

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE PRE-TRIAL JUDGE

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

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

The Registrar: **Mr Daryl Mundis**

Date: **5 May 2015**

Original language: **French**

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

THE PROSECUTOR

v.

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

**SEVENTH DECISION ON VICTIMS' PARTICIPATION
IN THE PROCEEDINGS**

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I. Introduction

1. In this decision, the Pre-Trial Judge rules on applications requesting the granting of the status of victim participating in the proceedings (“VPP”) submitted on 17 April 2015 by two persons, assigned codes V085 and V086. These applications were transmitted with the assistance of the Victims’ Participation Unit (“VPU”) pursuant to Rule 51 (B) (iii) of the Rules of Procedure and Evidence.¹ The Prosecution and Defence Counsel for the accused have not filed submissions in relation to these applications.

II. Submissions

2. During the pre-trial phase in the case of *Ayyash et al.*, the Pre-Trial Judge ruled on obtaining VPP status in six public decisions.² To date, 70 individuals are participating in the proceedings through a team of legal representatives.

3. The Pre-Trial Judge had originally set the deadline for filing all applications for participation for 31 October 2011.³ The VPU explains that these additional applications were filed on account of the fact that the applicants were not aware that they could apply to participate in the proceedings or were unable to do so.⁴

4. This decision is public. However, the examination of the submissions from the VPU presented on behalf of the applicants is summarised in the confidential and *ex parte* annex attached hereto. As such, details concerning the identity of the applicants, the harm they consider that they have suffered, and how this harm is linked to the attack of 14 February 2005 will not be articulated in the body of the decision in order to reconcile the obligation for transparency in the

¹ STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/PTJ, F1915, Eighth Transmission by the VPU Pursuant to Rule 51(B)(iii), 17 April 2015 (“Eighth Transmission”). All further references to filings and decisions refer to this case number unless otherwise stated.

² F0236, Decision on Victims’ Participation in the Proceedings, 8 May 2012, with confidential and *ex parte* annex (“Decision of 8 May 2012”); F0398, Second Decision on Victims’ Participation in the Proceedings, 3 September 2012, with confidential and *ex parte* annex; F0557, Third Decision on Victims’ Participation in the Proceedings, 28 November 2012, with confidential and *ex parte* annex; F0879, Fourth Decision on Victims’ Participation in the Proceedings, 2 May 2013, with confidential and *ex parte* annex (“Decision of 2 May 2013”); F1621, Fifth Decision on Victims’ Participation in the Proceedings, 18 July 2014, with confidential and *ex parte* annex; F1737, Sixth Decision on Victims’ Participation in the Proceedings, 6 November 2014, with confidential and *ex parte* annex.

³ F0045, *Ordonnance portant fixation du délai pour le dépôt des demandes aux fins d’obtenir la qualité de victime participant à la procédure*, 8 September 2011.

⁴ Eighth Transmission, para. 4.

proceedings as enshrined in Rule 96 (A) of the Rules with the obligation to safeguard the confidentiality of the applicants and their statements.⁵

III. Jurisdiction of the Pre-Trial Judge and applicable law

5. The Trial Chamber has been seised of the case of *Ayyash et al.* since the Pre-Trial Judge transmitted the case file to it in accordance with Rule 95 of the Rules. Since that referral, the Trial Chamber has authorised the joinder of a fifth accused to that case and assumed the pre-trial functions which are normally incumbent on the Pre-Trial Judge, with the exception of those falling under his exclusive jurisdiction. It has nevertheless noted that “the granting of the status of victims participating in the proceedings in Rule 86 in respect of any new applications could also be performed by the Pre-Trial Judge”.⁶ After consultation, the Trial Chamber and the Pre-Trial Judge decided that any new applications from victims to participate in the proceedings should be dealt with by the Pre-Trial Judge.⁷

6. Therefore, in accordance with Rule 86, it is for the Pre-Trial Judge to determine whether the two applicants whose files were transmitted to him by the VPU on 20 April 2015 may obtain VPP status.

7. The Pre-Trial Judge recalls that the relevant analysis of the law applicable to the granting of VPP status pursuant to Rule 86 was set forth in the Decision of 8 May 2012.⁸ According to those principles, in short, any person seeking VPP status must demonstrate that “an attack within the Tribunal’s jurisdiction” directly resulted in that person suffering physical, material or mental harm in accordance with Rules 2 and 86 (B) of the Rules. In particular, any request must provide “prima facie evidence that he is a victim as defined by Rule 2 of the Rules”.⁹

⁵ F0187, 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.

⁶ F1424, Decision on Trial Management and Reasons for Decision on Joinder, 25 February 2014, para. 73.

⁷ F1599, Sixth Transmission by the VPU Pursuant to Rule 51(B)(iii), 27 June 2014, para. 1.

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

⁹ The three other mandatory criteria set out at Rule 86 (B) are: (ii) whether the applicant’s personal interests are affected; (iii) whether the applicant’s proposed participation is intended to express his views and concerns; and (iv) whether the applicant’s proposed participation would be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

8. On 2 May 2013, the Pre-Trial Judge defined the meaning of the word “victim”, since the reference to “an attack within the Tribunal’s jurisdiction” rendered Rule 2 of the Rules open to interpretation. To be a “victim” within the meaning of that Rule, three cumulative criteria must be satisfied: (1) the applicant must be a natural person; (2) who has suffered physical, material or mental harm; and (3) such harm must have been a direct result of an attack within the Tribunal’s jurisdiction. As the reference to “an attack within the Tribunal’s jurisdiction” could be subject to interpretation, the Pre-Trial Judge held that the causation test required the applicants to demonstrate that the harm claimed was, *prima facie*, caused by a specific crime charged in the indictment.¹⁰

9. The Pre-Trial Judge clarified that although such harm must be a direct result of the Attack, that requirement does not restrict the recognition of VPP status to direct victims only, but can also include indirect victims who personally suffered harm as a direct result of the Attack.¹¹ Furthermore, the Pre-Trial Judge considered that, to bring an application, a natural person must have legal capacity and if the person is a minor, the application can be brought by a person acting on the applicant’s behalf. Proof of identity is needed for both the victim and his representative, together with proof of the connection between the two.¹²

10. With regard to the degree of proximity required between the direct and indirect victims seeking VPP status, the Pre-Trial Judge recalls that ascendant or descendant first degree relatives of a direct victim, as well as “persons in relationships of like proximity to the direct victim, and other extended family members having a special bond of affection with or dependence on the direct victim, can also be considered to have suffered harm as a direct result of the Attack.”¹³

IV. Statement of reasons

11. As a preliminary matter, the Pre-Trial Judge considers that although they are indeed overdue in relation to the initial deadlines set, the applications are admissible at this stage of the proceedings. Indeed, first of all, Rule 86 of the Rules does not set time limits within which to present a request to obtain VPP status. Secondly, the information set out by the VPU, according to which the state of health of the applicants and their lack of knowledge of the procedure would

¹⁰ Decision of 2 May 2013, para. 11 *et seq.*

¹¹ Decision of 8 May 2012, para. 45.

¹² *Id.*, paras 31-34.

¹³ *Id.*, para. 50.

explain the delay in filing, is relevant. Lastly, if the applications are to be admitted they would not, at this stage of the proceedings, prejudice the rights of the participants in the proceedings.

12. The Pre-Trial Judge considers that applicants V085 and V086 satisfy the first mandatory criterion mentioned in Rule 86 (B) (i) of the Rules relating to the obligation to provide *prima facie* evidence establishing that they are victims as defined under Rule 2. The confidential and *ex parte* annex to this decision provides a more detailed justification.

13. Those two applications likewise satisfy the criteria set out in the Statute and in the Rules, as indicated in Section III above. As a consequence, the applicants concerned are granted the status of victim participating in the proceedings.

14. The Pre-Trial Judge recalls Rule 51 (B) (v), which requires that the VPU inform applicants of this decision “in a timely manner”, and considers that such notification must be provided within a time limit of two weeks from the translation into Arabic of the aforementioned decision.

V. Common legal representation and grouping of victims

15. The Pre-Trial Judge recalls that the principles governing common legal representation were set out in the Decision of 8 May 2012 and apply *mutatis mutandis* to the present decision. In particular, and in accordance with Rule 86 (C) (ii) of the Rules, victims participating in the proceedings may only do so through a legal representative, unless the Pre-Trial Judge authorises otherwise. He notes that the applicants have not sought the right of self-representation. As indicated in the Decision of 8 May 2012 and in the absence of any reason to the contrary, the Pre-Trial Judge considers that the victims authorised to participate in the proceedings under the terms of this Decision may do so only through a legal representative.¹⁴ Moreover, Rule 86 (D) of the Rules provides that the Pre-Trial Judge rules on common legal representation by considering the criteria of Rule 86 (D) (i) to (iii) of the Rules. That provision suggests that, unless there are valid reasons for doing otherwise, VPPs are deemed to constitute a single group.¹⁵

¹⁴ *Id.*, para. 112.

¹⁵ *Id.*, paras 113, 119 and 120.

16. Having examined the applications, the Pre-Trial Judge concludes that there does not appear to be any reason that would justify dividing the persons who have been granted VPP status by way of this Decision into different groups or distinguishing them from the VPP group whose victim status was recognised in previous decisions. Persons seeking VPP status and authorised to participate in the proceedings in accordance with this Decision shall be part of the group of victims identified in the Decision of 8 May 2012.

VI. Confidentiality

17. The Pre-Trial Judge recalls that this Decision, as with the previous ones dealing with the same subject, is classified as “public” although it does refer to documents in the applications which are classified as confidential and *ex parte*, so as to provide the persons who have been granted VPP status the possibility of seeking the protective measures mentioned in Rule 133 of the Rules.

18. As such, those persons who have been granted VPP status who wish to remain anonymous or to seek other protective measures must apply to the Pre-Trial Judge at the earliest opportunity, in accordance with Rule 133 (A) of the Rules. Any such request must include a risk assessment conducted by the Victims and Witnesses Unit (the “VWU”).

VII. Disposition**FOR THESE REASONS,**

Pursuant to Articles 17 and 25 of the Statute, and Rules 2, 51 (B) (v), 86 and 133 of the Rules,

THE PRE-TRIAL JUDGE,

GRANTS VPP status to applicants V085 and V086;

ORDERS the VPU to notify the applicants of this decision within two weeks from its translation into Arabic;

ORDERS that the annexes to the Eighth Transmission by the VPU Pursuant to Rule 51 (B) (iii) of 17 April 2015 shall remain confidential and *ex parte* until further notice;

ORDERS that the annex to this decision shall remain confidential and *ex parte* until further notice; and

INVITES the VPU or the legal representative of victims to submit any request for appropriate measures to ensure the privacy and protection of the victims participating in the proceedings, after having conducted a risk assessment for the VPPs concerned, with the assistance of the VWU.

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

Leidschendam, 5 May 2015

[stamp]

[signature]

Daniel Fransen
Pre-Trial Judge

