



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

**THE TRIAL CHAMBER**

**Case No.:** STL-11-01/T/TC

**Before:** Judge David Re, Presiding  
Judge Janet Nosworthy  
Judge Micheline Braidy  
Judge Walid Akoum, Alternate Judge  
Judge Nicola Lettieri, Alternate Judge

**Registrar:** Mr Daryl Mundis

**Date:** 31 March 2014

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

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

**DECISION ON 'DEFENCE POSITION ON EXTENDING THE  
PARTICIPATION OF THE VICTIMS TO THE PROCEEDINGS  
CONCERNING MR MERHI'**

**Office of the Prosecutor:**

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& Mr Alexander Milne

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& Mr Thomas Hannis

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Mr Antoine Korkmaz, Mr John Jones  
& Mr Iain Edwards

**Victims' Legal Representatives:**

Mr Peter Haynes, Mr Mohammad F.  
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**Counsel for Mr Hassan Habib Merhi:**

Mr Mohamed Aouini, Ms Dorothee Le Fraper  
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## **INTRODUCTION AND BACKGROUND**

1. The Special Tribunal's Statute and its Rules of Procedure and Evidence allow victims of crimes within the Special Tribunal's jurisdiction to participate with the status of 'victims participating in the proceedings'. The cases of *Prosecutor v. Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi, and Assad Hassan Sabra* and *Prosecutor v. Hassan Habib Merhi* were joined on 11 February 2014.<sup>1</sup> Before joinder and during the pre-trial phase before the Pre-Trial Judge in the *Ayyash* case<sup>2</sup> the Pre-Trial Judge, under Rule 86, granted<sup>3</sup> the status of victim participating in its proceedings to 68 victims.<sup>4</sup>

2. Immediately after the decision on joinder, on 12 February 2014, the Trial Chamber invited counsel for Mr Merhi to state their position on the participation of victims in the newly joined case.<sup>5</sup> Defence counsel subsequently filed a statement,<sup>6</sup> and responses were also filed by the Legal Representative of the Victims<sup>7</sup> and the Special Tribunal's Victims Participation Unit.<sup>8</sup>

## **LEGAL PRINCIPLES AND SUBMISSIONS**

### *The relevant legal principles*

3. The Special Tribunal specifically recognises the participation of victims in its proceedings. Article 17 of the Statute provides that:

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<sup>1</sup> STL-11-01, *Prosecutor v. Salim Jamil Ayyash, Mustafa Amine Badreddine, Hassan Habib Merhi, Hussein Hassan Oneissi, and Assad Hassan Sabra* & STL-13-04, *Prosecutor v. Hassan Habib Merhi*, Transcript of 11 February 2014, pp. 90-95.

<sup>2</sup> Subsequently transferred to the Trial Chamber: STL-11-01/PT/PTJ, The Pre-Trial Judge's Report Prepared Pursuant to Rule 95 (A) of the Rules of Procedure and Evidence, 25 October 2013.

<sup>3</sup> In three separate decisions: STL-11-01/PT/PTJ, Decision On Victims' Participating in the Proceedings, 8 May 2012; Second Decision on Victims' Participation in the Proceedings, 3 September 2012; Third Decision on Victims' Participation in the Proceedings, 28 November 2012. In the Fourth Decision on Victims' Participation in the Proceedings, the Pre-Trial Judge denied status to four further applicants: Fourth Decision on Victims' Participation in the Proceedings, 2 May 2013.

<sup>4</sup> Currently 65. The Pre-Trial Judge authorised the participation of 68 victims. The Legal Representative of Victims requested the withdrawal of two victims, and later of a third victim. The Pre-Trial Judge authorised the withdrawal in decisions on 19 December 2012 and 5 December 2013.

<sup>5</sup> Transcript of 12 February 2014, pp. 120-121.

<sup>6</sup> STL-11-01/PT/TC, Defence Position on Extending the Participation of the Victims to the Proceedings Concerning Mr Merhi, 21 February 2014.

<sup>7</sup> STL-11-01/T/TC, Response of the Legal Representative of Victims to the "Position de la défense sur l'extension de la participation des victimes à la procédure concernant M. Merhi", 26 February 2014.

<sup>8</sup> STL-11-01/T/TC, VPU Submissions Regarding the Impact of the Joinder on Victim Participation, 10 March 2014, para. 19. This was done with the Trial Chamber's permission: STL-11-01/T/TC, Scheduling Directive from the Trial Chamber, 6 March 2014.

Where the personal interests of the victims are affected, the Special Tribunal shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Pre-Trial Judge or the Chamber and in a manner that is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Pre-Trial Judge or the Chamber considers it appropriate.

4. The Secretary-General's report explains that this 'protects the rights of victims whose personal interests are affected and, while not recognizing them as "*parties civiles*", it permits their views and concerns to be presented and considered at all stages of the proceedings'.<sup>9</sup> Rule 2 defines a 'victim' as 'A natural person who has suffered physical, material, or mental harm as a direct result of an attack within the Tribunal's jurisdiction'. A 'victim participating in the proceedings' is a 'Victim of an attack within the Tribunal's jurisdiction who has been granted leave by the Pre-Trial Judge to present his views and concerns at one or more stages of the proceedings after an indictment has been confirmed'.

5. Rule 86 (A) provides that 'a person claiming to be a victim of a crime within the Tribunal's jurisdiction' may request they be granted the status of victim participating in the proceedings, if the Pre-Trial Judge has confirmed the indictment under Rule 68. Rule 86 (B) sets out four factors the Pre-Trial Judge must consider in deciding whether to grant that status:<sup>10</sup>

- (i) whether the applicant has provided *prima facie* evidence that they are a victim;
- (ii) whether their personal interests are affected;
- (iii) whether their proposed participation is to express their views and concerns; and
- (iv) whether their participation would be 'prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial'.

6. Under Rule 86 (C) the Pre-Trial Judge decides the request after seeking submissions from the Parties and the Victims' Participation Unit on legal issues. A victim may only participate in proceedings through a legal representative, unless otherwise authorised.

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<sup>9</sup> *Report of the Secretary-General on the Establishment of a Special Tribunal for Lebanon*, UN Doc. S/2006/893, (15 November 2006), para. 31.

<sup>10</sup> It provides a further six factors the Pre-Trial Judge may consider.

*Submissions*

7. Counsel for Mr Merhi argued in their filing that the Pre-Trial Judge has the sole jurisdiction to determine the status of who is a victim participating in the proceedings. He alone must therefore formally decide whether to grant the status of victim participating in the proceedings to the 65 victims currently in the joined case so far as it concerns Mr Merhi.<sup>11</sup> They asked the Trial Chamber to note their position—and it is duly noted—and to ‘state that the extension of the participating rights of the Victims who have already been admitted in the *Ayyash* [...] proceedings to the case concerning Mr Merhi can only be done by way of a formal decision of the Pre-Trial Judge, who alone has jurisdiction on this matter’.<sup>12</sup>

8. The Legal Representative of Victims submitted that the victims remain participants in the proceedings irrespective of any change in the number of accused.<sup>13</sup> The participation relates to the case, not to individual accused, thus ‘it is therefore immaterial how many accused are tried in the *Ayyash* case’.<sup>14</sup> Further, any concerns regarding the prejudice to Mr Merhi’s rights should have been raised before the joinder,<sup>15</sup> and the Trial Chamber is the appropriate forum to litigate the 65 victims’ rights of participation.<sup>16</sup> The Legal Representative of Victims submits that ‘once a victim has been granted participatory rights, those rights will pertain to the case [...] rather than to the individual accused’, and that ‘the essential quality of a participating victim is derived from his or her being somebody who suffered harm as a direct result of an attack within the Tribunal’s jurisdiction’.<sup>17</sup>

9. The Chief of the Registry’s Victims’ Participation Unit submitted that the only change is that an additional accused person has been joined to the *Ayyash* case. The victims’ participation is not affected by this change; and no additional judicial decision is required to permit the participation of the victims in the joined case.<sup>18</sup> The principal test for status of a victim participating in the proceedings ‘concerns the relationship between the harm suffered by a victim’s and at least one of the charges contained in the indictment’.<sup>19</sup>

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<sup>11</sup> Defence position, para. 9.

<sup>12</sup> Defence position p. 3.

<sup>13</sup> Response of the Legal Representative of Victims, para. 3.

<sup>14</sup> Response of the Legal Representative of Victims, para. 10.

<sup>15</sup> Response of the Legal Representative of Victims, para. 11.

<sup>16</sup> Response of the Legal Representative of Victims, para. 3.

<sup>17</sup> Response of the Legal Representative of Victims, para. 10.

<sup>18</sup> VPU submissions, para. 19.

<sup>19</sup> VPU submissions, para. 13.

## DISCUSSION

### *The Pre-Trial Judge's decisions*

10. The Pre-Trial Judge made his three decisions on victims' participation in respect of an amended indictment then charging four accused with crimes in the Special Tribunal's jurisdiction. He did not decide that the participating victims were the alleged victims of any particular Accused person.

11. The applicants were required 'to demonstrate on a *prima facie* basis that the harm claimed is caused by a specific crime charged in the indictment'.<sup>20</sup> Specifically, the causal link required between the harm suffered and an attack within the Tribunal's jurisdiction must be read as requiring 'a nexus between the harm alleged and a *crime* specifically charged in the Indictment'.<sup>21</sup> The Pre-Trial Judge also noted that the United Nation's Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power defines a victim by reference to a criminal offence as persons who have suffered harm 'through acts or omissions that are *in violation of criminal laws*'.<sup>22</sup>

12. The Defence submission, however, treats the decisions as though they were made separately for each Accused. Although they do not submit that the Pre-Trial Judge erred in applying Rule 86 in the *Ayyash* case, they argue, rather, that because he did not make any separate decision in the *Merhi* case before joinder, he must do so now.<sup>23</sup>

13. These arguments, however, misunderstand the effect of the joinder of the two cases and they also argue against their own stated position that the 'status of victim before the Tribunal is fundamentally connected to the crime itself, and not to the person accused'.<sup>24</sup> After confirmation of the indictment, those claiming to be 'a victim of a crime within the Tribunal's jurisdiction' could, and did, request the status of victim participating in the proceedings. The Pre-Trial Judge granted the status of victim participating in the proceedings to those found to be victims of that attack, rather than as victims of the four Accused.

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<sup>20</sup> Fourth decision, para. 13.

<sup>21</sup> Fourth decision, para. 15. In paragraph 16 the Pre-Trial Judge comments 'harm claimed by an applicant seeking VPP status must be causally linked to a crime charged in the Indictment against the accused'. Further, he quotes from Article 25 of the Statute, which 'like Rule 2, establishes a causation test in permitting the Tribunal to "identify victims who have suffered harm as the result of commission of *crimes* by an accused convicted by the Tribunal"'.<sup>22</sup>

<sup>22</sup> Fourth decision, para. 20.

<sup>23</sup> Defence position, paras 8-9.

<sup>24</sup> Defence position, para. 7.

14. Rule 86 (B) (iv) states the Pre-Trial Judge must consider ‘whether the applicant’s proposed participation would be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial’. The Pre-Trial Judge’s decision did not specifically consider the identity of any of the Accused or any personal matter relating to them.<sup>25</sup> Rather, he set out three ways in which this requirement would be met:

- By ensuring that those granted the status are legitimately concerned in the proceedings;
- By the representation of victims by legal representatives who are obliged to ensure the integrity and expeditiousness of the proceedings; and that
- Concrete measures will be taken if necessary in relation to the preparation of the trial to ensure victim participation does not prejudice the rights of four accused persons.

15. The Pre-Trial Judge correctly applied these principles.

*The policy of victims’ participation*

16. The Defence submissions also go against the policy underlying Rule 86, namely to allow those who are the *victim of a crime*, as opposed to the alleged victim of a particular person, to participate in the proceedings. The proceedings before the Pre-Trial Judge related to the attack of 14 February 2005 resulting in the death of former Lebanese Prime Minister Rafiq Hariri and the death or injury of other persons, a crime within the Special Tribunal’s jurisdiction. The first three of the four mandatory considerations in Rule 86 (B) relate to an applicant’s status as a victim.<sup>26</sup> A number of discretionary factors are also listed. Every one concerns the victim and the conduct of proceedings, rather than the identity of any specific accused.

17. These matters would apply equally to any accused person, regardless of their identity. The Victims’ Participation Unit has correctly submitted that that the Pre-Trial Judge was neither required to, and nor did he consider the identity of the accused persons.<sup>27</sup> And, further that he made no decision concerning the relationship between the participating victims and the four Accused specifically.<sup>28</sup> The Pre-Trial Judge’s primary consideration was the relationship between the harm suffered by a victim, and the crime being considered. The Defence statement actually agrees with a

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<sup>25</sup> Decision on Victims’ Participating in the Proceedings, para. 100.

<sup>26</sup> Para. 5 above.

<sup>27</sup> VPU submissions, para. 12.

<sup>28</sup> VPU submissions, para. 13.

submission by the Legal Representative of Victims, acknowledging that ‘according the status of victim before the Tribunal is fundamentally connected to the crime itself, and not to the person accused’,<sup>29</sup>

18. The Pre-Trial Judge was correct. The confirmation of an indictment under Rule 68 is a prerequisite for requesting the granting of status of victim participating in the proceedings. The Rules do not provide that any subsequent change requires any reconsideration of the position in relation to victims, even if the indictment itself, or the persons indicted, changes.

*Another decision of the Pre-Trial Judge?*

19. Defence counsel submit that ‘a formal decision of the Pre-Trial Judge, who alone has jurisdiction in this matter, should extend the participation of the Victims to the joined case concerning Mr Mehri’.<sup>30</sup> This submission, however, is legally incorrect. Rule 130 (B) gives to the Trial Chamber after it receives a case from the Pre-Trial Judge, all of the powers of the Pre-Trial Judge except in three defined circumstances.<sup>31</sup> Granting participating victim status is within those powers. In its decision on joinder the Trial Chamber held that it will ‘continue to consult with the Pre-Trial Judge in relation to his possibly performing any of the functions in Rules 86’,<sup>32</sup> and it has done so. However, now that the case is before the Trial Chamber this would presumably relate to any *fresh* applications for the status of participating victims. Additionally, having the Pre-Trial Judge redetermine 65 applications for the status of a victim participating in the proceedings, but solely in relation to Mr Merhi, would represent a very inefficient use of the Special Tribunal’s resources.

20. Counsel for Mr Merhi submit that having the Pre-Trial Judge make a formal decision granting the status of participating victim is important for two reasons. First, it has legal consequences including compensation.<sup>33</sup> Second, such formal regularisation is aimed at protecting ‘the rights and interests of Mr Merhi’.<sup>34</sup>

21. In relation to the first, Article 25 (1) of the Statute of the Tribunal provides that ‘the Special Tribunal may identify victims who have suffered harm as a result of the commission of crimes by an accused convicted by the Tribunal’. However, identifying victims is different to granting someone

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<sup>29</sup> Defence position, para. 7.

<sup>30</sup> Defence position, para. 9.

<sup>31</sup> Rules 93, 117 and 118.

<sup>32</sup> STL-11-01/T/TC, Decision on Trial Management and Reasons for Decision on Joinder, 25 February 2014, para. 75.

<sup>33</sup> Defence position, para. 9.

<sup>34</sup> Defence position, para. 9.

the status of a victim participating in the proceedings. And identifying victims is discretionary, and neither the Statute nor the Rules restricts this role solely to the Pre-Trial Judge.

22. Further, seeking compensation is not confined to those the Special Tribunal has identified as victims. Article 25 (3) states that ‘a victim or persons claiming through a victim, whether or not such victim had been identified as such by the Tribunal under paragraph 1 of this article, may bring an action in a national court or other competent body to obtain compensation’. This is thus not relevant to the Trial Chamber’s consideration.

23. Regarding the second argument, the Defence filing does not actually identify which rights and interests of Mr Merhi are supposedly affected by the Pre-Trial Judge not making a formal decision in relation to the participating victims after he was joined to the case. These rights and interests are especially unclear in circumstances where the Defence submits that it does not intend to revisit the decisions taken in the *Ayyash* case, nor challenge the status of the participating victims. It is thus unclear just what the Trial Chamber is being asked to do.

### CONCLUSION

24. The Pre-Trial Judge granted the status of victim participating in the proceedings to 68 persons. The Defence does not claim that the Pre-Trial Judge erred in applying Rule 86 in granting that status. The same proceedings are now before the Trial Chamber and Mr Merhi has been joined as an accused to the proceedings. The Pre-Trial Judge correctly based his decisions on the relationship between the harm suffered by a victim, and the crime charged in the amended indictment, rather than who was accused of committing those crimes. Joinder has not changed that relationship.

25. Nothing in the Statute, the Rules, international standards on human rights, and the general principles of international criminal law and procedure requires the Trial Chamber to revisit the Pre-Trial Judge’s decisions in relation to granting the status of participating victims to the existing victims. Or, conversely, that the Pre-Trial Judge should make fresh determinations for all of the participating victims in respect of a new accused person. The Pre-Trial Judge noted that concrete measures would be taken if necessary in relation to trial preparation to ensure victim participation does not prejudice the rights of an accused.<sup>35</sup> The Defence statement does not identify a need for such measures. Accordingly, the Trial Chamber does not need to take any action—arising from the

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<sup>35</sup> Para. 14 above.



joinder—in relation to the status of victims in the case. The status of 65 current participating victims remains unchanged. The motion is therefore dismissed.

**DISPOSITION**

**FOR THESE REASONS**, the Defence filing ‘Defence Position on Extending the Participation of the Victims to the Proceedings Concerning Mr Merhi’ is dismissed.

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

Leidschendam,  
The Netherlands  
31 March 2014

*David Re*

\_\_\_\_\_  
Judge David Re, Presiding

*Janet Nosworthy*

\_\_\_\_\_  
Judge Janet Nosworthy

*Micheline Braidy*

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Judge Micheline Braidy

