



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

### THE PRE-TRIAL JUDGE

Case No.: **STL-11-02/CCS/PTJ**

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

The Registrar: **Mr Daryl Mundis**

Date: **16 September 2019**

Original language: **French**

Classification: **Public**

---

**PUBLIC REDACTED VERSION OF THE “ORDER REQUESTING INFORMATION FROM THE PROSECUTOR REGARDING THE PROGRESS OF THE INVESTIGATIONS INTO THE ATTACKS PERPETRATED AGAINST MESSRS HAMADEH, HAWI AND EL-MURR” DATED 12 OCTOBER 2016**

---

**Office of the Prosecutor:**

Mr Norman Farrell

**Defence Office**

Ms Dorothée Le Fraper du Hellen



## **I. Introduction**

1. By this Order, the Pre-Trial Judge of the Special Tribunal for Lebanon calls on the Prosecutor to provide him with any useful information regarding the progress of his investigations into the attacks perpetrated against Messrs Hamadeh, Hawi and El-Murr, so that the Pre-Trial Judge may anticipate the next steps and take the measures required to be able, if necessary, to review the one or more indictments relating to these cases promptly and prepare these cases for trial in a diligent and efficient manner.

## **II. Procedural background**

2. On 5 August 2011, at the request of the Prosecutor, the Pre-Trial Judge concluded that the attacks perpetrated against Messrs Hamadeh, Hawi and El-Murr were within the Tribunal's jurisdiction because they were connected to the attack against Mr Hariri and were in terms of nature and gravity similar to that attack.<sup>1</sup> That decision was taken pursuant to Rule 11 of the Rules of Procedure and Evidence of the Tribunal according to the modalities provided for in Article 1 of the Statute of the Tribunal.

3. Indeed, even if the Tribunal has jurisdiction primarily to try the persons responsible for the attack committed against Mr Hariri, Article 1 of the Statute states that the Tribunal shall also have jurisdiction to deal with other connected cases and which are of a similar nature and gravity. As the United Nations Secretary-General stated in his Report on the establishment of the Tribunal "singling out for prosecution the assassination of Rafiq Hariri, while disregarding a score of other connected attacks could cast a serious doubt on the objectivity and impartiality of the tribunal and lead to the perception of 'selective justice'".<sup>2</sup> He added that in establishing the Independent Investigation Commission first, "the investigative process has, for all intents and

---

<sup>1</sup> STL, STL-11-02/CCS/PTJ, F0002, Decision on the Prosecutor's Connected Case Submission of 30 June 2011, 5 August 2011, confidential and *ex parte*, para. 142. In the "Prosecutor's Connected Case Submission" filed by the Prosecutor on 30 June 2011 (F0001), the Prosecutor sought a ruling by the Pre-Trial Judge that the attacks committed against the three individuals were connected with the attack of 14 February 2005 against Rafic Hariri ("attack against Mr Hariri"). The three separate cases are the following: On 1 October 2004, Mr Marwan Hamadeh and [REDACTED] were seriously injured and his security guard (Mr Ghazi Bou Karroum) was killed, during the explosion of a vehicle parked in a street in Beirut, near the vehicle in which they were travelling; on 21 June 2005, Mr George Hawi was killed and [REDACTED] was injured, during the explosion of a device fixed to their vehicle in Beirut; on 12 July 2005, Mr Elias El-Murr, [REDACTED], as well as other persons, were injured during the explosion of a vehicle in a street in Beirut, when they were passing the vehicle in question. Mr Khaled Moura, who was passing by in another vehicle, was killed.

<sup>2</sup> S/2006/893, Report of the Secretary-General on the establishment of a special tribunal for Lebanon, 15 November 2006 ("Report"), para. 18.

purposes, begun” and that should have the effect of “reducing the lifespan of the tribunal and increasing the efficiency and cost-effectiveness of its operation”.<sup>3</sup> The Commission already found in 2006 that 14 other attacks could be connected to the Hariri case, including the cases of Hamadeh, Hawi and El-Murr.<sup>4</sup>

4. The Pre-Trial Judge’s Decision of 5 August 2011 on the connected nature of the three aforementioned cases allowed the Prosecutor to conduct the investigations into those cases. Following that Decision, on 19 August 2011, at the request of the Prosecutor, the Pre-Trial Judge directed the Lebanese courts to defer those three cases to the Tribunal and to forward the results of the investigation and the relevant court records to it so as to allow the Prosecutor to carry out his duties in accordance with Article 11 (1) of the Statute.<sup>5</sup> In the reasons for his request for deferral, the Prosecutor pointed out that this was necessary in order to “make a determination as to whether further investigation into these cases is required and ultimately whether they warrant prosecution before the Tribunal”.<sup>6</sup> Since that date, insofar as the Tribunal has primacy over the Lebanese courts to hear and determine these cases, pursuant to Article 4 of the Statute, it alone has jurisdiction to deal with them.

5. These various stages are the prerequisites which enable the Prosecutor to submit one or more indictments relating to one or more of these cases for confirmation, in accordance with Rule 68 of the Rules. Indeed, the submission of an indictment follows on from the investigations if they have enabled the Prosecutor to establish there is sufficient evidence to demonstrate *prima facie* that a suspect committed a crime.

6. In the Annual Report on the Tribunal’s activities which followed the deferral by the Lebanese authorities of the cases of Hamadeh, Hawi and El-Murr (March 2011-February 2012), the Prosecutor stated that:

---

<sup>3</sup> Report, para. 10.

<sup>4</sup> Report, para. 11.

<sup>5</sup> STL, STL-11-02/D/PTJ, F0006, Order Directing the Lebanese Judicial Authority Seized with the Case Concerning the Attack Perpetrated against Mr Elias El-Murr on 12 July 2005 to Defer to the Special Tribunal for Lebanon, 19 August 2011; STL, STL-11-02/D/PTJ, F0004, Order Directing the Lebanese Judicial Authority Seized with the Case Concerning the Attack Perpetrated against Mr Marwan Hamadeh on 1 October 2004 to Defer to the Special Tribunal for Lebanon, 19 August 2011; STL, STL-11-02/D/PTJ, F0005, Order Directing the Lebanese Judicial Authority Seized with the Case Concerning the Attack Perpetrated against Mr George Hawi on 21 June 2005 to Defer to the Special Tribunal for Lebanon, 19 August 2011.

<sup>6</sup> STL, STL-11-02/D/PTJ, F0003, Prosecutor’s Request for Deferral and Provision of Documentation in the Cases of Hamadeh, Hawi and El-Murr, confidential and *ex parte*, 8 August 2011, para. 8 (b).

investigative and analytical work on these three connected cases intensified, and, when warranted by the evidence, the OTP will bring further indictments. As provided by Rule 88, the OTP held a number of meetings with the Pre-Trial Judge to familiarise him with the evidence in these cases.<sup>7</sup>

7. [REDACTED].<sup>8</sup> [REDACTED].<sup>9</sup> [REDACTED].<sup>10</sup> On 31 July 2013, the Pre-Trial Judge ruled<sup>11</sup> on a request by the Prosecutor to confirm an indictment against the aforementioned suspect.<sup>12</sup> Since then however, the Prosecutor has not seized the Pre-Trial Judge with any further requests relating to the cases of Hamadeh, Hawi and El-Murr. Nevertheless, as can be seen from the various Annual Reports on the Tribunal's activities, he has actively pursued his investigations into these cases.<sup>13</sup>

### III. Statement of reasons

8. According to Article 18 of the Statute, the Pre-Trial Judge reviews the indictment and may, at the request of the Prosecutor, issue any orders required for the conduct of the investigation and the preparation of a fair and expeditious trial. Rule 77 (E) of the Rules states that the Pre-Trial Judge may, in the interests of justice, issue *proprio motu* such orders as may be necessary for the preparation or conduct of the proceedings. Moreover, as the Secretary-General pointed out in his Report on the establishment of the Tribunal, one of the distinguishing features of the Tribunal is that it draws more upon civil law than common law, and that this results in enhanced judicial powers to take measures to ensure expeditious hearing of the cases.<sup>14</sup> It was particularly with this efficiency in mind that the role of the Pre-Trial Judge, before the confirmation of an indictment, was envisaged, even in the context of cases likely to fall within the jurisdiction of the Tribunal. Thus, Rule 88 of the Rules entitled "Role of the Pre-Trial Judge before Confirmation of the Indictment" sets out the Pre-Trial Judge's functions as the

<sup>7</sup> STL, Third Annual Report (2011-2012), pp. 36-37 (cf. <http://www.specialtribunalforlebanon.com/fr/مكتبة-المحكمة-1435/الخاصة-بليبنان/التقارير-السنية-third-annual-report-2011-2012>).

<sup>8</sup> [REDACTED].

<sup>9</sup> [REDACTED].

<sup>10</sup> [REDACTED].

<sup>11</sup> [REDACTED].

<sup>12</sup> [REDACTED].

<sup>13</sup> STL, Fourth Annual Report (2012-2013), p. 36 (cf. <http://www.specialtribunalforlebanon.com/fr/مكتبة-المحكمة-2181/الخاصة-بليبنان/التقارير-السنية-fourth-annual-report-2012-2013>); STL, Fifth Annual Report (2013-2014), pp. 37-38 (cf. <http://www.specialtribunalforlebanon.com/fr/Documents/Bibliotheque-du-STL/Reports-annuels/2984-fifth-annual-report-2013-2014>); STL, Sixth Annual Report (2014-2015), p. 33 (cf. <http://www.specialtribunalforlebanon.com/fr/Documents/Bibliotheque-du-STL/Reports-annuels/3845-sixth-annual-report-2014-2015>); STL, Seventh Annual Report (2015-2016), p. 22 (cf. <http://www.specialtribunalforlebanon.com/fr/Documents/Bibliotheque-du-STL/Reports-annuels/4833-seventh-annual-report-2015-2016>).

<sup>14</sup> Report, paras 8 and 9.

Prosecutor's investigations are conducted in cases falling or that may fall within the jurisdiction of the Tribunal. In that context, insofar as the Pre-Trial Judge may take any measures required to ensure cases likely to be within the jurisdiction of the Tribunal are diligently and effectively prepared for trial, in accordance with the powers conferred upon him by Rule 88 (C) of the Rules, he has the same powers, *a fortiori*, when those cases are already within the jurisdiction of the Tribunal, even if they have not yet been referred to him. In such a case, however, he must take care not to impinge on the prerogatives of the other organs of the Tribunal, including those of the Prosecutor.

9. In the context of the cases of Hamadeh, Hawi and El-Murr, which are now within the jurisdiction of the Tribunal pursuant to Rule 11 of the Rules, the Pre-Trial Judge recalls that when he ruled on their connected nature, he did not review whether there was sufficient *prima facie* evidence to demonstrate that a suspect had allegedly committed a crime which might fall within the jurisdiction of the Tribunal pursuant to Rule 68 of the Rules. To date, therefore, no proceedings have been brought against one or more suspects for their alleged role in any of these connected cases. Currently these cases are still at the investigative stage, which is the exclusive jurisdiction of the Prosecutor under Article 11 (2) of the Statute. Thus, the Pre-Trial Judge does not intend to interfere in the powers and functions of the Prosecutor, or to dictate to him how to pursue his criminal policy.<sup>15</sup>

10. Nevertheless, in the light of the foregoing, the Pre-Trial Judge considers that, in the context of the measures he may take under Rule 88 (C) of the Rules, it is appropriate at this stage in the proceedings to call on the Prosecutor to provide him with information regarding his investigations into the cases of Hamadeh, Hawi and El-Murr. This request for information is intended to enable the Pre-Trial Judge, as appropriate, to anticipate the next steps and take the measures required to be able, if necessary, to review the one or more indictments relating to these cases promptly and prepare these cases for trial in a diligent and efficient manner. This is an appropriate and urgent request given the progress of the work of the Tribunal and its temporary and *ad hoc* nature.

---

<sup>15</sup> Pursuant to Article 11(2) of the Statute, the Prosecutor receives no instructions from any source, is the sole responsible for the investigation and prosecution of persons responsible for the crimes falling within the jurisdiction of the Tribunal. He also assists the Tribunal in establishing the truth and protects the interests of the victims and witnesses pursuant to Rule 55 (C) of the Rules.

**IV. Confidentiality**

11. In the light of the reasons justifying the classification of the Connected Case Decision as confidential and *ex parte*,<sup>16</sup> the present Order must be classified in the same manner at this stage in the proceedings, in order to guarantee the security and safety of the victims and witnesses, and likewise safeguard the Prosecutor’s ongoing investigations and the integrity of the evidence pursuant to Rules 77 (A) and 96 (A) of the Rules.

**V. Disposition**

**FOR THESE REASONS,**

Pursuant to Rules 77, 88 (C) and 96 (A) of the Rules,

**THE PRE-TRIAL JUDGE,**

---

<sup>16</sup> STL, STL-11-02/CCS/PTJ, F0007, Reclassification Order, 14 November 2011, para. 10.

**ORDERS** the Prosecutor to provide him with any useful information regarding the connected cases, so as to allow him to anticipate the next steps and take the measures required to be able, if necessary, to review the one or more indictments relating to these cases promptly and prepare these cases for trial in a diligent and efficient manner;

**ORDERS** the Prosecutor to provide him with that information by 7 November 2016 at the latest, either by way of filings or in the context of a meeting organised pursuant to Rule 88 (D) of the Rules;

**ORDERS** the Prosecutor to keep him regularly informed, at least every two months, of such information by way of filings or meetings organised pursuant to Rule 88 (D) of the Rules;

**STATES** that the present Order is confidential and *ex parte*.

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

Leidschendam, 16 September 2016

[stamp]

[signature]

Daniel Fransen  
Pre-Trial Judge

