

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: **13 July 2017**

Original language: **English**

Classification: **Public**

THE PROSECUTOR

v.

**SALIM JAMIL AYYASH
HASSAN HABIB MERHI
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA**

EIGHTH DECISION ON VICTIMS' PARTICIPATION IN THE PROCEEDINGS**Office of the Prosecutor:**

Mr Norman Farrell & Mr Alexander Milne

Counsel for Mr Salim Jamil Ayyash:

Mr Emile Aoun, Mr Thomas Hannis & Mr Chad Mair

Legal Representatives of Participating Victims:

Mr Peter Haynes, Mr Mohammad F. Matter & Ms Nada Abdelsater-Abusamra

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Mr Mohamed Aouni, Ms Dorothée Le Fraper du Hellen & Mr Jad Yousef Khalil

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Ms Kristina Carey

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Counsel for Mr Assad Hassan Sabra:

Mr David Young, Mr Geoffrey Roberts & Ms Sarah Bafadhel



I. Introduction

1. In this decision, the Pre-Trial Judge rules on an application submitted on 28 June 2017 (“Application”) on behalf of one individual, assigned code V087, who requests the status of victim participating in the proceedings (“VPP”).¹ The Application was transmitted with the assistance of the Victims’ Participation Unit (“VPU”) pursuant to Rule 51(B)(iii) of the Rules of Procedure and Evidence (“Rules”). No responses have been received.

II. Submissions

2. In support of the Application, VPU explains that V087 was unable to submit an application for participation previously due to medical reasons but is now able to do so.² In this regard, VPU recalls that the Pre-Trial Judge previously considered applications received beyond the initial deadline of 31 October 2011 that he had established, as admissible on the basis that Rule 86 imposed no time limits.³

3. This decision is public. However, the submissions from the VPU and the Application will be summarised and assessed in the confidential and *ex parte* annex attached to this decision. As such, details concerning the identity of V087, the harm that he considers to have suffered, and how the harm is linked to the attack of 14 February 2005 (“Attack”) will not be articulated in the body of this decision in order to reconcile the need for transparency in the proceedings and the obligation to safeguard the confidentiality of V087’s identity and personal information.

III. Jurisdiction of the Pre-Trial Judge and Applicable Law

4. During the pre-trial phase in the case of *Ayyash et al.*, after initially setting the deadline for the filing of all applications for participation for 31 October 2011,⁴ the Pre-Trial Judge ruled on requests for VPP status in six public decisions.⁵ During the trial phase, the

¹ STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/PTJ, F3200, Ninth Transmission by the VPU Pursuant to Rule 51(B)(iii), 28 June 2017 (“Ninth Transmission”). All further references to filings and decisions refer to the STL-11-01 case unless otherwise stated.

² Ninth Transmission, para. 4.

³ *Id.* at para. 5.

⁴ F0045, Scheduling Order Regarding the Deadline for Filing Applications to Participate in the Proceedings as a Victim, 8 September 2011 (“Deadline for VPP applications”).

⁵ F0236, Decision on Victims’ Participation in the Proceedings, Public with confidential and *ex parte* annex, 8 May 2012, (“First Decision”); F0398, Second Decision on Victims’ Participation in the Proceedings, Public with confidential and *ex parte* annex, 3 September 2012 (“Second Decision”); F0557, Third Decision on

Pre-Trial Judge ruled on two further applications following consultations with the Trial Chamber that determined that new applications for VPP status should be dealt with by the Pre-Trial Judge.⁶ Currently, 71 individuals are participating in the proceedings through a team of legal representatives.⁷

5. The Pre-Trial Judge recalls that the relevant analysis of the law applicable to applications for VPP status under Rule 86 was set out in the First Decision.⁸ Briefly stated, any person seeking VPP status must demonstrate that an attack within the jurisdiction of the Special Tribunal for Lebanon (“Tribunal”) directly resulted in physical, material, or mental harm to him/her in accordance with Rules 2 and 86(B). Such request must provide *prima facie* evidence in support of the applicant’s claim. In the Fourth Decision, the Pre-Trial Judge clarified that a “victim” within the meaning of the Tribunal’s Rules requires that (1) the applicant 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 such that the applicant is able to demonstrate that the harm claimed was, *prima facie*, caused by a specific crime charged in the indictment.⁹

IV. Discussion

6. As a preliminary matter, the Pre-Trial Judge considers that although the Application is indeed overdue in relation to the initial deadline set, it is admissible at this stage of the proceedings since Rule 86 does not set time limits within which to present a request to obtain VPP status. The initial deadline was issued in accordance with the Pre-Trial Judge’s duty to “ensure that the proceedings are not unduly delayed”.¹⁰ This same consideration will be assessed as part of the criteria set out in Rule 86.

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

⁶ F1936, Seventh Decision on Victims’ Participation in the Proceedings, Public with confidential and *ex parte* annex, 5 May 2015 (“Seventh Decision”).

⁷ While 75 individuals have been granted VPP status, two have withdrawn from the proceedings and two have passed away – Ninth Transmission, para. 3.

⁸ First Decision, Sections III and IV.

⁹ Fourth Decision, para. 11.

¹⁰ Deadline for VPP applications, p. 2.

7. Rule 86(B) identifies the criteria to be applied when determining VPP status. The first four criteria in Rule 86(B)(i)-(iv) are mandatory.¹¹ The first three of these criteria are analysed in the confidential and *ex parte* annex to this decision. The Pre-Trial Judge considers that V087 fulfils each of the first three mandatory criteria in Rule 86 (B)(i)-(iii).

8. The fourth mandatory criterion, pursuant to Rule 86(B)(iv), requires the Pre-Trial Judge to consider whether the participation of V087 would be prejudicial to, or inconsistent with, the rights of the accused to a fair and impartial trial. Having analysed the Application, the Pre-Trial Judge is satisfied that there are no reasons, at this stage, to conclude that granting VPP status to V087 would prejudice the Accused's rights. In addition, the Pre-Trial Judge recalls that, in accordance with Rule 87, the Trial Chamber retains the right to determine the mode and extent of the victims' participation in the proceedings.

9. With respect to the remaining criteria prescribed in Rule 86(B)(v)-(x),¹² which are of a discretionary nature, the Pre-Trial Judge has analysed the Application in the manner consistently employed in previous decisions on VPP status¹³ and finds no reason to reject the Application.

10. As concerns the criterion of Rule 86(B)(viii) in particular, although the Application has been made at a late stage of the proceedings, the Pre-Trial Judge considers that there are sufficient safeguards to ensure that the proposed participation will not cause unnecessary delays or inefficiency in the proceedings in light of the powers conferred to the Trial Chamber under Rule 87, the modes of representation as set out in section V of this decision, and also considering that VPP status has been granted to other victims affected by the Attack in the same circumstances as V087.

¹¹ 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; (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.

¹² Those discretionary criteria are: (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.

¹³ First Decision, para. 102; Second Decision; para. 9.

11. For the foregoing reasons, the Pre-Trial Judge is satisfied, having conducted an assessment of the material in the Application, that V087 fulfils the requirements as set out in the Rules and accordingly shall be granted VPP status.

12. Lastly, 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 to V087 no later than two weeks after the Arabic translation of this decision becomes available.

V. Common legal representation and grouping of victims

13. The Pre-Trial Judge recalls the principles governing the common legal representation of VPPs,¹⁴ which apply *mutatis mutandis* to the present decision. Rule 86(C)(ii) provides that victims shall participate in the proceedings through legal representatives, unless otherwise authorised by the Pre-Trial Judge. Consistently with previous decisions on VPP status,¹⁵ the Pre-Trial Judge considers that V087 should participate in the proceedings through a legal representative.

14. On reviewing the Application, the Pre-Trial Judge finds no reason to justify placing the Applicant into a distinct group from the VPP group whose victim status was recognised in previous decisions. V087 will therefore be part of the group of victims identified in the First Decision.

VI. Confidentiality

15. 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 Application which are classified as confidential and *ex parte*, so as to provide V087 the possibility to seek protective measures as set out in Rule 133.

¹⁴ First Decision, paras 108-128.

¹⁵ Seventh Decision, para. 15; *see also* Second Decision, paras 14-16; Third Decision, paras 10-12.

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 V087;

ORDERS the VPU to notify V087 of this decision within two weeks of its translation into Arabic;

ORDERS that the annexes to the Ninth Transmission by the VPU Pursuant to Rule 51(B)(iii) of 28 June 2017 shall remain confidential and *ex parte* until further notice; and

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

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

Leidschendam, 13 July 2017



Daniel Fransen
Pre-Trial Judge

