



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE PRE-TRIAL JUDGE

Case No.: **STL-18-10/PT/PTJ**

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

The Registrar: **Mr Daryl Mundis**

Date: **17 April 2020**

Original language: **French**

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

THE PROSECUTOR
v.
SALIM JAMIL AYYASH

**DECISION RELATING TO VICTIMS' PARTICIPATION IN THE PROCEEDINGS
AND THEIR LEGAL REPRESENTATION**

Office of the Prosecutor:
Mr Norman Farrell

Counsel for Mr Salim Jamil Ayyash:
Mr Emile Aoun
Ms Anta Guissé

Victims' Participation Unit:
Ms Héloïse Dumont



I. Introduction

1. By way of the present decision (“Decision”), the Pre-Trial Judge rules on 33 applications for the granting of the status of victim participating in the proceedings (“applications” and “VPP”). These applications were filed by persons considering themselves to be victims of the attacks carried out against Messrs Hamade, Hawi, and El-Murr on 1 October 2004, 21 June 2005 and 12 July 2005 respectively (“applicants” and “connected attacks”). They are based on evidence intended to establish *prima facie* that a natural person suffered physical, material or mental harm as a direct result of the connected attacks. Those applications were transmitted by the Victims’ Participation Unit (“VPU”) pursuant to Rule 51 (B) (iii) of the Rules of Procedure and Evidence (“RPE”).¹ Following his examination, the Pre-Trial Judge grants the status of VPP to 29 persons² and rejects four applications which are incomplete.³ The Pre-Trial Judge has decided to divide the 29 VPP into three groups with common legal representation, each relating to one connected attack.

2. This Decision has no bearing on the determination by a Chamber, in the context of a definitive judgment, as to whether or not a VPP is the victim of an attack within the Tribunal’s jurisdiction.

3. The modalities for victims’ participation in the proceedings before the Pre-Trial Judge will be the subject of a separate decision, given that, in accordance with Rule 87 of the Rules, they are determined by the competent chamber at the various stages of the proceedings.

¹ STL, *The Prosecutor v. Salim Jamil Ayyash*, STL-18-10/I/PTJ, F0060, First Transmission of Applications for Participation pursuant to Rule 51(B)(iii) with Confidential *ex parte* Annexes 1 – 20, public with confidential and *ex parte* annexes, 18 November 2019 (“First transmission”). Unless otherwise stated, any subsequent references to filings and decisions relate to this case number. F0070, Second Transmission of Applications for Participation pursuant to Rule 51(B)(iii) with confidential and *ex parte* Annexes 1 – 4, public with confidential and *ex parte* annexes, 4 December 2019 (“Second transmission”); F0081, Third Transmission of Applications for Participation pursuant to Rule 51(B)(iii) with confidential *ex parte* Annexes 1 – 18, public with confidential and *ex parte* annexes, 19 December 2019 (“Third transmission”); F0096, Fourth Transmission of Applications for Participation pursuant to Rule 51(B)(iii) with Confidential and *ex parte* Annexes 1 – 24, public with confidential and *ex parte* annexes, 17 February 2020 (“Fourth transmission”); F0096, Addendum to “Fourth Transmission of Applications for Participation pursuant to Rule 51(B)(iii) with Confidential and *ex parte* Annexes 1 – 24”, public with confidential and *ex parte* annexes, 4 March 2020 (“Addendum”); F0127, Transmission of Additional Supporting Material and Information pursuant to Rule 51(B)(iii) with Confidential and *ex parte* Annexes A and B, public with confidential and *ex parte* annexes, 15 April 2020 (“Additional transmission”).

² This relates to applicants V1002, V1003, V1004, V1005, V1006, V1007, V1008, V1009, V1011, V1012, V1014, V1015, V1016, V1017, V1018, V1019, V1021, V1022, V1023, V1024, V1025, V1026, V1027, V1028, V1029, V1030, V1031, V1032 and V1033.

³ This relates to applicants V1001, V1010, V1013 and V1020.

II. Procedural background

4. On 15 May 2019, the Pre-Trial Judge confirmed in part an indictment relating to the connected attacks against Mr Ayyash (“Accused”).⁴
5. On 14 June 2019, the Prosecution filed a revised version of the indictment (“Indictment”).⁵
6. On 19 September 2019, the Pre-Trial Judge invited those persons who considered themselves to be victims of the crimes referred to in the Indictment to file their applications to participate in the proceedings with the VPU by 2 December 2019, should they wish to do so.⁶
7. On 18 November 2019, the VPU seized the Pre-Trial Judge of 10 applications.⁷
8. On 4 December 2019, the VPU transmitted two additional applications.⁸
9. On 19 December 2019, the VPU transmitted nine new applications.⁹
10. On 17 February 2020, the VPU transmitted 12 other applications.¹⁰ It provided additional documentation in support of those applications on 4 March 2020.¹¹
11. On 21 February 2020, in accordance with Rule 86 (C) (i) of the Rules, the Pre-Trial Judge sought submissions from the Parties and the VPU on relevant legal issues relating to the granting of VPP status by 12 March 2020.¹²
12. On 12 March 2020, the Prosecution and the VPU presented their respective submissions in response to the Order of 21 February 2020 (“Prosecution’s Submission”¹³ and “VPU

⁴ F0003, Public redacted version of the “Decision on the Review of the Indictment of 14 December 2018 issued against Mr Salim Jamil Ayyash” dated 15 May 2019, 16 September 2019.

⁵ F0012, Notice of Provision of the Public Redacted Version of the Indictment of 14 June 2019, Annex A, Public Redacted Version of the Indictment, 16 September 2019.

⁶ F0038, Order Setting the Deadline for the Filing of Applications to Obtain the Status of Victim Participating in the Proceedings, 19 September 2019 (“Order of 19 September 2019”).

⁷ First transmission.

⁸ Second transmission.

⁹ Third transmission.

¹⁰ Fourth transmission.

¹¹ Addendum.

¹² F0099, Order Inviting the Parties and the Victims’ Participation Unit to File Submissions concerning the Legal Issues relating to the Victims’ Applications to Participate in the Proceedings, 21 February 2020 (“Order of 21 February 2020”).

¹³ F0114, Prosecution’s Submission in Response to the Pre-Trial Judge’s Order of 21 February 2020, 12 March 2020.

Submission”¹⁴). Both favoured, as a general rule, following the case law established in the *Ayyash et al.* case,¹⁵ with the exception of a few points which will be examined in the body of the Decision.

13. On 12 March 2020, also in response to the Order of 21 February 2020, the Defence indicated that it did not wish to take a position, at this stage in the proceedings, on the relevant legal issues concerning the granting of VPP status, but that it reserved the right to appeal, pursuant to Rule 86 (C) (i) of the Rules, or to raise those issues before Trial Chamber II.¹⁶

14. On 15 April 2020, the VPU transmitted additional submissions from the applicants on the question of common legal representation for the VPP.¹⁷

III. Preliminary observations

15. The Pre-Trial Judge recalls that he had set the deadline for the filing of applications for participation with the VPU for 2 December 2019.¹⁸ Six applications were filed with the VPU after that date.¹⁹ The VPU explained that these late filings were as a result of delays in discussions between it and the applicants due to the political situation Lebanon since 17 October 2019 or to delays in obtaining the necessary documents in support of the applications.²⁰

16. The Pre-Trial Judge considers that although they were filed after the deadline that was initially set, given the circumstances invoked by the VPU and considering that they do not affect the requirements for a fair and expeditious trial, those six applications are admissible at this stage in the proceedings.

IV. Publicity of the Decision

17. The documents submitted to the Pre-Trial Judge by the VPU comprise, on the one hand, a public explanatory section relating to the transmissions of the applications and, on the other, the

¹⁴ F0115, VPU Submission on Legal Issues pursuant to the Pre-Trial Judge’s Order of 21 February 2020, 12 March 2020.

¹⁵ Prosecution’s Submission, para. 2; VPU Submission, paras 8 and 17.

¹⁶ F0117, Defence Notice following Pre-Trial Judge’s Order of 21 February 2020, 12 March 2020, paras 2 and 3.

¹⁷ Additional Transmission.

¹⁸ Order of 19 September 2019.

¹⁹ It relates to the applications from V1013, V1029, V1030, V1031, V1032 et V1033. See Third Transmission, para. 6 and Fourth Transmission, para. 6.

²⁰ First Transmission, paras 21 to 24; Second Transmission, para. 11; Third Transmission, para. 10. See also Third Transmission, annexes 12, 14, 16, 18; Fourth Transmission, annexes 16 and 24.

application forms for participation as well as a summary of each one prepared by the VPU which are confidential and *ex parte* in order to protect the applicants' identities.

18. Given that the Decision does not contain any information that would identify the applicants or compromise the confidentiality of the applications, the Pre-Trial Judge considers that there is no reason for it not to be made public. Conversely, the annex appended to the Decision ("Annex") contains the examination of the VPU submissions presented on behalf of the applicants. This remains confidential and *ex parte*. Accordingly, the details concerning the applicants' identities, the harm that they claim to have suffered and the way in which that harm was linked to the connected attacks, do not appear in the body of the Decision so as to reconcile the principle of publicity of the pre-trial proceedings enshrined in Rule 96 of the Rules and the duty of protection and confidentiality vis-à-vis the applicants and their statements.²¹

V. Discussion

19. In order to determine whether a victim may participate in the proceedings as a VPP, the Pre-Trial Judge examines a number of elements, some of which are mandatory, and others not. The four mandatory elements meet the requirements of Article 17 of the Statute, and are set out in Rule 86 (B) (i) to (iv) of the Rules, namely:

- (i) whether the applicant has provided *prima facie* evidence that he is a victim within the meaning of Rule 2 of the Rules ;
- (ii) whether the applicant's personal interests are affected;
- (iii) whether the applicant's proposed participation is intended to allow him 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 the requirements for a fair and impartial trial.

²¹ STL, *The Prosecutor v. Ayyash et al.*, STL-11-01/PT/PTJ, 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, paras 26 to 55. See also, *The Prosecutor v. Ayyash et al.*, STL-11-01/PT/PTJ, F0236, Decision on Victims' Participation in the Proceedings, 8 May 2012, public with confidential and *ex parte* annex ("First Decision on the VPP in the *Ayyash et al.* Case"), para. 129.

The other elements, set out in Rule 86 (B) (v) to (x) of the Rules, are not mandatory but may be taken into account by the Pre-Trial Judge.

20. The Pre-Trial Judge examines below the general principles relating to the granting of VPP status, without prejudice to his assessment of each application on a case-by-case basis. This examination refers in particular to the analysis of the law applicable to a determination of VPP status pursuant to Rule 86 of the Rules, as it was developed in the *Ayyash et al.* case.²²

A. Criteria establishing whether the applicant is *prima facie* a victim within the meaning of Rule 2 of the Rules

21. Pursuant to Rule 86 (B) (i) of the Rules, the applicant must provide “*prima facie* evidence that he is a victim as defined in Rule 2 of the Rules .”

22. Rule 2 of the Rules stipulates three requirements for being a “victim”, namely: (1) the applicant must be a natural person; (2) the applicant must have suffered physical, material or mental harm; and (3) such harm must have been a direct result of an attack within the Tribunal’s jurisdiction. Also by virtue of Rule 2 of the Rules, this victim shall have the status of “VPP” if he 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.

1. The Applicant is a Natural Person

23. The Pre-Trial Judge considers that the applicant must be a natural person having legal capacity.²³ They must show *prima facie* proof of their identity. To that end, identification documents such as national identity cards, extracts from individual record books, passports, residence cards or driving licences are sufficient.²⁴ When none of these documents can be provided, it is possible to use other reliable documents which contain information identifying the applicant. The probative value of these documents will be assessed on a case -by-case basis.²⁵

²² First Decision on the VPP in *Ayyash et al.*, Sections III and IV. See also, *The Prosecutor v. Ayyash et al.*, STL-11-01/PT/PTJ, F0879, Fourth Decision on Victims’ Participation in the Proceedings, 2 May 2013, public with confidential and *ex parte* annex (“Fourth Decision on the VPP in *Ayyash et al.*”), Section IV.

²³ First Decision on the VPP in *Ayyash et al.*, paras 30 and 31.

²⁴ *Id.*, paras 32 and 33.

²⁵ *Id.*, para. 33 (ii).

2. The Harm Suffered Was a Direct Result of an Attack within the Tribunal's Jurisdiction

24. A causal link between the harm claimed and an attack within the Tribunal's jurisdiction must be established. In the case at hand, the applicants must prove on a *prima facie* basis that the harm claimed was caused by a specific crime charged in the Indictment relating to the connected attacks.²⁶

25. This causal link to an attack within the Tribunal's jurisdiction is not restricted to direct victims only but can also include indirect victims who personally suffered harm as a direct result of the attack.²⁷

26. With regard to the degree of proximity required between the direct and indirect victims seeking VPP status, in addition to ascendant and descendant first-degree relatives of a direct victim, 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.²⁸ The closeness of the relationship required for the granting of VPP status does not differ depending on whether the direct victim was injured or killed.²⁹

27. With regard to the assessment of evidence that the harm sustained was a direct result of the attack, this must be done on a case-by-case basis taking into account all relevant circumstances. Applicants claiming to have suffered physical or mental harm as direct victims need to show, at a minimum, that they were present at the scene of the attack at the relevant time.³⁰ Applicants who are indirect victims must also show the direct victim's presence at the scene of the attack and show their kinship, close personal relationship or bond of special affection with, or dependence on, the direct victim, as appropriate.³¹

²⁶ Fourth Decision on the VPP in *Ayyash et al.*, para. 15.

²⁷ First Decision on the VPP in *Ayyash et al.*, para. 45.

²⁸ *Id.*, para. 50.

²⁹ *Ibid.*

³⁰ *Id.*, para. 52.

³¹ *Id.*, para. 53.

28. With regard to material harm, applicants seeking relief for such harm as a direct result of the attack must show at a minimum that the assets that have been damaged or destroyed were located in proximity of the scene of the attack.³²

29. If all reasonable steps to provide official documents or a written statement in order to establish that the harm is the direct result of the connected attacks have been taken, but yielded no results, applicants must notify the Pre-Trial Judge of the impossibility of producing the required documents and the reasons therefor. They can also avail themselves of the assistance of the VPU.³³

3. The Presence of Physical, Material or Mental Harm

30. The harm alleged must have been personally suffered by the applicant. In cases where the applicant is represented by a person acting on his behalf, the relevant harm must have been suffered by the victim, not by the representative.³⁴

31. With regard to the standard of proof required, as a general principle and where possible, applicants are required to produce documentary evidence of the harm sustained to substantiate their application. The probative value of the relevant documentary evidence will be assessed on a case-by-case basis.³⁵

32. The VPU is seeking a degree of flexibility regarding the standard of documentary evidence required,³⁶ pointing out that it may be difficult or in some cases impossible for some applicants to obtain the required documents 15 years after the fact.³⁷ It requests that circumstantial evidence be admitted. The VPU mentions for that purpose the possibility of considering corroborating evidence, or even an applicant's own statement, where that applicant is unable to provide the documentary evidence required.³⁸

33. The Pre-Trial Judge considers that, as a general rule, only documents of an official nature are accepted as sufficient *prima facie* evidence. He considers, however, that non-official

³² *Id.*, para. 54.

³³ *Id.*, para. 52.

³⁴ *Id.*, para. 59.

³⁵ *Id.*, para. 62.

³⁶ VPU Submissions, paras 11-16.

³⁷ *Id.*, paras 14 and 15.

³⁸ *Id.*, paras 12, 13, 16.

documents may provide useful elements of information, even if, as such, they do not ordinarily meet the standard of proof required.³⁹ With regard to the applicant's statement, while it may be taken into consideration and may provide useful information in the Pre-Trial Judge's assessment, on its own it would not suffice to demonstrate harm suffered or the existence of a link between such harm and an attack within the Tribunal's jurisdiction.

34. Lastly, the Pre-Trial Judge notes that the three forms of harm mentioned in Rule 2 of the Rules are listed in the alternative. Consequently, when the Pre-Trial Judge is satisfied that there is one form of harm for an applicant who alleges multiple forms of harm and that the other conditions set forth in Rule 86 (B) are met, he does not make a finding on the other types of harm. This does not mean that the other forms of harm, which were not assessed, have not been made out *prima facie*. The Pre-Trial Judge's findings concerning the type of harm suffered therefore cannot be relied upon elsewhere to deny reparation on the basis that the victims have only suffered the form of harm admitted in the Decision.⁴⁰

a. Physical Harm

35. The Pre-Trial Judge considers that even though Rule 2 of the Rules does not set any explicit threshold of seriousness for physical harm, transient or trifling harm does not constitute physical harm for the purposes of this Rule.⁴¹ The harm must be of such nature and gravity as to be detrimental to the health or well-being of the victim.⁴² Therefore, "physical harm" encompasses substantial bodily injuries, ordinarily requiring a degree of medical treatment for the victim.⁴³

36. Applicants are required to produce, where possible, medical records of the harm sustained, such as medical reports from a doctor, hospital or health centre, X-rays and scan results and prescriptions for medication, where applicable.⁴⁴

³⁹ First Decision on the VPP in *Ayyash et al.*, para. 62.

⁴⁰ *Id.*, paras 57 and 58.

⁴¹ *Id.*, para. 65.

⁴² *Ibid.*

⁴³ *Id.*, para. 66.

⁴⁴ *Id.*, para. 67.

b. Material Harm

37. The “material harm” in Rule 2 of the Rules denotes damage caused to, or destruction or deterioration of property, loss of income or of means of subsistence and other forms of financial loss.⁴⁵

38. Where an applicant claims loss or material damage to property, he must provide sufficient evidence to establish *prima facie* proof of title over the property in question.⁴⁶ In order to prove title over the property, documents such as title deeds, registration papers or equivalent documents establishing ownership in Lebanon, as well as invoices, insurance certificates and similar documents are relevant.⁴⁷

39. With regard to material harm sustained as such, this can be shown by insurance claim documents, estimates or receipts for repairs and any other documentary evidence (for example, photographs or audio-visual footage of the damaged property). In exceptional cases, the Pre-Trial Judge may consider other documents in proof of material harm, such as a witness statement attesting to the material damage suffered by an applicant.⁴⁸

40. Applicants claiming to have suffered material harm in the form of lost income must provide sufficient *prima facie* evidence of their prior income as well as of their inability to work either temporarily or permanently. To that end, the applicant may submit documentary evidence of, *inter alia*: (i) a destroyed workplace; (ii) inability to work; or (iii) receipt of unemployment benefits.⁴⁹

c. Mental Harm

41. The Pre-Trial Judge considers that “mental harm” in Rule 2 of the Rules must be understood as harm of an emotional, psychological or psychiatric nature.⁵⁰ Furthermore, this

⁴⁵ *Id.*, para. 72.

⁴⁶ *Id.*, para. 73.

⁴⁷ *Id.*, para. 74.

⁴⁸ *Ibid.*

⁴⁹ *Id.*, para. 75.

⁵⁰ *Id.*, para. 78.

harm must be of a certain degree of gravity, to the exclusion of transient and trivial emotional distress, in order to be taken into account for the granting of VPP status.⁵¹

42. The Pre-Trial Judge notes that the Rules do not distinguish between the mental harm of a direct victim and that of an indirect victim.

43. The mental harm of a direct victim must be established by means of documentary evidence, such as an attestation issued by a qualified doctor, psychologist, psychiatrist or counsellor.⁵²

44. With regard to indirect victims, the Pre-Trial Judge states that, as a general principle and where possible, applicants have to show the mental harm they have suffered. Moreover, they have to provide evidence of (i) the harm suffered by the direct victim; and (ii) their kinship or otherwise close personal relationship with the direct victim.⁵³ If the direct victim sustained only minor injuries, the emotional distress suffered by his family members would not ordinarily rise to the level of harm required for the granting of VPP status, unless shown otherwise.⁵⁴

45. With regard to the closeness of the relationship between direct and indirect victims, the Pre-Trial Judge considers that ascendant or descendant first-degree relatives as well as spouses, legal cohabitants and siblings are presumed to have a special bond of affection with the direct victim. Therefore, the harm suffered by these immediate family members can be presumed in case of death of the direct victim. This presumption also applies to persons in a relationship of similar closeness to the direct victim (for example, persons assimilated into the role of first-degree relatives), provided that they demonstrate *prima facie* the existence of such relationship. The harm alleged by extended family members may, in exceptional circumstances, be considered a direct result of one of the connected attacks if the applicant can establish a sufficiently close personal relationship with the direct victim.⁵⁵

46. On this point, invoking the jurisprudence of the International Criminal Court (“ICC”), the Prosecution submits that the mental harm of indirect victims resulting from the death or physical injury of a family member cannot be presumed solely based on the relationship between direct and indirect victims and maintains that indirect victims must also demonstrate mental harm by

⁵¹ *Ibid.*

⁵² *Id.*, para. 79.

⁵³ *Id.*, para. 82.

⁵⁴ *Id.*, para. 83.

⁵⁵ *Id.*, para. 84.

means of an attestation issued by a health professional such as a counsellor, psychologist or psychiatrist.⁵⁶

47. The Pre-Trial Judge notes that, contrary to the Prosecution's contention, in the judgment on the appeals in the *Katanga* case to which it refers,⁵⁷ the ICC Appeals Chamber does not call into question the presumption that it established in the *Lubanga* case. The ICC Appeals Chamber thus established that individuals could seek reparations for psychological harm resulting from the loss of a family member where such loss ensues from the crimes for which a conviction was handed down. For the indirect victim, psychological harm and harm resulting from the loss of the family member can be proved by demonstrating a "close personal relationship" with the direct victim. This jurisprudence thus confirms that the establishment of a close personal relationship with the deceased direct victim suffices to prove both the harm of the indirect victim and that the harm resulted from the crimes committed.⁵⁸

B. Whether the applicant's personal interests are affected

48. The Pre-Trial Judge considers that the notion of "personal interests" in Rule 86 (B) (ii) of the Rules is understood to mean the legitimate interests which a victim must establish in order to justify participating in the proceedings in a specific manner.⁵⁹

49. The Prosecution argues that, given the distinction in Rule 86 (B) of the Rules between harm and personal interests, it cannot be presumed that an applicant who has suffered harm has *ipso facto* had his personal interests affected and that these two criteria must be assessed separately.⁶⁰

50. While the Pre-Trial Judge stated in the First Decision on the VPP in the *Ayyash et al.* Case that "when determining whether or not a person is a victim in the sense of Rule 2 of the Rules, the notion of "personal interests" is of limited relevance" and that such interests could be

⁵⁶ Prosecution's Submissions, paras 6-8.

⁵⁷ See *Id.*, footnote 8.

⁵⁸ ICC, *The Prosecutor v. Germain Katanga*, ICC-01/04-01/07-3778-Red, Public redacted Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled "Order for Reparations pursuant to Article 75 of the Statute", 9 March 2018, para. 116. See ICC, *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-3129-AnxA, Order for Reparations (Amended) annexed to "Judgment on the appeals against the 'Decision establishing the principles and procedures to be applied to reparations' of 7 August 2012", 3 March 2015, para. 63.

⁵⁹ First Decision on the VPP in *Ayyash et al.*, para. 89.

⁶⁰ Prosecution's Submissions, para. 15.

presumed once it is established that the applicant has suffered harm as a direct result of an attack within the Tribunal's jurisdiction,⁶¹ pursuant to Rule 86 (B) of the Rules, he states that he assesses these criteria separately. Accordingly, it is not an automatic presumption but a case-by-case determination.

51. Insofar as a victim who has been granted the status of VPP does not have the status of a Party within the meaning of Rule 2 of the Rules, the victim cannot intervene in the proceedings as of right, and his or her personal interests must have been affected in order to justify participating in the proceedings in a specific manner. Among the personal interests justifying a victim's participation in the proceedings, the Pre-Trial Judge notes a desire to be informed about the various stages of the proceedings, recognition of victim status and suffering ensuing from the alleged crimes. This criterion will be particularly relevant when deciding on the modalities for the participation of VPPs.⁶²

C. Whether the applicant's participation is intended to express his views and concerns

52. The criterion of “views and concerns” in Rule 86 (B) (iii) of the Rules denotes: (1) the general motivation of persons seeking to participate in the proceedings as victims; and (2) the modalities of his participation at specific stages thereof. Applicants must have a legitimate aim and be driven to contribute to the pursuit of justice, for example by seeking to establish the truth or to obtain recognition of the harm they have allegedly suffered. With respect to the mode of participation, this implies that VPPs are constrained to express their views and concerns in accordance with the specific modalities prescribed by the Rules. The Pre-Trial Judge considers that at this stage in the proceedings, only the aspect relating to the applicant's motivation is relevant; the specific modalities of VPPs' participation are only relevant once the VPPs are actually authorised to participate in the proceedings.⁶³

⁶¹ First Decision on the VPP in *Ayyash et al.*, para. 90.

⁶² *Ibid.*

⁶³ *Id.*, paras 96 and 97.

D. The participation sought by the applicant must not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial

53. The Pre-Trial Judge considers that the criterion set out in Rule 86 (B) (iv) of the Rules can be met in at least three ways: (1) persons who are granted VPP status and who, therefore, participate in the proceedings, must be legitimately concerned, namely: they are victims within the meaning of Rule 2 of the Rules; their personal interests are affected; and their views and concerns correspond to legitimate objectives; (2) VPPs will ordinarily be represented by common legal representatives who – by virtue of their professional experience and ethical obligations – are required to ensure the integrity and expeditiousness of the proceedings; and (3) with respect to trial preparation, concrete measures will be taken, if necessary, to ensure that victims' participation in the proceedings does not prejudice the rights of the accused.⁶⁴

E. Other criteria

54. In addition to the above mentioned criteria, the Pre-Trial Judge may also consider the elements of Rule 86 (B) (v) to (x) of the Rules. In this regard:

- i) With regard to Rule 86 (B) (v) of the Rules on whether an applicant may be a witness, this determination will be made at the appropriate time pursuant to Rule 150 (D) of the Rules.⁶⁵ The fact that a person acts in the capacity of a witness during trial shall not serve to deprive that person of his rights to participate in proceedings as a victim,⁶⁶ and vice versa.
- ii) With regard to Rule 86 (B) (vi) of the Rules on whether the legitimate personal interests of the applicant in the trial are different from those of other VPPs, the Pre-Trial Judge considers that: (1) applicants who meet the requirements of Rule 86 (B) of the Rules and have different personal interests must be allowed to participate in order to express their views and concerns; and (2) a determination on whether the applicant's personal interests are different from those of other VPPs is to be made at the time, if any, that VPPs are divided into groups having common legal representation pursuant to Rule 86 (D) of the Rules. The fact that a person may have interests that diverge from the interests of others

⁶⁴ *Id.*, para. 100.

⁶⁵ According to Rule 150 (D) of the Rules: "A victim participating in the proceedings may be permitted to give evidence if a Chamber decides that the interests of justice so require."

⁶⁶ First Decision on the VPP in *Ayyash et al.*, para. 102 (ii).

shall not, however, serve to deprive that person of his rights to participate in proceedings as a victim.⁶⁷

- iii) With respect to Rules 86 (B) (vii) and (viii) of the Rules, namely the impact that the participation of victims could have on the integrity, dignity, decorum and objectivity of the proceedings and on the duration or efficiency of the proceedings, respectively, the Pre-Trial Judge notes that VPPs will ordinarily be allowed to participate in the proceedings, not on their own account, but through legal representatives. The professional experience and ethical obligations of such representatives will ensure the integrity, dignity, decorum and objectivity of the proceedings, as well as their efficiency. Moreover, these concerns will be addressed by the appropriate Chamber when the modalities of victims' participation are determined.⁶⁸
- iv) With respect to Rule 86 (B) (ix) of the Rules, on the impact that the participation of victims could have on the security of the proceedings or of any person involved therein, the Pre-Trial Judge recalls that it is possible to remedy such situations through the application of the necessary protective measures.⁶⁹
- v) With respect to Rule 86 (B) (x) of the Rules, namely whether the proposed participation of victims would otherwise be in the interests of justice, it should be noted that the interests of justice and the interests of victims coincide and that victims are likely to have an interest in seeing that crimes are effectively investigated and, where appropriate, prosecuted.⁷⁰

VI. Conclusions on the Assessment of Applications

55. After having conducted an individual assessment of the applications, the Pre-Trial Judge finds that 29 applications satisfy the first criterion in Rule 86 (B) (i) of the Rules and that these applicants provided *prima facie* evidence to establish that they are victims of one of the connected attacks within the meaning of Rule 2 of the Rules. The Annex provides a more detailed justification in this regard.

⁶⁷ *Id.*, para. 102 (ii).

⁶⁸ *Id.*, para. 102 (iii).

⁶⁹ *Id.*, para. 102 (iv).

⁷⁰ *Id.*, para. 102 (v).

56. The Pre-Trial Judge considers that those requests also meet the criteria set forth in Rule 86 (B) (ii) to (iv) of the Rules. For each applicant: (i) their personal interests were affected; (ii) he/she intends to express his/her views and concerns; and (iii) at this stage, the application does not affect and is neither inconsistent with the rights of Mr Ayyash nor with the requirements for a fair and impartial trial.

57. Furthermore, on the basis of the information available to him at this stage in the proceedings, the Pre-Trial Judge considers that none of these applications should be dismissed by virtue of the criteria enumerated in Rule 86 (B) (v) to (x) of the Rules, which he has also assessed. Therefore, the 29 applicants concerned are granted the status of VVP.⁷¹

58. However, the Pre-Trial Judge finds that four applications are incomplete. Indeed, as reasoned in greater detail in the Annex, the information provided is not sufficient to demonstrate that the harm alleged is the direct result of the connected attacks or that the harm suffered is sufficiently serious. The applicants concerned cannot, therefore, as it stands, have the status of VVP.⁷² Even if an application is found to be incomplete based on its accompanying supporting materials, this decision does not mean that the applicant concerned will not subsequently be able to be granted VPP status or recognized as a victim by a competent Chamber. If they so wish, persons whose applications have been found to be incomplete may submit additional information or materials in order to have their applications re assessed.

59. The Pre-Trial Judge recalls Rule 51(B) (v) of the Rules, which requires the VPU to inform the applicants of this Decision “in a timely manner”, and considers that, in the case at hand, notification should be effected as soon as possible.

VII. Common Legal Representation and Grouping of Victims

A. Legal Representation of VPPs

60. According to Rule 86 (C) (ii) of the Rules, victims shall participate in the proceedings through legal representatives, unless otherwise authorised by the Pre-Trial Judge.

⁷¹ Reference is made to the following applicants: V1002, V1003, V1004, V1005, V1006, V1007, V1008, V1009, V1011, V1012, V1014, V1015, V1016, V1017, V1018, V1019, V1021, V1022, V1023, V1024, V1025, V1026, V1027, V1028, V1029, V1030, V1031, V1032 and V1033.

⁷² Reference is made to the following applicants: V1001, V1010, V1013 and V1020.

61. The Pre-Trial Judge notes that no applicant has applied to represent himself. On the other hand, some of them are already represented by counsel and/or have indicated their preference for a specific representative.

62. The Pre-Trial Judge must ensure that the proceedings are not unduly delayed and take any measures necessary to prepare the case for a fair and expeditious trial, in accordance with Rule 89 (B) of the Rules. Furthermore, as described above,⁷³ the participation of victims in the proceedings must be conducted in a manner that is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.⁷⁴

63. In the case at hand, in light of the participants and of the interests involved in particular, the Pre-Trial Judge considers that the victims authorised to participate in proceedings pursuant to this Decision must do so through a legal representative.

B. Dividing the VPPs into Groups Having Common Legal Representation

64. Rule 86 (C) (ii) of the Rules provides that a VPP may only participate through a legal representative unless the Pre-Trial Judge authorises otherwise, while Rule 86 (D) of the Rules provides that:

The Pre-Trial Judge shall also decide whether to divide victims participating in the proceedings into groups having common legal representation, considering:

- (i) any conflicting interests that may hinder common representation;
- (ii) any shared or similar interests that may facilitate common representation; and
- (iii) the rights of the accused and the interests of a fair and expeditious trial.

This decision may not be appealed.

65. It follows from these provisions that the economy of the Tribunal's victims' participation regime favours common legal representation of victims grouped into a single group, unless valid reasons such as those set out in Rule 86 (D) (i) to (iii) of the Rules justify not doing so.⁷⁵ The practice of international courts and tribunals authorising victims to participate in the proceedings is also to limit the number of groups of victims represented. Moreover, VPPs' participation must

⁷³ See *Supra*, para. 53.

⁷⁴ See Article 17 of the Statute and Rule 86 (B) (iv) of the Rules.

⁷⁵ First Decision on the VPP in *Ayyash et al.*, paras 119 and 120.

be effected with due regard not only to the interests of the VPPs, but also to the broader interests which the Pre-Trial Judge is charged to ensure, notably the rights of the accused and a fair and expeditious trial.⁷⁶ Bearing that in mind, it should be determined whether there is a need, in the case at hand, to depart from the principle of single common legal representation for the VPPs.

66. Firstly, the Pre-Trial Judge notes that while the facts referred to in the Indictment concern the same accused, Mr Ayyash, and the so-called “connected” attacks, there are actually three distinct attacks, which took place in different circumstances, on different dates and in different locations, in addition to targeting different political figures, as the case may be, using distinct *modi operandi*. Consequently, the victims of each of these three attacks are affected by separate facts. In addition, the evidence is not identical.

67. The Pre-Trial Judge further notes that the VPU transmitted to him the views and positions of each applicant regarding the division of the VPPs into groups, where appropriate, asking him to take them into account in his assessment.⁷⁷ It follows from these observations that some applicants do not wish to be represented in a single group comprising all of the VPPs of the three connected attacks. They do not object in principle, however, to being grouped with the other victims of the same connected attack. Only one applicant wished not to be grouped with other victims, including those of the same connected attack. Some applicants submitted that the interests of each group of victims of a particular attack may differ from those of other attacks. Others mentioned conflicts of interest between the victims of different attacks.

68. The Pre-Trial Judge considers that the personal interests of the victims of each connected attack are likely to differ and that these differences could give rise to conflicting interests that may hinder common representation if all victims were represented in a single group and, consequently, prejudice the entire proceedings. Conversely, the Pre-Trial Judge considers that the victims of the same connected attack have a shared or similar interest that may facilitate common representation and that there are no conflicting interests significant enough to hinder such representation. The Pre-Trial Judge is not convinced that the alleged interests of the applicant seeking sole representation and those of the applicants who are victims of the same connected attack can be differentiated. He considers that all of these VPPs are affected by the same facts and the same criminal behaviour and that their common interest, beyond any political,

⁷⁶ See *Id.*, para. 120.

⁷⁷ First transmission, para. 19. See also Additional Transmission.

religious, philosophical, social or other considerations, is to try to know and understand why, and by whom, the connected attack of which they are victims was planned and executed.

69. The Pre-Trial Judge also considers that the desire for independence and freedom of action put forward by the applicant wishing to be represented alone is not sufficient to distinguish him from the other VPPs of the same connected attack, in the context of their legal representation. Accepting such a distinction would tend to give greater importance and influence to one VPP in relation to the others, while fairness of the proceedings is equally applicable in respect of the VPPs. The notion of equal treatment should inform their participation such that none of them should be placed at a disadvantage with respect to another when participating in the proceedings. To make a contrary finding could undermine the interests of some victims and could introduce extraneous considerations into the criminal proceedings that may be prejudicial to or inconsistent with the rights of the Accused and of the requirement for a fair and impartial trial, in violation of Article 17 of the Statute.

70. The Pre-Trial Judge therefore finds that in the present case there are valid reasons as referred to in Rule 86 (D) (i) and (ii) of the Rules which justify dividing the VPPs into three groups, each being linked to a connected attack. He further considers that this division will not prejudice the rights of the Accused or the interests of a fair and expeditious trial. The Pre-Trial Judge stresses that his assessment of the materials submitted to him is based solely on the legal criteria of Rule 86 (D) of the Rules, excluding any political, philosophical, religious or other considerations, specific to each VPP.

71. The Pre-Trial Judge invites the Registrar, after consulting the VPU, to designate, pursuant to Rule 51 (G) of the Rules, counsel to represent the victims participating in the proceedings in accordance with the Directive on Victims' Legal Representation⁷⁸ and the Decision. In this respect, the Pre-Trial Judge considers that it is for the Registrar to organise the three groups of legal representation in such a way as to ensure effective and efficient representation of all of the VPPs, while taking into account the specificities of each group.

⁷⁸ STL-BD-2012-04-Rev.2, adopted on 4 May 2012, amended and corrected on 10 April 2019.

VIII. Protective measures

72. Persons who have been granted VPP status who wish to have protective measures such as anonymity or other measures under Rule 133 of the Rules must apply at the earliest opportunity. Any such request must include a risk assessment conducted by the Victims and Witnesses Unit (the “VWU”).

IX. Disposition

FOR THESE REASONS,

PURSUANT TO Articles 17 and 25 of the Statute and Rules 2, 51, 86 and 133 of the Rules,

THE PRE-TRIAL JUDGE

GRANTS VPP status to the following applicants as set out in the Annex: V1002, V1003, V1004, V1005, V1006, V1007, V1008, V1009, V1011, V1012, V1014, V1015, V1016, V1017, V1018, V1019, V1021, V1022, V1023, V1024, V1025, V1026, V1027, V1028, V1029, V1030, V1031, V1032 and V1033;

REJECTS as incomplete the following applications as set out in the Annex: V1001, V1010, V1013 and V1020;

ORDERS the VPU to notify the applicants of the Decision as soon as possible and report on this matter to the Pre-Trial Judge;

DECIDES that victims authorised to participate in the proceedings shall do so through common legal representation divided into three groups, each relating to a connected attack, composed as follows:

- 1) group relating to the attack against Mr Hamade: V1004, V1005, V1006, V1007, V1008, V1011, V1015, V1016, V1017, V1018 and V1023;
- 2) group relating to the attack against Mr Hawi: V1014, V1024, V1025, V1026, V1027 and V1028;
- 3) group relating to the attack against Mr El-Murr: V1002, V1003, V1009, V1012, V1019, V1021, V1022, V1029, V1030, V1031, V1032 and V1033;

ORDERS the Registrar to designate a legal representative for each group to represent the persons granted the status of VPP included in that group; and

INVITES the VPU or the legal representatives of the VPPs to submit any request for appropriate measures to ensure the privacy and security of the VPPs to the Pre-Trial Judge, after having conducted a risk assessment for the relevant VPPs with the assistance of the VWU.

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

Leidschendam, 17 April 2020

[stamp]

Daniel Fransen
Pre-Trial Judge

