *Ibid.*

<sup>33</sup> Motion for Review, para. 33.

<sup>34</sup> *Id.*, para. 34.

<sup>35</sup> *Id.*, para. 35.

<sup>36</sup> *Id.*, para. 36.

<sup>37</sup> Submissions, para. 17.

<sup>38</sup> *Id.*, para. 18; and Motion for Review, para. 12.

<sup>39</sup> Submissions, para. 19.

premised on a misunderstanding of Article 20(A) of the Directive.<sup>40</sup> According to Article 20(A), such consultation shall take place during the course of the VPU's work with victims who have applied or wish to apply to participate in the proceedings. Hence, the Article does not mandate that consultations be undertaken with victims only once they have been granted VPP status.<sup>41</sup> The Registrar submits that the VPU correctly discharged its obligations under Article 20(A) of the Directive by consulting V027 and V028's lawyer prior to the determination of their status.<sup>42</sup>

21. Furthermore, the Registrar asserts that the Rules and the Directive should not be interpreted in light of the principle of consultation developed by the ICC jurisprudence.<sup>43</sup> This is because the consultation process set out in the Rules and the Directive deliberately departs from the procedure followed at the ICC, where victims are entitled to choose their own legal representative, and where the Registrar only intervenes if the victims fail to reach a consensus on common legal representation. Instead, the Tribunal's Rules and Directive specifically mandate the Registrar to designate a legal representative.<sup>44</sup>

22. Additionally, the Registrar submits that Article 19(C) of the Directive does not require that the views of victims be taken into consideration when deciding on their legal representative. It merely suggests that it is a factor which *may* be taken into consideration and thus leaves it to the discretion of the Registrar to consider these factors in his decision.<sup>45</sup>

23. With respect to the procedure for the designation of the Co-Legal Representatives, the Registrar submits that, contrary to the Duty Legal Representative's assertion, Article 19(D) of the Directive does not dictate a "two-step process", and that for practical reasons, it is preferable that the designation of the Lead and Co-Legal Representatives occurs simultaneously.<sup>46</sup>

24. The Registrar submits that, as the Motion for Review does not demonstrate that the Designation was tainted by a procedural error, the Motion for Review should be dismissed

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<sup>40</sup> *Id*, para. 21.

<sup>41</sup> *Ibid*

<sup>42</sup> *Id*, paras 24-25.

<sup>43</sup> *Id*, para. 23

<sup>44</sup> *Ibid*

<sup>45</sup> *Id*, para. 26.

<sup>46</sup> *Id*, paras 30-33.

and the Designation should be confirmed pursuant to Article 22(C)(i) of the Directive.<sup>47</sup> In any event, the Registrar argues that the remedy proposed by the Duty Legal Representative would cause considerable delays to the proceedings, and the proper remedy would be to order further consultations to take place pursuant to Article 20(B) of the Directive.<sup>48</sup>

25. With respect to the request to separate V027 and V028 from the group of victims or allow them to participate without legal representation, the Registrar submits that these remedies constitute a *de facto* request for reconsideration of the Decision of 8 May 2012 insofar as it determined the common legal representation and grouping of the VPPs.<sup>49</sup> As regards the alternative request for withdrawal of V027 and V028's VPP status, the Registrar notes that this process should be judicially controlled.<sup>50</sup>

#### V. The Duty Legal Representative's Reply

26. In reply to the Submissions, the Duty Legal Representative avers that consultations, as understood under Articles 19 and 20 of the Directive, should be undertaken with victims personally. Therefore, the VPU should have consulted V027 and V028 rather than their lawyer.<sup>51</sup> Thus, the Registrar cannot maintain that V027 and V028 were meaningfully consulted prior to the Designation.<sup>52</sup>

27. The Duty Legal Representative further submits that the Registrar cannot ignore the statutory regime of the ICC relating to victims' representation when interpreting the extent of his consultation duties as mandated by the Directive.<sup>53</sup> By disregarding his obligations under Articles 19(C) and 20(A) of the Directive, the Registrar did not perform his consultation duties to the extent reasonably possible.<sup>54</sup>

28. Finally, the Duty Legal Representative argues that the remedies requested neither circumvent the Directive, nor disregard Rule 86(D).<sup>55</sup> First, Article 22(A) of the Directive seeks to ensure that victims can challenge a procedural error in the designation of legal

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<sup>47</sup> *Id.*, para 38.

<sup>48</sup> *Id.*, paras 43-46.

<sup>49</sup> *Id.*, paras 47 and 48

<sup>50</sup> *Id.*, paras 49 and 50

<sup>51</sup> Reply, paras 3-5.

<sup>52</sup> *Id.*, para. 7.

<sup>53</sup> *Id.*, para. 9.

<sup>54</sup> *Id.*, paras 8-10

<sup>55</sup> *Id.*, para. 14-17.



representatives. Considering that a procedural defect in the designation of the Lead Legal Representative can result in an invalid designation of Co-Legal Representatives, the Article permits an indirect challenge to the Co-Legal Representative's designation.<sup>56</sup> Second, the Duty Legal Representative argues that he has demonstrated a lawyer-client conflict of interest, as opposed to a conflict of interest between victims. In the Decision of 8 May 2012, the Pre-Trial Judge decided that he was not persuaded that there is a "conflict of interest that hinders common representation of a single group."<sup>57</sup> As the Pre-Trial Judge did not decide on the existence of a lawyer-client conflict of interest, the proposed remedies fall within the range of Article 20(B)(iii) of the Directive.<sup>58</sup>

## VI. Applicable Standard of Review

29. Before discussing the arguments advanced by the Duty Legal Representative and the Registrar, the Pre-Trial Judge recalls that the present Decision concerns the review of a specific decision of the Registrar, for which the Pre-Trial Judge is competent pursuant to Article 22 of the Directive. In the following section the Pre-Trial Judge will address the applicable standard of review for the decisions of the Registrar relating to the designation of victims' legal representative.

30. The Pre-Trial Judge notes that the standard of review of a decision by the Registrar designating victims' legal representatives has not yet been addressed by the Tribunal. Neither the Rules nor Article 22 of the Directive detail the applicable standard of review for the current decision. The Pre-Trial Judge therefore considers that the appropriate standard of review must be determined in light of the general principles of interpretation as specified by Rule 3.

31. In this respect, the Pre-Trial Judge considers that reference can be made to the standard of review developed by the jurisprudence of other international tribunals, as it reflects "general principles of international criminal law and procedure".<sup>59</sup>

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<sup>56</sup> *Id.*, para. 14.

<sup>57</sup> Decision of 8 May 2012, para. 121; Reply, para. 15.

<sup>58</sup> Reply, para. 16.

<sup>59</sup> Rule 3(A)(iii); and *Inter Alia* International Criminal Tribunal for the former Yugoslavia ("ICTY"), *Prosecutor v Miroslav Kvočka Mlado Radić, Zoran Žigić & Dragoljub Prcač*, Case No. IT-98-30-I-A, Decision on Review of Registrar's Decision to Withdraw Legal Aid from Zoran Žigić, 7 February 2003, para. 13; and ICTY, *The Prosecutor v Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Request for Review of OLAD Decision on Trial Phase Remuneration, 19 February 2010, para. 9; ICC, *The Prosecutor v Germain Katanga*

32. As noted by other international tribunals, the judicial review of a decision by the Registrar concerns the propriety of a certain procedure followed when reaching a decision, as well as the outcome of that decision. A successful motion for review should thus demonstrate either that the decision is tainted by a procedural error, in view of the fact that the Registrar: (i) failed to comply with legal requirements; (ii) acted in a disproportionate manner; (iii) acted without procedural fairness; (iv) did not take into account relevant factors; or demonstrate that the Registrar reached a conclusion that no sensible person who has properly applied his mind to the issue could have reached.<sup>60</sup>

33. The Pre-Trial Judge notes that the arguments submitted by the Duty Legal Representative only relate to the procedural aspects of the Designation, and thus do not argue that the Registrar reached an unreasonable decision.

## VII. Statement of Reasons

34. In this section, the Pre-Trial Judge will address the following matters raised by the Motion for Review: (a) the consultation of victims prior to designating their representation; and (b) the simultaneous designation of the Lead and Co-Legal Representatives.

### a. The Consultation of Victims prior to Designating Representatives

35. Article 19(C)(i) of the Directive provides that in designating a legal representative for victims, the Registrar “may consider... any views or preferences expressed by the victims who are to be represented regarding their legal representation”. Article 20(A) of the Directive provides that in the designation process “the VPU shall, to the extent reasonably possible,

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*and Mathieu Ngudjolo Chui*, Case No. ICC-RoR-217-02/08, Decision on “Mr. Mathieu Ngudjolo’s Complaint Under Regulation 221(1) of the Regulations of the Registry Against the Registrar’s Decision of 18 November 2008”, 10 March 2009, para. 24; ICC, *The Presidency*, Case No. ICC-Pres-RoC72-01-8, Reasons for the “Decision on the ‘Application for Review of Decision of the Registrar’s Division of Victims and Counsel dated 2 January 2008 not to admit Prof. Dr. Sluiter to the List of Counsel’”, 10 July 2008, para. 20; ICC, *The Prosecutor v Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen*, Case No. ICC-02/04-01/05, Reasons for the Decision on the Application of Mr Jens Dieckmann of 28 October 2008 for judicial review of his appointment by the Registrar as defence counsel, in accordance with the decision of Pre-Trial Chamber II of 21 October 2008, 10 March 2009, para. 29; ICC, *The Presidency*, Case No. ICC-RoR56-01/09, Decision on the application to review the decision of the Registrar denying the admission of Ms Magdalena Ayoade to the list of experts, 6 August 2009, para. 11; ICC, *The Prosecutor v Jean-Pierre Bemba Gombo*, Case No. ICC-01/05-01/08, Public redacted Decision on the “Request for Review of the Registrar’s Decision of 25 August 2008 on the Application for Legal Assistance Paid by the Court”, 25 February 2009, para. 10.

<sup>60</sup> The “unreasonableness test”

consult with victims who have applied or wish to apply to participate in the proceedings regarding their views and preferences on legal representation.”

36. In determining what would constitute consultations “to the extent reasonably possible”,<sup>61</sup> the Registrar has indicated that he must consider various elements. These aspects include security considerations, the time and resources available to the Registry and the VPU, the number of victims who have applied for VPP status, their distinct needs and interests, and the victims’ diverse geographical locations.

37. While these provisions require an effort from the Registrar to consult victims before designating a legal representative, they are drafted in such a way that they accord to the Registrar a margin of appreciation as to the nature and extent of this consultation process.

38. In addition, the Pre-Trial Judge notes that the wording of the Directive suggests that the Articles are clearly distinct from the principle of consultation as determined under Rule 90 of the ICC Rules and the ICC’s jurisprudence.<sup>62</sup> Article 16 of the Directive makes this distinction especially clear by according the Registrar the principal role in designating the victims’ legal representative at the Tribunal.<sup>63</sup> In contrast, pursuant to Rule 90 of the ICC Rules, victims will attempt to agree on a common legal representative, and the assistance of the Registrar is only needed if the victims are unable to choose a common representative themselves.<sup>64</sup>

39. Article 20(A) of the Directive expressly provides that the designation process requires the VPU, to the extent reasonably possible, to consult with victims who have applied or wish to apply for VPP status. The Pre-Trial Judge notes that V027 and V028 had indicated to the VPU that they had chosen a private lawyer to represent them. Consequently, the VPU consulted him on several occasions and he had the opportunity to represent the views of his clients. For this reason, the Pre-Trial Judge considers that the Registrar properly discharged his obligations, as the VPU acted in good faith by consulting with the victims’ private counsel where they had been engaged. The Designation was thus not tainted by a procedural error by virtue of a failure to consult the VPPs.

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<sup>61</sup> Article 20(A) of the Directive.

<sup>62</sup> *Supra*, paras 14 and 20.

<sup>63</sup> Article 16 of the Directive

<sup>64</sup> Rule 90(1) and (3) ICC Rules of Procedure and Evidence.

**b. Simultaneous Designation of the Lead and the Co-Legal Representatives**

40. The Duty Legal Representative argues that the scheme of the Directive, and in particular Articles 19(D) and 23, implies that a two-step process must be followed whereby the Lead Legal Representative is designated and then — with the latter's input — the Co-Legal Representatives are designated.<sup>65</sup> A simultaneous designation would therefore defeat the purpose of these provisions, namely to serve as a check on the Registrar's authority to designate Co-Legal Representatives.<sup>66</sup>

41. The Pre-Trial Judge recalls that Article 19(D) of the Directive requires the Registrar to take note of the views of the Lead Legal Representative prior to designating the Co-Legal Representatives. Article 23 specifies that the designation of a co-legal representative can only be challenged by the Lead Legal Representative.

42. The Pre-Trial Judge notes that nothing in Article 19 of the Directive prevents the Registrar from simultaneously designating the Lead and Co-Legal Representatives. Neither does Article 19 preclude the possibility of the Registrar hearing the Lead Legal Representative's views regarding the Co-Legal Representative before the latter is formally designated. Furthermore, the Pre-Trial Judge recalls the Registrar's discretion when applying the criteria set forth in Article 19 of the Directive. This margin of appreciation is necessary so that, in constituting a legal team to represent the VPPs, the Registrar can take into account the practical aspects of each specific situation.

43. With respect to the consultation process, as specified in Article 19(D) of the Directive, the Pre-Trial Judge observes that the Registrar considered the views of the Lead Legal Representative, who indicated his support for the designation of the Co-Legal Representatives.<sup>67</sup> The Pre-Trial Judge therefore considers that the Registrar has complied with the requirements set out in Article 19(D) of the Directive.

44. As to the challenge of the designation of the Co-Legal Representative, the Pre-Trial Judge observes that Article 23 of the Directive addresses situations where the Lead Legal Representative disagrees with the designation of the Co-Legal Representatives. This safeguard is available regardless of when the Lead and Co-Legal Representatives are

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<sup>65</sup> Motion for Review, para 26

<sup>66</sup> Reply, para. 11

<sup>67</sup> Designation, para. 21.

designated. The Lead Legal Representative can seek a review when his requested designation is denied, pursuant to Article 23(A) of the Directive, and also when he disagrees with a designation, pursuant to Article 23(B) of the Directive. This applies whether or not the designation is simultaneous. Therefore, this aspect of the Duty Legal Representative's argument must fail. Accordingly, the simultaneous designation of the Lead and Co-Legal Representatives does not deprive the former of his entitlement to seek a review thereof.

45. In light of the above, the Pre-Trial Judge considers that nothing in the Directive prescribes that the designation of victims' representatives requires a two-step process. The simultaneous designation of the Lead and the Co-Legal Representatives by the Registrar is therefore not tainted by a procedural error.

### **VIII. Alternative Remedies**

46. The Duty Legal Representative alleges a "general discretion" that the Pre-Trial Judge has to make "any other appropriate order", and proceeds to present three alternative remedies.<sup>68</sup> Regardless of the existence or scope of any such general discretion he may have, the Pre-Trial Judge considers that it is inopportune for him to consider these proposed remedies since he found that — according to the standard of review — there is no reason for quashing the Designation.

47. Nonetheless, the Pre-Trial Judge emphasises that the structure of common legal representation allows the Lead Legal Representative to answer adequately any alleged concern of VPPs regarding other legal representatives, if need be in consultation with the VPPs concerned and the VPU. If necessary, it is for the Lead Legal Representative to challenge the designation of the Co-Legal Representatives pursuant to Article 23 of the Directive.

48. Finally, as regards the request for withdrawal, the Pre-Trial Judge notes that victims' participation has a consensual basis and V027 and V028 are entitled to withdraw from participating in the proceedings, if they so wish. The Pre-Trial Judge recalls V027 and V028's obligation to continue to respect the confidentiality of any information received by virtue of their engagement in the proceedings.

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<sup>68</sup> See paras. 17-18, *supra*

**IX. Confidentiality**

49. With the exception of the Duty Legal Representative's Motion for Review and its Annexes B and C, of which a public redacted version was filed, all other filings in this case were filed as confidential and *ex parte*.<sup>69</sup> The Pre-Trial Judge recalls that the Registrar indicated that he had not objected to the Submissions being reclassified as public,<sup>70</sup> and there are likewise no reasons to maintain the confidentiality of the Reply. The Pre-Trial Judge thus considers that there are no valid reasons to retain the confidential classification of the aforementioned documents. Consequently, the present Decision is filed publicly and the Pre-Trial Judge orders the Registry to reclassify as public the Submissions, the Request for Leave, the Order granting the Request for Leave and the Reply. However, until further notice, Annex A of the Motion for Review will remain confidential and *ex parte* in order to protect the privacy of V027.

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<sup>69</sup> Annex A remained confidential and *ex parte* because it would reveal the identity of V027.

<sup>70</sup> Submissions, para. 54.

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**FOR THESE REASONS,**

**THE PRE-TRIAL JUDGE,**

**PURSUANT TO** Rule 96 of the Rules and Article 22 of the Directive,

**DISMISSES** the Motion for Review of the Registrar's Designation of Victims' Legal Representation; and

**ORDERS** the Registry to reclassify as public all filings relating to the present Decision, namely: the Submissions; the Duty Legal Representative's Request for Leave to file a Reply; the Pre-Trial Judge's Order granting the Request for Leave; and the Duty Legal Representative's Reply.

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

Leidschendam, 27 September 2012



Daniel Fransen  
Pre-Trial Judge

