



Original: English

No. ICC-01/12-01/18

Date: 7 August 2024

TRIAL CHAMBER X

Before:

**Judge Kimberly Prost, Presiding Judge
Judge Tomoko Akane
Judge Keebong Paek**

SITUATION IN THE REPUBLIC OF MALI

IN THE CASE OF

***THE PROSECUTOR v. AL HASSAN AG ABDOUL AZIZ AG MOHAMED AG
MAHMOUD***

Public

**Decision on the Defence's 'Urgent Request for Review of Registry's Decision on
Legal Aid'**

To be notified in accordance with Regulation 31 of the *Regulations of the Court* to:**The Office of the Prosecutor**

Karim A. A. Khan
 Nazhat Shameem Khan
 Mame Mandiaye Niang

Counsel for the Defence

Melinda Taylor

Legal Representatives of Victims

Seydou Doumbia
 Mayombo Kassongo
 Fidel Luvengika Nsita

Legal Representatives of Applicants**Unrepresented Victims****Unrepresented Applicants for
Participation/Reparations****The Office of Public Counsel for Victims****The Office of Public Counsel for the
Defence****States Representatives*****Amicus Curiae*****REGISTRY**

Registrar

Osvaldo Zavala Giler

Counsel Support Section

Juan A. Escudero

Victims and Witnesses Unit**Detention Section****Victims Participation and Reparations
Section****Other**

TRIAL CHAMBER X of the International Criminal Court, in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, having regard to Regulation 83 of the Regulations of the Court (the ‘Regulations’) and Regulation 135 of the Regulations of the Registry, issues the following ‘Decision on the Defence’s “Urgent Request for Review of Registry’s Decision on Legal Aid”’.

I. Background

1. On 18 July 2024, the Counsel Support Section (the ‘CSS’) of the Registry issued a decision (the ‘Impugned Decision’),¹ in which it, *inter alia*, rejected the Defence’s request to assign complexity level 3 for the purpose of legal aid.
2. On 25 July 2024, the Defence filed an urgent request seeking the Chamber to review and quash the Impugned Decision (the ‘Request’).²
3. On 5 August 2024, pursuant to the deadline set by the Single Judge,³ the Registry filed its observations on the Request (the ‘Observations’).⁴
4. On 6 August 2024, the Defence sought leave to reply to the Observations (the ‘Leave to Reply Request’).⁵

II. Analysis

5. As a preliminary matter, the Chamber considers that it would not be further assisted by additional submissions on the issues identified in the Leave to Reply Request. The Chamber accordingly rejects the Leave to Reply Request.

¹ ICC-01/12-01/18-2627-Conf-Exp-AnxB.

² Defence Urgent Request for Review of Registry’s Decision on Legal Aid, ICC-01/12-01/18-2627-Conf-Exp (confidential *ex parte*, only available to the Defence and the Registry; with four annexes of the same classification).

³ Email dated 29 July 2024 at 13:43.

⁴ Registry’s Observations on “Urgent Request for Review of Registry’s Decision on Legal Aid” (ICC-01/12-01/18-2627-Conf-Exp), ICC-01/12-01/18-2631-Conf-Exp (confidential *ex parte*, only available to the Defence and the Registry).

⁵ Email dated 6 August 2024 at 12:23.

6. Regulation 83(4) of the Regulations and the LAP⁶ both provide that the Registrar's decision on legal aid may be reviewed by the relevant Chamber on application.
7. At the outset, given the current stage of the proceedings, the Chamber considers it useful to briefly address the concept of 'relevant Chamber'.
8. The LAP defines the appeals stage as the time period between the notice of appeal pursuant to Article 81(1) of the Statute and the issuance of the Appeals Chamber Judgment.⁷ As noted by the Single Judge in her previous decision, the interpretation adopted by the Registry is that 'the appeals stage is to be understood as starting with the preparation of the notice of the appeal, not the issuance of the notice of appeal itself, *i.e.* it may commence as soon as the trial judgment pursuant to article 74 of the Statute has been issued'.⁸ Accordingly, for the purpose of determining the scope of legal aid to which the Defence is entitled, the present case is considered as being at the appeals stage.
9. At the same time, the Chamber is mindful that, in the event of a conviction, the first months of the appeals stage may entail work being carried out by the Defence in two concurrent proceedings: the preparation of any notice of appeal to be filed before the Appeals Chamber along with related appellate activity, as well as preparations for sentencing in the proceedings before the Trial Chamber. Both of these sets of activities needs to be taken into account in the assessment of complexity and resource allocation. However, the LAP fails to provide any clarity as to which chamber dealing with these two concurrent proceedings should be considered the 'relevant Chamber'.
10. Without diminishing the significance of the work in relation to sentencing,⁹ the Chamber notes that the LAP envisages the appeals stage as being primarily dedicated to appellate litigation, starting from the preparations for the filing of

⁶ See LAP, ICC-ASP/22/9, paras 101-103.

⁷ LAP, ICC-ASP/22/9, para. 33.

⁸ Decision on the Defence's request for review of the Registrar's decision on legal aid, 22 January 2024, ICC-01/12-01/18-2585 (the '22 January 2024 Decision'), para. 14 *referring to* Registry's Observations on "Defence Application for Review of the Registry's Decision on Legal Aid" (ICC-01/12-01/18-2577), 11 January 2024, ICC-01/12-01/18-2580, para. 10.

⁹ 22 January 2024 Decision, ICC-01/12-01/18-2585, para. 13.

the notice of appeal and ending with the Appeals Chamber Judgment.¹⁰ In these circumstances, the Chamber is of the view that, in principle, the ‘relevant Chamber’ to review decisions on legal aid during the appeals stage is the Appeals Chamber. This is particularly the case as the Trial Chamber is not the appropriate body to interpret the complexity of any proceedings that may be instituted before the Appeals Chamber.

11. However, there may be certain instances where the Trial Chamber may be considered the ‘relevant Chamber’ for the purpose of Regulation 83(4) of the Regulations. In this particular case, the Chamber notes that the Request raises discrete issues that are procedural in nature and relate to sentencing proceedings, which can be duly addressed by the present Chamber without entering into matters that are exclusively for the Appeals Chamber to consider. Thus, in this specific instance (and subject to the comments below), the Chamber sees no error in the Defence filing the Request before this Chamber.
12. The Chamber will now turn to the Registry’s challenge against the receivability of the Request. The Registry submits that the Impugned Decision is not reviewable pursuant to Regulation 83 of the Regulations as it is not a decision *issued by the Registrar* and that the Request should therefore be rejected.¹¹
13. As noted by the Registry, Regulation 83(4) of the Regulations stipulates that ‘[d]ecisions by the Registrar on the scope of legal assistance paid by the Court [...] may be reviewed by the relevant Chamber [...]’. In the relevant part, the LAP provides as follows:¹²

101. A person receiving legal aid by the Court may submit a request to the Registrar for review of a decision on the scope of legal aid resources provided to a team.

102. The Registrar’s final decision on legal aid resources taken pursuant to Regulation 83 of the RoC may be reviewed by the relevant Chamber on application by the person receiving legal aid pursuant to Regulation 83(4) of the RoC.

¹⁰ LAP, ICC-ASP/22/9, para. 33.

¹¹ Observations, ICC-01/12-01/18-2631-Conf-Exp, paras 17-21.

¹² LAP, ICC-ASP/22/9, paras 101-102.

14. The aforementioned provisions clearly envisage a two-step process for appealing decisions on the scope of legal aid. First, as indicated in paragraph 101 of the LAP, the relevant team must request the Registrar to review the decision in question. Once a decision on the request for review is issued, it is that ‘Registrar’s final decision’ that is reviewable by the ‘relevant Chamber’, as stipulated in paragraph 102 of the LAP and Regulation 83(4) of the Regulations.
15. In the present case, the Defence impugns a decision issued by the CSS without having first requested review of that decision by the Registrar. The Chamber agrees that such decisions are not reviewable by the Chamber under Regulation 83 of the Regulations and as such considers that the request is not receivable by this Chamber.¹³

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Leave to Reply Request; and

REJECTS the Request *in limine*.

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



Judge Kimberly Prost

Presiding Judge



Judge Tomoko Akane



Judge Keebong Paek

Dated this Wednesday, 7 August 2024

At The Hague, The Netherlands

¹³ The Chamber notes that in the 22 January 2024 Decision, the receivability of the request was not in dispute. See ICC-01/12-01/18-2585, para. 10.