



Hague Case Law: Latest Developments

Anna Meijknecht¹

Published online: 1 December 2020
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Special Tribunal for Lebanon

Ayyash et al. Case¹

On 18 August 2020, the Trial Chamber of the Special Tribunal for Lebanon (STL) issued its judgment in the *Ayyash et al.* case.

On Monday 14 February 2005, the former prime minister of Lebanon, Mr Rafik Hariri, was killed by an explosion triggered by a suicide bomber. Twenty-one others died and at least another 226 people were injured. Mr Hariri and his convoy had been under surveillance for some months before his assassination. The aim of this surveillance was to obtain information about Mr Hariri's movements, his security detail, his level of protection and eventually to determine a suitable method to murder him, including finding an appropriate location for the intended attack. The successful attack on Mr Hariri was carefully planned and implemented. Those engaged in the surveillance were communicating in the field using three sets of mobile telephone networks. To distinguish the three networks, the Prosecution labelled them as the Yellow, Blue and Red networks. The Red network was the assassination team.

The accused who faced trial *in absentia* were Salim Jamil Ayyash, Hassan Habib Merhi, Hussein Hassan Oneissi and Assad Hassan Sabra. They were charged with conspiracy to commit a terrorist act, along with a number of other related charges.

In its judgment, the Trial Chamber emphasized that its 'role as a first instance trial court is neither to write nor correct any version of history that witnesses or parties may have urged upon it. Its role is confined to adjudicating whether any of the four Accused are guilty beyond reasonable doubt of any of the charges against them. The attack on Mr Hariri, however, did not occur in a political or historical vacuum and the Trial Chamber cannot ignore the background to the attack as providing a possible motive for it. It does this while noting that motive is not an element of any of the crimes charged in the amended consolidated indictment'.²

¹ Case No. STL-11-01/T/TC.

² Judgment, para. 393.

✉ Anna Meijknecht
a.k.meijknecht@asser.nl

¹ Tilburg Law School, Tilburg, The Netherlands

According to the Trial Chamber, the assassination by car bombing of a prominent politician—who had recently resigned as the prime minister and was preparing to contest the next parliamentary elections—was undoubtedly a political act. The Trial Chamber ‘should therefore consider whether political motives may be attributed to any of the Accused [...] Understanding the political background to the attack gives context to why Mr Hariri was targeted in this manner, but only as it relates to whether the Accused on trial are guilty of any counts charged on the indictment. Similarly, completeness requires placing the attack within a wider historical setting’.³

The evidence⁴ showed Syria’s overwhelming political, military and economic dominance in Lebanon after the end of the tragic civil war. Opponents of the Syrian presence included Christians and members of Mr Hariri’s Future Movement. In the months before his assassination, Mr Hariri’s allies were publicly calling for an end to the Syrian political, military and economic dominance over Lebanon. His supporters held three meetings in the Bristol Hotel in Beirut and issued calls for the end of the Syrian domination of Lebanon—a final one just twelve days before his murder, on 2 February 2005. According to the Trial Chamber, the ‘growing opposition to the Syrian presence in Lebanon threatened Syria’s interests and Syria [and] Hezbollah may have had motives to eliminate Mr Hariri, and some of his political allies’. However, ‘there is no evidence that the Hezbollah leadership had any involvement in Mr Hariri’s murder and there is no direct evidence of Syrian involvement in it’.⁵

The Prosecution had to prove the guilt of the Accused ‘beyond reasonable doubt’. The total number of witnesses at trial was 297. The Prosecution’s case mainly relied upon telecommunications evidence. Over the years of the investigation, the investigators examined the records of millions of calls and text messages to find evidence of communications between mobile phones from which patterns could be found.

Eventually, the Prosecution was able to prove that Mr Ayyash had used the Red mobile network—the network of the assassination team. The Trial Chamber found Mr Ayyash, ‘guilty beyond reasonable doubt’, as a co-perpetrator of the intentional homicide of Mr Rafik Hariri. The same evidence also established beyond reasonable doubt his knowledge and his intention to commit the intentional homicide of 21 other people, and the attempted intentional homicide of the 226 others who had been injured in the bomb attack. The Trial Chamber also found, in respect of the 226 people injured in the attack, that their death had been prevented solely by circumstances beyond the perpetrators’ control. The three other defendants were acquitted of all charges.

The Trial Chamber cannot order reparations but it may identify victims, which may assist them in claiming compensation before a national court or another competent body. In the present case the Trial Chamber was satisfied beyond reasonable doubt that direct and indirect victims suffered harm. According to the Trial Chamber, the disparity in treatment among the participating victims as to financial compensation for the loss or damage suffered was dramatic. Some victims received money

³ Judgment, para. 394.

⁴ Judgment, para. 787.

⁵ Judgment, para. 787.

from a state body, others from the Hariri family. Most received nothing. Therefore, as a general proposition, the Trial Chamber agreed that victims of crimes should be entitled to receive a form of statutory compensation. The Trial Chamber—at the invitation of the Legal Representatives of Victims—reminded the Lebanese Government of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and of the importance of having an adequate compensation scheme for victims. As an alternative, a voluntary trust fund could be established to compensate the victims in the cases within the Tribunal’s jurisdiction.⁶

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⁶ Judgment, paras. 896–897.