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Victims' Rights in Criminal Proceedings

A comparative analysis between the criminal procedure before The Special Tribunal for Lebanon and the Lebanese Domestic Criminal Courts

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Abstract

Since the development of international transnational crimes, the creation of international criminal tribunals to try those crimes on an international level was essential to promote the rule of law and to prosecute criminals. Very often, the victims

of these crimes have not been parties before international courts but had seldom the right to participate in the proceedings. Victims' right to participate in international criminal procedures has seen a growing procedural dilemma in international trials, as it has been advocated by many but also refuted by others. Before the Special Tribunal for Lebanon, allowing victims' participation in the proceedings established a key modification to the orthodox international criminal procedure mechanisms, upholding the rights of the victims in international criminal proceedings to the next level. While this international Tribunal is exclusively bound by the application of Lebanese Law, it is interesting to analyze how, the application of domestic law with regard to the rights of the victims of crimes to participate in the proceedings on a national level, engendered a shift in the status of victims' participation in the proceedings before international criminal courts.

Key words

International Criminal Law – Criminal Procedure – STL – Victims – Lebanon

Introduction

Since the development of international transnational crimes, the creation of international criminal tribunals to try those crimes on an international level was essential to promote the rule of law and to prosecute criminals. Very often, the victims of these crimes have not been parties before international courts but had seldom the right to participate in the proceedings. The Special Tribunal for Lebanon, is an ad hoc tribunal established by Resolution 1757 of the United Nations Security Council in 2007, entrusted to try before it the crime of terrorism, which resulted in the death of the former Lebanese Prime Minister Rafiq Hariri and several others, on the basis of Lebanese law only. Its statute embodies exceptional innovations to international criminal justice (Aptel, 2007). Besides having a narrow mandate, its statute introduced important characteristics of the civil law system or what is known as the “Romano-Germanic criminal system” (Aptel, 2007: 1108) into the international justice arena. Allowing the judges to conduct the hearings together with the admissibility of trials *in absentia* are not the only innovations (Aptel, 2007). This ad hoc tribunal's most important

innovation was mainly to allow victims' participation in the proceedings, a practice that has long been ignored before international criminal courts (Aptel, 2007; Gillett and Schuster, 2009). Since victims of crimes tried before international tribunals have several motives to participate in the proceedings, the Special Tribunal for Lebanon allowed their participation to promote a "more efficient international criminal procedure" (Aptel, 2007: 1107). This exception has been the result of the application of the Lebanese law to ensure that those victims are not deprived before the STL of their rights, as "if the trial was to be held before Lebanese courts" (Aptel, 2007: 1120).

Accordingly, it is interesting to study the notion of Victim in the context of the Special Tribunal for Lebanon (I), then deeply understand the modalities of victims' participation in the proceedings before the Tribunal (II) and finally analyse the rights of the victims before the Lebanese Domestic Criminal Courts (III).

I-Notion of Victim

1.1.The term 'victim' in international law can have several meanings. On one hand, the victim can be a physical person who has suffered harm or who has been injured as a result of a crime. This harm can be physical, psychological or social. On another hand, a victim can also be a corporation that suffered loss or damage. However, the notion of "physical person" is the main focus of this study.

1.2.In Common law countries, such as the United States of America, the criminal justice system has for too long treated victims less than they should, putting the interest of the State and of the common well-being first (Herrington, 1985). In fact, the system has forgotten that these victims are the resentful parties in the case, who need legal representation, recognition and reparation (Herrington, 1985). Accordingly, individuals who have survived an attack or got injured as a result of an assault should be treated with compassion.

1.3.In Civil law countries, such as Lebanon, the Lebanese Code of Criminal Procedure (LCCP) grants the victims - individuals or natural persons who suffer harm as a result of an attack, accident, or any other event- "the status of *parties civiles* and allows them to initiate criminal proceedings" (de Hemptinne, 2010: 172). It entails that inquisitorial systems, in contrast to adversarial systems, take more into consideration the interests

of the victims by providing them with more rights as “*parties civiles*”. Article 5 of the Lebanese Code of Criminal Procedure confirms this statement and states that victims can bring an action before national courts and request compensation or reparation.

1.4.As the Special Tribunal for Lebanon (thereafter STL) adopts its own rules of evidence and procedure -as will be detailed later- it does not, in contrast with the Lebanese Code of Criminal Procedure, allow victims to participate in criminal proceedings unless an indictment has been confirmed (de Hemptinne, 2010), in accordance with Rule 86 (A) of its Rules of Procedure and Evidence (hereafter the Rules).

It is therefore crucial to understand how victims can qualify as such before the Tribunal.

1.1.How to qualify as a ‘victim’ before the Special Tribunal for Lebanon ?

1.1.1.Under The STL’s Rule 2 of the Rules, a victim is defined as “*a natural person who has suffered physical, material or mental harm as a direct result of an attack within the Tribunal’s jurisdiction*”. This has been confirmed by the STL’s Judgment in ***The Prosecutor v. Ayyash et al., Pre-trial Judge, Case no: STL-01/PT/PTJ of May 8, 2012.***

1.1.2.The Rule has thus required three cumulative conditions in order for an individual to be granted the status of victim before the STL: a natural person (1), having suffered physical, material or mental harm (2), which has been the direct result of an attack within the STL’s jurisdiction (3).

1. *The Victim must be a natural person:* This requirement excludes legal persons or corporations from qualifying as victims and thus participating in the proceedings before the Tribunal. In addition, the natural person must have legal capacity to act before the Tribunal. However, if the victim is an individual who has not reached the age of 18 by the time of the occurrence of the attack or criminal activity (a minor), or if the victim lacks legal capacity, he/she should be brought before the Tribunal by a person acting on the applicant’s behalf, in their title of legal

2. guardian of that victim. In addition to the legal capacity, the above-mentioned caselaw states that the applicant must provide *prima facie* proof of their identity.
3. *The Victim must have suffered physical, material or mental harm*: Rule 2 of the Rules has specified three categories of harm, as a result of which, an individual is considered a victim before the Special Tribunal for Lebanon.

-First, physical harm: The physical harm is the harm that injures the body, known as “bodily injury”. In *The Prosecutor v. Ayyash et al., Pre-trial Judge, Case no: STL-01/PT/PTJ of May 8, 2012*, the Pre-Trial Judge considered that “*transient or trifling harm does not constitute physical harm, for the purpose of Rule 2 of the Rules*”. The Pre-Trial Judge adds that “[...] *it should be of such nature and gravity as to interfere with the health, well-being or comfort of the victim [...]*”. Accordingly, the Pre-Trial Judge considers that a *prima facie* standard of proof must be applied, under Rule 86(B) (i) of the Rules, to see whether sufficient grounds exist in relation to the harm suffered by the applicant.

-Second, material harm: The material harm refers to the damage of property, buildings or vehicles of the applicant. The Prosecutor also argued “*that the loss of employment and associated income*” can also be understood as material damage as directly resulting from the Attack. Not to mention that the victim should provide evidence of ownership of the property and the proof that the attack was the cause of the damage or destruction.

-Third, mental harm: The mental harm is understood as the psychological harm that is caused by the Attack. It can include psychiatric trauma and mental disorder, leading to emotional suffering of the individual. The Pre-Trial Judge argues that emotional suffering does not include “*transient or trivial emotional distress*”.

4. *The harm has been a direct result of an attack within the STL’s jurisdiction*: This third requirement emphasizes the notion of direct result of the Attack. It means that the applicant should provide proof that the harm suffered has been the outcome of an attack which falls within the jurisdiction of the Tribunal.

After studying the cumulative requirements to qualify as a victim before the Tribunal, it is now necessary to study the types of victims according to the STL’s Rules.

1.2. Which victims can participate in the proceedings before the Special Tribunal for Lebanon?

Direct and Indirect Victims under the STL's Rules:

1.2.1. The Special Tribunal for Lebanon has allowed both direct and indirect victims to come forward with their applications to participate in the international criminal proceedings. Thus, it is necessary to distinguish between these two categories of victims, as the participation of the latter is limited to specific conditions.

1.2.2. The Victims' Participation Unit (hereafter VPU) has argued in the case of ***The Prosecutor v. Ayyash et al., Pre-trial Judge, case no: STL-01/PT/PTJ of May 8, 2012***, that sometimes individuals can suffer harm as an indirect result of an attack, and should nevertheless be considered victims. In the same line of reasoning, the Pre-Trial Judge in the above-mentioned judgment noted that the adjective "direct" as mentioned in Rule 2 of the Rules does not refer to the notion of "harm", but rather to the requirement of causation between the attack and the damage caused by it. For this reason, the Pre-Trial Judge used his margin of appreciation and considered that direct victims, just like indirect victims, can participate in the proceedings before the Tribunal as long as a harm deriving directly from the Attack has been suffered by them.

1.2.3. Article 25 of the STL's Statute confirms this point, as it stipulates that victims are individuals who *"have suffered harm as a result of the commission of the crimes by an accused convicted by the Tribunal"*. Hence, Article 25 does not specifically mention the harm as a "direct" result of the criminal conduct. Accordingly, the text of Rule 2 of the Rules should not be interpreted in a narrowed manner.

1.2.4. Direct victims are the individuals who have suffered a prejudice or harm as a direct result of the crime or the attack. As for the indirect victims, they are the ones who have suffered harm due to the prejudice or harm suffered by the direct victim. According to the judgement in ***The Prosecutor v. Ayyash et al., Pre-trial Judge, Case no: STL-01/PT/PTJ of May 8, 2012***, the Pre-Trial Judge ruled that *"[...] Ordinarily, 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. [...] Similarly, indirect victims whose harm results from the physical or mental harm suffered by the direct victim need to show the direct victim's presence at the scene of the Attack as indicated above."*

[...]”. Nonetheless, the Vice-President of the Special Tribunal for Lebanon, Judge Ralph Riachy, believes that “being present at the scene of the accident or attack” should not be a requirement to qualify for a “direct victim” (Riachy, December 2018). On another hand, both the Pre-Trial Judge and Judge Riachy agree that the indirect victim can sometimes be required to provide evidence of close relationship or a special bond of affection with, or dependence on, the direct victim.

1.2.5. The ruling of the Pre-Trial Judge comes in line with the International Criminal Court Appeals Chamber’s decision, which pointed out that forasmuch as a person suffers a personal harm, “[...] *it can attach to both direct and indirect victims [...]*” (ICC, ***Prosecutor v. Thomas Lubanga Dyilo***, Case No. ICC-01/04-01/06, **Judgment on Appeals of 11 July 2008**). In addition, the Lebanese Code of Obligation and Contract, in its Article 134, stipulates that victims should be awarded reparations for indirect harm which is undoubtedly connected or related to the offence in question.

1.2.6. The final requirement in identifying an individual as a victim before the Special Tribunal for Lebanon is in pointing out how the applicant’s personal interests are affected. According to Article 17 of the Statute of the STL “*Where the personal interests of the victims are affected, the Special Tribunal shall permit their views and concerns to be presented and considered [...]*”. Likewise, Rule 86 (B) (ii) of the Rules stipulates that a victim shall have its personal interests affected, and Rule 86 (B) (iv) stipulates that a victim can participate in the proceedings when his/her “*legitimate personal interests [...]* are at stake in the trial”.

After exploring the notion of direct and indirect victims and establishing who can be considered a victim before The Special Tribunal for Lebanon, understanding victims’ participation modalities in the proceedings is necessary to puzzle out how victims’ rights are applied.

II- Victims’ participation modalities before the Special Tribunal for Lebanon

Before starting with exploring victims’ participation modalities before the Special Tribunal for Lebanon, it is necessary to state why their participation is essential. In fact,

there are three major reasons for victims' participation in criminal proceedings. The purposes are judicial, emblematic and reparative.

Regarding the judicial purpose, victims' participation is important before an international tribunal because it might "contribute to the establishment of the truth" (de Hemptinne, 2010: 167). In fact, victims might reveal important and relevant facts, information, data or any evidence that the Prosecutor or the defence did not have access to, nor provided the Tribunal with. Their contribution might thus help judges in their reasoning, leading to a better, just and fair judgment. In addition, often the Prosecutor and the victims have different interests, and for that, the law allows the victims to be heard by the judge or the chamber during the proceedings. Moreover, there is an emblematic purpose. As the Special Tribunal for Lebanon is an international tribunal, its work is not very known to the public, specifically the victims who are not parties at the case. For this reason, and in order to help victims feel more integrated in the trial, and to show more transparency in its work, their participation in the proceedings is essential (de Hemptinne, 2010). Finally, there is a reparative purpose which is the biggest motivation for victims to participate in the proceedings. In fact, victims' participation is constructed around the idea of compensation. Although the reparative impact is limited before the Special Tribunal for Lebanon (as victims cannot claim reparations before the Tribunal), they can nonetheless obtain reparation before national courts, after the judgment of the Tribunal is pronounced, according to Article 25 of the Statute of the STL. Herrington puts it as such: "*restitution is another means that serves justice and helps the victim recover from the crime*" (Herrington, 1985: 162). Thus, obtaining compensation for the damages is a big relief to victims who have suffered losses, whether physical, material or economic.

2.1. Modalities of victims' participation under the Special Tribunal for Lebanon's Statute and Rules of Procedure and Evidence:

"Victim Participation has the potential to empower survivors and engender individual healing and social trust, promoting accountability and the rule of law" (Hobbs, 2014: 3). In fact, the goal of international criminal tribunals is primary to try crimes with international dimensions or which have had an important impact on a

society or community. For that, victims of those criminal activities should have the right to participate in the proceedings before the international tribunal. Each international criminal court has its own rules of procedure and allows victims' participation under specific conditions. It is thus important to study under the Statute and the Rules of Procedure and Evidence of the Special Tribunal for Lebanon, the rights of the victims (i) and the modalities of their participation in the proceedings before the Tribunal (ii).

2.1.1. Victims' rights before the Special Tribunal for Lebanon:

2.1.1.1.The right of the victims to participate in the proceedings before an international tribunal is essential because there is often a problem in “transmitting to victims an understanding of the processes of justice, including their limitations” (Hobbs, 2014: 11). Thus, allowing victims to take part in the proceedings would lead to a better acceptance of the Tribunal's decision (Hobbs, 2014).

2.1.1.2.According to Article 17 of the Statute of the STL “*When the personal interests of the victims are affected, the STL 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*”.

This article stipulates that when the victims' personal interests are troubled, they “are allowed to present their views and concerns at any appropriate stage of the proceedings” (de Hemptinne, 2010: 165).

2.1.1.3.In addition, Rule 2 of the Rules defines victim participating in the proceedings as “*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.*”

Thus, Article 17 of the Statute and Rule 2 of the Rules have established the groundwork for victims' rights to participate in the proceedings before the Tribunal. It is now important to study the modalities of victims' participation before the Tribunal.

2.1.2. Victims' participation at different stages of the proceedings before the Tribunal:

The Special Tribunal for Lebanon established a Victim's Participation Unit (VPU), which is the organ responsible of receiving victims' applications to participate in the proceedings, under Rule 51 (B) (iii) of the Rules. It is also the organ which verifies the completeness of the application, and its transmission to the Pre-Trial Judge.

2.1.2.1. According to Rule 86 (A) of the Rules, victims cannot participate in the investigation, but can only participate after an indictment has been confirmed. In addition, victims do not have the right to intervene *ipso facto*, but should receive an authorization from the Pre-Trial Judge, according to Rule 86 (B) of the Rules. Moreover, under Rule 86 (C) (ii) of the Rules, a victim may only participate in the proceedings through a legal representative, and under Rule 86 (D), the Pre-Trial Judge can decide that a group of victims be represented by a common legal representative. This has been confirmed by the judgement in ***The Prosecutor v. Ayyash et al., Pre-Trial Judge, Case No: STL-11-01/PT/PTJ, 18 May 2012***. Finally, according to Rule 87 (C) of the Rules, a victim participating at the sentencing stage, can only be heard by the Trial Chamber or present before it a written submission "*relating to the personal impact of the crimes on them*", and not on which sentence to impose on the convicted person. ***In The Prosecutor v. Ayyash et al., Pre-Trial Judge, Case No: STL-11-01/PT/PTJ, 18 May 2012***, it has been made clear that "[...] victims' participation is limited to expressing their views and concerns on matters that affect their personal interests." It added that their participation "[...] cannot be inconsistent with the rights of the accused and a fair and impartial trial."

2.1.2.2. At trial, victims who participate in the proceedings are entrusted with important powers (de Hemptinne, 2010). According to Rules 143 and 147 of the Rules,

respectively, victims are allowed to make an opening statement and a closing argument. According to Rule 87 (B) and Rule 146 (A) of the Rules, victims can be authorized to call witnesses, and under Rule 146 (B) (ii) to adduce evidence. In addition, victims have the right to “*examine or cross-examine witnesses and file motions and briefs*” under Rule 87 (B) of the Rules (Gillett and Schuster, 2009; de Hemptinne, 2010). The aforementioned judgment states that according to Rule 89 (D) of the Rules, “[...] *the Pre-Trial Judge shall record the points of agreement and disagreement on matters of law and fact. In this connection, he may order the Parties and the victims participating in the proceedings to file written submissions.*” The Rules of Procedure and Evidence also grant the legal representative of the victim the right to ask specific questions to the accused, according to Rule 144 (B). However, the questioning cannot occur directly, but rather through the Judge (de Hemptinne, 2010). Additionally, victims must receive documents filed by the parties, except for confidential and *ex parte* documents under Rule 87 (A) of the Rules.

Nevertheless, in ***The Prosecutor v. Ayyash et al., Pre-Trial Judge, Case No: STL-11-01/PT/PTJ, 18 May 2012***, it has been argued that the Pre-Trial Judge can grant the victims’ legal representative the right to access confidential materials under certain conditions; (i) when “[...] *the security of individuals or organization will not be adversely affected*” and (ii) in the meaning of Rule 133 of the Rules. The latter condition means that this exception -of accessing confidential materials- cannot be extended to the victims themselves but only to their legal representatives, who are bound by confidentiality of evidence according to the Code of Professional Conduct of lawyers before the Tribunal. An exception to this exception exists, and that is if the legal representative believes that it is crucial that such materials be divulged to the victims in order to best represent their interests. For that, the legal representative needs to seek approval of the party providing the material, and in the negative, seek the Pre-Trial Judge’s approval, who will decide on a case-by-case basis. Apart from that, victims should also be informed of any procedural development, under Rule 86 (F) of the Rules, and of the date of the pronouncement of the judgment, under Rule 168 (A) of the Rules. Finally, according to the above-mentioned judgment, under Rule 91 (D)

and (E) of the Rules, “[...] the Pre-Trial Judge might invite victims participating in the proceedings to attend meetings [...]” and such meetings have to be held either “inter partes” or “ex parte”. The judgment adds that according to Rule 94 (A) of the Rules, “[...] the Pre-Trial Judge considers that, as a general rule, the legal representative may attend and participate in meetings, status conferences and hearings, where a VPP [victim participating in the proceedings]’s personal interests are affected by an issue which will be considered at the event concerned.”

2.1.2.3.At the appeals stage, Rule 87 (D) of the Rules stipulates in a vaguely way the role of victims or their rights. It states that “subject to the authorization of the Appeals Chamber, after hearing the Parties, a victim participating in the proceedings may participate in a manner deemed appropriate by the Appeals Chamber.” In ***The Prosecutor v. Ayyash et al., Appeals Chamber, Case No: STL-11-01/PT/AC/AR126.3, 10 April 2013***, regarding the admissibility of the Appeal, the Chamber pointed out that “[...] an appeal may only be filed if this right is explicitly granted in the Rules of Procedure and Evidence” or “if certification to appeal is given by the first instance Judge or Chamber”. It is important to mention that this appeal was admitted before the Appeals Chamber with Judges Riachy and Nsereko dissenting. The decision adds that according to Rule 126 (E) of the Rules, only a “Party” has the right to appeal, and under Rule 2 of the Rules, the term “Party” refers to “The Prosecutor and/or the Defence” and thus, it does not include the victims nor their legal representatives. However, the Appeals Chamber used its margin of appreciation and held by majority that “[...] Rule 126 (E) is exceptionally applicable by analogy to allow for a narrow right to an interlocutory appeal of the VPPs in strictly confined circumstances, and only after obtaining certification.” By confined circumstances, the Chamber meant when the victim’s “[...] own interests as participant(s) are fundamentally concerned [...]”, without causing prejudice to the accused.

2.1.2.4.At the sentencing stage, where the aim of the criminal proceedings is to determine the sentence that must be imposed on the accused when found guilty (de Hemptinne, 2010), Rule 171 (B) of the Rules grants VPPs, after obtaining authorization

by the Trial Chamber, to “*exercise all the rights provided in Rule 87 (C).*” Rule 87 (C) of the Rules provides a balance between the interests of the victims and the accused’s rights. On one hand, it allows the victims to present their views and concerns regarding the effects of the crimes on them “in order for the judges to evaluate the gravity of the crimes committed by measuring the level of suffering” they endured (de Hemptinne, 2010: 178). On the other hand, it does not give victims any power to intervene with the sentence to be imposed on the convicted person; rather, the Prosecutor is solely entrusted with this power, while taking into consideration the convicted person’s right to a fair sentence, proportional to the crime committed.

2.1.2.5. Nonetheless, according to Article 25 (3) of the Statute of the STL, “ *[...] a victim or persons claiming through the 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.*” Therefore, the Statute of the STL makes it clear that victims cannot obtain compensation before the STL. However, once a final judgment has been pronounced, convicting the accused of the crimes which resulted in the suffering of the victims, the latter can ask the Registrar of the STL to transmit to the competent domestic authorities the final decision confirming the criminal responsibility of the convicted individual, according to article 25 (4) of the Statute. The victim will only then be able to request compensation before the domestic courts.

After determining the types of victims before the STL and establishing their rights to participate in the proceedings according to the Tribunal’s texts, it is now crucial to compare it to the rights of the victims before the Lebanese Domestic Criminal Courts.

III-Victims’ participation modalities before the Lebanese Domestic Criminal Courts

For the purpose of this research, this paragraph will only explore the rights of the victims to participate before the Lebanese domestic criminal courts, and its modalities. Victims’ rights before the Lebanese domestic civil courts will not be discussed as

victims are one of the two parties at trial and can use all their rights in court and be present at each stage of the proceedings as they are “*partie civile*.”

This paragraph would discuss victims’ participation before the Lebanese Permanent Military Tribunal (I) and before the Lebanese domestic criminal courts (II).

3.1. Before the Lebanese Permanent Military Tribunal:

3.1.1.According to Article 5 of the Lebanese Code of Criminal Procedure (hereafter LCCP), the Public Prosecutor is the one who can initiate criminal actions before criminal courts, and the victim can initiate civil actions before civil courts to request compensation as a result of the harm suffered. Hence, before the Military Tribunal, the Public Prosecutor is the only one who is entrusted with the right to initiate criminal actions, as criminal acts affect public order and increase public danger, according to Article 6 of the LCCP. It is thus the Public Prosecutor who is a party at the case against the accused and not the victim. This is confirmed by ***caselaw No. 176, of 8/6/2006, Cassation, Criminal Court, Chamber No.6***, which ruled that “[...] *the military judge does not rule on civil cases, thus the victim cannot appear before this court under this capacity, but has to go before the competent civil court to request reparation for the damages caused by the criminal conducts on which the military tribunal has ruled [...].*”

3.1.2.Moreover, ***the Military Supreme Court, in its decision No. 121, of 20/12/1957***, pointed out that “*the victim does not undergo an oath before the military tribunal because article 53 of the Code of Military Justice only grants him or her the right to file an action for compensation before civil courts, when only then he or she will become a party at the case.*”

3.1.3.According to Lebanese law, victims can initiate an action before the regular civil court and request compensation for the damages caused by the criminal conduct. Thus, victims cannot request reparation before the Military Tribunal. This is confirmed by ***Decision No.25, of 29/1/2009, Single Judge, Lebanese Civil Court***, which ruled that

“[...] according to his competences, the military judge does not rule on a case established via a personal suit initiated by a victim, but has only and exclusively the jurisdiction to rule over an action initiated by the Public Prosecutor via a public action, according to the last provision of article 25 of the Code of Military Justice, and by that, transferring the case of ruling on compensation to the competent civil court [...].”

3.1.4. Finally, the Code of Military Justice, Article 78, grants the Government's Commissioner the right to file an appeal against the decision of the military investigative judge. This right is neither granted to the accused nor to the victim. In its 2007 decision, ***Decision No. 90, of 12/4/2007, Cassation Criminal Court, Chamber No. 6***, the Court of Cassation confirmed its firm position on this point and ruled that *“the victim does not have the right to file an appeal against the decision of the investigative judge [...], this right is granted only to the Government's Commissioner, with only an exception granting the accused the right to appeal for issues of incompetency of the Court [...].”*

3.2. Before the Lebanese Domestic Criminal Courts:

The Lebanese Code of Criminal Procedure (hereafter LCCP), grants victims of crimes a legal statute allowing them to file an action in compensation for the harm and damages suffered as a result of a criminal conduct (Becheraoui, 2007). However, the provisions of the LCCP did not enhance or modify the rights of the victims to participate in the proceedings before the criminal courts, but only safeguarded their right to file an action before the civil court and be a party at the case, by taking the statute of *“partie civile”*, according to Article 5 of the LCCP.

3.2.1. Becoming “partie civile” before the Investigative Judge (Juge d’instruction):

3.2.1.1. Acquiring the legal statute of *“partie civile”* is fundamental because it promotes the victims from being a witness to being a party at the case, and gaining all the rights granted to a party at trial. The ***Lebanese Court of Cassation, in its Decision No. 305, of 3/07/2002, Criminal Chamber***, confirms that.

3.2.1.2. On the other hand, Article 7 of the same code allows the victim to bring such action before the investigative (or examining) judge in crimes such as felonies and misdemeanours, and before the single judge in cases of misdemeanours and contraventions, when this penal judge is trying the criminal case. By initiating the action in compensation, the public action is automatically initiated if it wasn't previously launched by the Public Prosecutor before the penal judge (Article 7 (2) LCCP). According to Article 68 (1) of the LCCP, the victim of a crime (either a felony or a misdemeanour) can initiate an action directly before the investigative judge who is territorially competent, while taking the legal statute of "*partie civile*". This is confirmed by **Decision No.305** above-mentioned. Moreover, the **Criminal Chamber of the Lebanese Court of Cassation, in its Decision No. 476, of 11/12/2002** expressly ruled that the Lebanese law allows the victim to act alone and initiate this action despite the opposition of the public prosecution's office which is granted, according to Article 6 of the LCCP, the right to initiate all actions against criminal conducts affecting public order.

3.2.1.3. Additionally, Article 73 LCCP grants the victim the right to appeal against the investigative judge's order, ruling on the inadmissibility of the legal status of "*partie civile*" of the victim at the request of the Public Prosecutor or the Defendant.

3.2.2. *Becoming "partie civile" via direct complaint before the Single Penal Judge:*

3.2.2.1. The single penal judge has jurisdiction to try misdemeanours and contraventions, except for those expressly mentioned in a special text, according to Article 150 of the LCCP (Becheroui, 2007). This article also states that the Public Prosecutor cannot be a party at a case before the single penal judge.

3.2.2.2. Article 155 (1) of the LCCP clearly grants the victim the right to initiate an action before the single penal judge, as it states that "[...] every person harmed from a crime can take the legal statute of *partie civile* before the unique penal judge [...]". Thus, it can be deduced that besides being able to become "*partie civile*" and exercise a civil action before the investigative judge, the victim can also initiate directly its

action before the single penal judge, competent in matters related to misdemeanours and contraventions, via direct complaint. However, if the Public Prosecutor had already initiated the public action before the investigative judge, the direct complaint cannot be launched again before the single penal judge, according to ***Decision No. 281, of 26/06/2002 of the Lebanese Court of Cassation, Criminal Chamber.***

3.2.3. Rights of victims participating in criminal proceedings:

3.2.3.1.After acquiring the legal statute of “*partie civile*” and after the launching of the public action, the victim can participate in the criminal trial before the criminal court to request compensation for the harm suffered due to the crime committed.

3.2.3.2.In the investigative phase, according to Article 67 of the Lebanese Code of Criminal Procedure (LCCP), the victim can file an action in compensation before the investigative judge after the public action has been filed by the competent authorities. However, according to ***Decision No.240, of 29/05/2002, of the Criminal Chamber of the Court of Cassation***, even if the LCCP does not expressly state it, the victim can participate in the proceedings before the Investigative Judge or the Indictment Chamber under the condition that it only uses its civil action regarding the facts that have already been referred to the investigative judge. For that, the victim will be a civil party at the case and can be heard on grounds of information before the criminal court. Thus, the victim’s case will be an accessory to the public case.

The victim has thus the right to have a lawyer present at the proceedings to represent his or her interests, according to Articles 81(5) and 82 (2) of the LCCP. The victim has also the right to have an interpreter present, if the victim wants to express himself or herself in another language, according to Article 88 of the LCCP. However, the victim and its legal representative do not have the right to be present when witnesses are giving their statements, according to Article 82 (2) of the LCCP. The victim has also the right to be informed of the important decisions and content of the accused’s interrogation, for that, according to Article 67 (2) of the LCCP, the victim has to take a domicile in a town which falls within the jurisdiction of the court that is trying the criminal case.

In that domicile, the victim will be notified all documents and decisions of the court. Additionally, according to Article 106 (1) of the LCCP, the investigative judge can invite the victim to attend trial by informing him or her of the time and date of the hearing. The victim has also the right to request an expert to conduct some research in order to bring to light the truth if it's deemed necessary. Moreover, Article 135 of the LCCP grants the victim the right to appeal before the Indictment Chamber against the investigative judge's orders which prejudice his or her civil interests. On another hand, the victim has also the right to appeal before the Indictment Chamber against the investigative judge's orders of release of the accused according to Article 116 of the NLCCP. Finally, according to Article 307 of the LCCP, the victim has the right to appeal before the court of cassation on the inadmissibility of its civil action for lack of legal status and therefore lack of capacity to file a civil action. The victim can also appeal against the decisions of an incompetent Indictment Chamber on limitation periods, amnesty, and early termination of the prosecution.

3.2.3.3.At the judgment phase, before the single penal judge, according to Article 168 of the LCCP, the victim has the right to have a lawyer present during all trial's phases. According to Article 157 of the LCCP, the victim has the right to appeal against the judge's decisions within 24 hours following the notification of the decision. Additionally, if the victim is present at the beginning of the trial, but was later absent to the following sessions and only represented by the legal counsel, according to Article 168 (2) of the LCCP, the judgment regarding the decision on compensation will be a judgment issued as if in his or her presence. The victim will then only have the right to appeal against the judge's decision before the correctional chamber of the Court of Appeal. According to Article 179 of the LCCP, the victim has the right to produce evidence. According to Article 181 of the same code, the victim has the right to ask questions to a witness via the presiding judge. In addition, Articles 182 and 187 of the same code grant the victim the right to oppose that a witness starts giving his or her statement before undergoing the oath procedure. The victim has the right to oppose the decision regarding the release of the detainee within 24hours, according to Article 192 of the LCCP, and thus appeal against this decision (Article 192 (5) of the LCCP).

Article 212 (2) grants the right to appeal against decisions of the single penal judge in cases of felonies and misdemeanors, however, the civil party -the victim- can only appeal against decisions related to his or her civil interests, thus only against decisions regarding compensation. Finally, according to Article 320 of the LCCP, the victim can appeal before the court of cassation against decisions which can prejudice his or her civil interests only.

3.2.3.4. Before the Assizes Court, the victim, as a civil party, has the right to access the case file and give in its conclusions on the matter, according to Articles 239 and 240 of the LCCP. Additionally, Article 244 of the LCCP, the victim has the right before and during the hearing to introduce witnesses. Moreover, the accused has the duty to inform both the civil party and the public prosecutor of the list of witnesses he or she is willing to bring in, at least 24 hours before the hearing. However, according to Article 243 of the LCCP, the victim cannot appeal against or oppose the decision of release of the detainee before the Assizes Court.

Conclusion

Victims' participation in the proceedings before international criminal courts is an innovation put forward by the Special Tribunal for Lebanon since both its Statute and Rules of Procedure and evidence allow for such participation, through the application of Lebanese Law. This participation is however limited to after an indictment has been confirmed by the Pre-Trial Judge, in order to prevent from unnecessary delay in the proceedings, and to ensure the application of fair trial rights of the accused. This participation is thereby not limited to a neutral participation, but according to the rules of procedure and evidence, victims are allowed to make opening statements and closing arguments, to call witnesses, and to adduce evidence. None withstanding, they cannot obtain compensation directly before the Special Tribunal for Lebanon when a final judgment is pronounced in their favor. Nevertheless, they have to use this final judgement and request the enforcement of the foreign judgment before civil national courts to obtain compensation. This modality is applicable since Lebanese Law allows

for victims' participation in the proceedings as '*partie civile*' only before the domestic civil courts. Their participation in the criminal proceedings is prohibited, as only the Public Prosecutor is entitled with the right to initiate a criminal action before all Lebanese Domestic Criminal Courts, including the Lebanese Permanent Military Tribunal. Once again, once the judgment of the criminal court is pronounced in favor of the victim, that the latter can use it to request compensation for the harm suffered before domestic civil courts. Exceptions to this principle exist, only in the case of misdemeanours and contraventions. This exception is codified in the Lebanese Code of Criminal Procedure that allows the victim to initiate an action before the investigative judge or the single penal judge while taking the legal statute of '*partie civile*', when it comes to a felony or a misdemeanour, or to a misdemeanour or a contravention respectively. After such action has been initiated, the Public Prosecutor will then replace the victims in the criminal proceeding. This comparative analysis provided an explanation to how the Lebanese domestic law in fact benefitted the victims of the terrorist attack of 14 February 2005, and how it shifted the status of the victim before international criminal courts from non-existent to effectively participating in the proceedings.

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