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No.: ICC-02/11-01/11

Date: 18 July 2014

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Single Judge

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR V. LAURENT GBAGBO***

Public

**Decision on Defence request on the suspension of time limits during judicial
recess**

Decision to be notified, in accordance with regulation 31 of the Regulations of the Court, to:

The Office of the Prosecutor

Fatou Bensouda, Prosecutor

James Stewart, Deputy Prosecutor

Counsel for the Defence

Emmanuel Altit

Agathe Bahi Baroan

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Paolina Massidda

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Silvia Fernández de Gurmendi, Single Judge for Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”), responsible for carrying out the functions of the Chamber in relation to the situation in the Republic of Côte d’Ivoire and the cases emanating therefrom,¹ hereby issues the decision on the Defence’s *“Requête urgente afin que soient suspendus les délais durant les vacances judiciaires”* (the “Request”).²

1. On 17 July 2014, the Defence filed the Request, asking the Chamber to suspend all deadlines during the Summer Judicial Recess period, and invoking a number of arguments in its support. First, it is argued that the Staff Rules and Staff Regulations dealing with annual and home leave are also applicable to members of the Defence team, because these rules implement the fundamental human rights to rest and leisure as well as the right to family life.³ It is submitted that the Chamber is obliged to respect those fundamental human rights, in accordance with article 21 of the Rome Statute (the “Statute”).⁴ The Defence claims that, because the preparation of the defence of Laurent Gbagbo (“Mr Gbagbo”) constitutes the principal professional activity of the Defence team, in accordance with the system on legal aid, and because they are based in The Hague and work mainly in the premises of the Court, they should benefit from the same rights as other staff members of the Court.⁵

2. The Defence refers to a number of international and legal systems where deadlines are suspended during court recess and points out that some Trial Chambers of the Court have issued decisions to that effect.⁶ The Defence further points out that the Chamber has never suspended deadlines during past recess periods and has often issued decisions which triggered time limits

¹ “*Décision portant désignation d’un juge unique*”, 16 March 2012, ICC-02/11-01/11-61.

² ICC-02/11-01/11-669.

³ Request, paras 6-16.

⁴ *Ibid.*, paras 33-35.

⁵ *Ibid.*, paras 17-22.

⁶ *Ibid.*, paras 26-32.

during the relevant recess periods.⁷ In this context, the Defence submits that the litigation of a potential request for leave to appeal the decision on the confirmation of charges,⁸ the official French translation of which is expected to be notified on 18 July 2014, will fall squarely within the Summer Judicial Recess period.⁹ The Defence adds that the Chamber has taken into consideration the recess period in favour of the Prosecutor, but never in favour of the Defence, which is particularly prejudicial to the Defence in light of the long pre-trial phase of the present case.¹⁰ The Defence argues that while this practice is not prejudicial for the Prosecutor because she disposes of ample resources,¹¹ it does prejudice the Defence in a number of ways.¹² In addition, the Defence submits that the Chamber needs to decide on the applicability of the labour rules to the Defence as, in its submission, the Single Judge did not decide on the substance of a similar Defence request filed before the Winter Judicial Recess period of 2013/2014.¹³ Accordingly, the Defence requests the Chamber to apply the labour rules applicable to other staff at the Court, *i.e.* the United Nations Common System, to the Defence or to decide that minimum international standards apply to the Defence, and to suspend all procedural deadlines during the judicial recess.¹⁴

3. On 18 July 2014, the Office of Public Counsel for victims (the “OPCV”) filed a response opposing the Request, pointing out that the Request is substantially the same as a prior request filed by the Defence before the

⁷ *Ibid.*, paras 36-43.

⁸ “Decision on the confirmation of charges against Laurent Gbagbo”, 12 June 2014, ICC-02/11-01/11-656-Conf (“Confirmation Decision”). A public redacted version is available (ICC-02/11-01/11-656-Red).

⁹ Request, para. 44.

¹⁰ *Ibid.*, paras 63-65.

¹¹ *Ibid.*, paras 44, 49-56.

¹² *Ibid.*, paras 57-61.

¹³ *Ibid.*, paras 46-48.

¹⁴ *Ibid.*, p. 20.

Winter Judicial Recess period of 2013/2014, and rejected by the Single Judge.¹⁵ The OPCV submits that the Defence requests suspension of time limits which were set in accordance with a request originating from the Defence and that it already benefitted from a significantly longer period for presenting a request for leave to appeal the Confirmation Decision than ordinarily foreseen by the Rules.¹⁶ Finally, the OPCV argues that the fact that the Request was filed one day before commencement of the judicial recess and the expected notification of the official French translation of the Confirmation Decision demonstrates a lack of diligence on the part of the Defence.¹⁷

4. The Single Judge notes articles 21, 57(2), 61, 67(1)(c) of the Statute, rule 7 of the Rules of Procedure and Evidence (the “Rules”) and regulation 19*bis* of the Regulations of the Court (the “Regulations”). In particular, regulation 19*bis* (2) of the Regulations stipulates:

Unless otherwise determined by a Chamber, during the judicial recess hearings shall be limited to urgent issues and time limits shall not be suspended.

5. The Single Judge first notes the Defence submission that the Request should be adjudicated by the full Chamber.¹⁸ In the present case, following a decision to this effect by the Chamber,¹⁹ the functions of the Chamber are exercised by the Single Judge, with the exception of those decisions listed in article 57(2)(a) of the Statute and in the Rules and unless the full Chamber decides otherwise in accordance with rule 7(3) of the Rules. As the present decision is not of a type which under article 57(2)(a) of the Statute or under the Rules must be issued by the full Chamber and given that the full Chamber, after consultation, has decided not to make use of its prerogative under rule

¹⁵ ICC-02/11-01/11-670, paras 6-9.

¹⁶ *Ibid.*, para. 10.

¹⁷ *Ibid.*, para. 11.

¹⁸ Request, paras 2-5.

¹⁹ ICC-02/11-01/11-61.

7(3) of the Rules to decide on this Request, the Single Judge remains competent to exercise the functions of the Chamber in relation to this Request.

6. At the outset, the Single Judge takes note of the tardiness of the Request, which was defined as “*urgente*” and submitted by the Defence on 17 July 2014, one day before the start of the judicial recess, and despite the Defence being on notice that the official French translation of the Confirmation Decision was expected to be notified by 18 July 2014, as indicated in a decision issued on 16 June 2014,²⁰ *i.e.* one month before the current Request was filed.

7. The Single Judge recalls that proceedings before the Court are governed, *inter alia*, by the principle of expeditiousness to which considerable importance must be accorded. This principle is encapsulated most prominently in article 67(1)(c) of the Statute of which the *accused* shall benefit in the first place. This fundamental right thus confers a responsibility upon a chamber to organise the conduct of the proceedings, including their calendar, accordingly. In this spirit, regulation 19bis (2) of the Regulations clearly instructs that time limits *shall not be suspended* during judicial recess, unless otherwise determined by a chamber. In its determination, a chamber is duty-bound to take into account the particular circumstances of the case which have a bearing on the matter, such as the stage and the length of the proceedings in light of the right of the accused “to be tried without undue delay” pursuant to article 67(1)(c) of the Statute.

²⁰ “Decision on the ‘*Requête urgente de la défense portant sur la détermination de la date à partir de laquelle courent les délais fixés pour qu’elle puisse déposer une éventuelle demande d’autorisation d’interjeter appel de la « Decision on the confirmation of charges against Laurent Gbagbo » (ICC-02/11-01/11-656-Conf) et/ou pour qu’elle puisse déposer une éventuelle réponse à une éventuelle demande d’autorisation d’interjeter appel déposée par le Procureur*’”, 16 June 2014, ICC-02/11-01/11-658.

8. The Defence points out that the pre-trial proceedings in the present case have lasted a considerable period of time.²¹ The Single Judge is mindful of the fact that Mr Gbagbo was transferred to the Court on 30 November 2011 and that, consequently, pre-trial proceedings have been ongoing for two and a half years. Taking this into account, as well as in light of the significantly advanced stage of the pre-trial proceedings, with the charges against Mr Gbagbo having been confirmed, the Single Judge considers it inappropriate to suspend the time limits during the Summer Judicial Recess at this stage of the proceedings. This would unduly prolong the pre-trial proceedings to the detriment of Mr Gbagbo's right "to be tried without undue delay".

9. The Single Judge notes the Defence submissions in relation to the labour rules.²² In the view of the Single Judge, any potentially applicable labour rules have no bearing on the subject matter of the Request, namely the issue of suspension of time limits during a judicial recess period, in particular because the judicial recess is not to be seen as an exclusive or mandatory leave period.

10. Furthermore, and more importantly, the Single Judge considers that the fundamental right of Mr Gbagbo "to be tried without undue delay" must prevail in the specific circumstances of this case.

11. The Single Judge observes that the Defence identifies one specific deadline which expires during the Summer Judicial Recess period, namely the time limit for any request for leave to appeal the Confirmation Decision,²³ which was extended until five days following notification of the official

²¹ Request, paras 45, 65.

²² *Ibid.*, paras 6-22, 33-35.

²³ *Ibid.*, para. 44.

French translation of the Confirmation Decision.²⁴ The Single Judge notes that the five day time limit for requesting leave to appeal is defined in rule 155(1) of the Rules. Further, as is also apparent from the wording of regulation 19*bis* (2) of the Regulations, the Single Judge considers that, in principle, time limits shall not be suspended during a judicial recess period, unless a Chamber determines otherwise for particular reasons. In light of the above, the Single Judge is of the view that there are no circumstances which would justify a suspension of time limits during the Summer Judicial Recess period. The Single Judge does not believe that this ruling is prejudicial to the Defence as compared to the Prosecutor, since, as also pointed out in the Request,²⁵ the Prosecutor will have to respond to a potential Defence request for leave to appeal the Confirmation Decision equally during the recess period.

FOR THESE REASONS, THE SINGLE JUDGE

REJECTS the Request.

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



Judge Silvia Fernández de Gurmendi

Single Judge

Dated this Friday, 18 July 2014

At The Hague, The Netherlands

²⁴ "Decision on the '*Requête urgente de la défense portant sur la détermination de la date à partir de laquelle courent les délais fixés pour qu'elle puisse déposer une éventuelle demande d'autorisation d'interjeter appel de la « Decision on the confirmation of charges against Laurent Gbagbo » (ICC-02/11-01/11-656-Conf) et/ou pour qu'elle puisse déposer une éventuelle réponse à une éventuelle demande d'autorisation d'interjeter appel déposée par le Procureur*'", 16 June 2014, ICC-02/11-01/11-658, p. 5.

²⁵ Request, para. 44.