



Original: English

No.: ICC-02/11-01/11
Date: 31 October 2013

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Hans-Peter Kaul
Judge Christine Van den Wyngaert

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO***

Public

Response to the "Prosecution's request pursuant to Regulation 35 for variation of time limit to file updated document containing the charges, list of evidence and consolidated elements-based chart"

Source: Office of Public Counsel for Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. PROCEDURAL HISTORY

1. On 3 June 2013, Pre-Trial Chamber I (the “Chamber”) issued its “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute” (the “Decision adjourning the confirmation hearing”)¹ wherein it decided by majority, with Judge Fernández de Gurmendi dissenting,² to adjourn the confirmation of charges hearing and to request the Prosecutor to conduct further investigations for the purpose of collecting additional evidence and, consequently, to submit, by 15 November 2013, an amended document containing the charges, an amended list of evidence and an updated Element Based Chart.³

2. On 10 June 2013, the Prosecution submitted a request for leave to appeal the Decision adjourning the confirmation hearing (the “Prosecution’s Request for leave to appeal”).⁴ The Defence requested leave to appeal said decision on 25 June 2013 (the “Defence’s Request for leave to appeal”).⁵ The Common Legal Representative filed a response to each request on 17 June and 1st July 2013, respectively.⁶

¹ See the “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute” (Pre-Trial Chamber I), No. ICC-02/11-01/11-432, 3 June 2013 (the “Decision adjourning the confirmation hearing”).

² See the “Corrigendum - Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute - Dissenting opinion of Judge Silvia Fernández de Gurmendi”, No. ICC-02/11-01/11-432-Anx-Corr, 6 June 2013.

³ See the Decision adjourning the confirmation hearing, *supra* note 1, pp. 22-23.

⁴ See the “Prosecution’s application for leave to appeal the “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute”, No. ICC-02/11-01/11-435, 10 June 2013 (the “Prosecution’s Request for leave to appeal”).

⁵ See the “Demande d’autorisation d’interjeter appel de la « décision d’ajournement de l’audience de confirmation des charges conformément à l’article 67-7-c-i du Statut » (ICC-02/11-01/11-432-tFRA) du 3 juin 2013”, No. ICC-02/11-01/11-439, 25 June 2013 (the “Defence’s Request for leave to appeal”).

⁶ See the “Response of the Common Legal Representative to the ‘Prosecution’s application for leave to appeal the “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute”’, No. ICC-02/11-01/11-437, 17 June 2013; and the “Réponse du Représentant légal commun des victimes à la « Demande d’autorisation d’interjeter appel de la « décision d’ajournement de l’audience de confirmation des charges conformément à l’article 67-7-c-i du Statut » (ICC-02/11-01/11-432-tFRA) du 3 juin 2013 » déposée par la Défense le 25 juin 2013”, No. ICC-02/11-01/11-442, 1st July 2013.

3. On 31 July 2013, the Chamber by majority, with Judge Fernández de Gurmendi dissenting,⁷ rejected the Defence's Request for leave to appeal and granted the Prosecution's Request for leave to appeal with respect to one reformulated issue.⁸

4. On 12 August 2013, the Prosecution submitted the "Prosecution's appeal against the 'Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute'" (the "Prosecution's Appeal"),⁹ wherein it raised two grounds of appeal.

5. On 29 August 2013, the Appeals Chamber granted the Common Legal Representative's request to participate in the proceedings related to the Prosecution's Appeal¹⁰ and allowed her to file observations on the issue under appeal by 27 September 2013.¹¹

6. On 20 September 2013, the Defence filed its response to the Prosecution's Appeal.¹² On 27 September 2013, the Common Legal Representative filed her observations on the Prosecution's Appeal.¹³

⁷ See the "Decision on the Prosecutor's and Defence requests for leave to appeal the decision adjourning the hearing on the confirmation of charges - Dissenting opinion of Judge Silvia Fernández de Gurmendi" (Pre-Trial Chamber I), No. ICC-02/11-01/11-464-Anx, 31 July 2013.

⁸ See the "Decision on the Prosecutor's and Defence requests for leave to appeal the decision adjourning the hearing on the confirmation of charges" (Pre-Trial Chamber I), No. ICC-02/11-01/11-464, 31 July 2013.

⁹ See the "Prosecution's appeal against the 'Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute'", No. ICC-02/11-01/11-474 OA5, 12 August 2013 (the "Prosecution's Appeal").

¹⁰ See the "Application to Participate in the Interlocutory Appeal Filed by the Prosecution against the 'Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute' of 3 June 2013", No. ICC-02/11-01/11-475 OA5, 13 August 2013.

¹¹ See the "Decision on the participation of victims in the Prosecutor's appeal against the 'Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute'" (Appeals Chamber), No. ICC-02/11-01/11-492 OA5, 29 August 2013, operative para. 1.

¹² See the "Réponse de la défense au « Prosecution's appeal against the 'Decision adjourning the hearing on the confirmation of charges » (ICC-02/11-01/11-474)", No. ICC-02/11-01/11-509 OA5, 20 September 2013.

¹³ See the "Observations of the Common Legal Representative on the 'Prosecution's appeal against the 'Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute'", No. ICC-02/11-01/11-513 OA5, 27 September 2013.

7. On 1st October 2013, the Appeals Chamber granted the *amicus curiae* request filed by Professors Darryl Robinson, Margaret deGuzman, Charles Jalloh and Robert Cryer to present observations in relation to the Prosecution's Appeal,¹⁴ which were submitted on 10 October 2013¹⁵ and to which the Prosecution and the Defence responded on 18 October 2013.¹⁶

8. The Prosecution's Appeal is currently pending before the Appeals Chamber.

9. On 28 October 2013, the Prosecution submitted a "[...] request pursuant to Regulation 35 for variation of time limit to file updated document containing the charges, list of evidence and consolidated elements-based chart" (the "Prosecution's Request"),¹⁷ wherein it requested the Chamber "*to extend the 15 November 2013 deadline for the Prosecution to 'submit [...] the Amended DCC, amended list of evidence and updated consolidated Element Based Chart' until two weeks after the Appeals Chamber has rendered its judgment on the Prosecution Appeal*".¹⁸

10. In accordance with regulation 24(2) of the Regulations of the Court, the Common Legal Representative submits her response to the Prosecution's Request.

¹⁴ See the "Application to Participate in the Interlocutory Appeal Filed by the Prosecution against the "Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute" of 3 June 2013", No. ICC-02/11-01/11-475 OA5, 13 August 2013.

¹⁵ See the "*Amicus Curiae* Observations of Professors Robinson, deGuzman, Jalloh and Cryer", No. ICC-02/11-01/11-534 OA5, 10 October 2013.

¹⁶ See the "Prosecution's Response to *Amicus Curiae* Observations of Professors Robinson, deGuzman, Jalloh and Cryer", No. ICC-02/11-01/11-541 OA5, 18 October 2013. See also the "Réponse de la défense aux « *Amicus Curiae* Observations of Professors Robinson, deGuzman, Jalloh and Cryer » (ICC-02/11-01/11-534)", No. ICC-02/11-01/11-540, 18 October 2013.

¹⁷ See the "Prosecution's request pursuant to Regulation 35 for variation of time limit to file updated document containing the charges, list of evidence and consolidated elements-based chart", No. ICC-02/11-01/11-547, 28 October 2013 (the "Prosecution's Request").

¹⁸ *Idem*, para. 11.

II. RESPONSE BY THE COMMON LEGAL REPRESENTATIVE

11. The Common Legal Representative is of the view that the Prosecution's Request meets the requirements under regulation 35 of the Regulations of the Court and therefore should be granted.

12. In particular, the Common Legal Representative submits that the Prosecution demonstrated the existence of a "good cause" for the extension of the deadline for the submission of the Amended DCC, amended list of evidence and updated consolidated Element Based Chart in accordance with regulation 35 of the Regulations of the Court.

13. The Common Legal Representative supports the reasons outlined in the Prosecution's Request and wishes to observe that the Prosecution's Request is also justified on the basis of the principle of judicial economy. Indeed, given the significant budgetary restrictions the Court has suffered since last few years, should the Appeals Chamber decide to reverse the Decision adjourning the confirmation hearing, the Prosecution would have been obliged to unnecessarily deploy its resources in an inappropriate manner, *i.e.* for the purpose of conducting supplementary investigations and gathering additional evidence which might not be of relevance at this stage of the proceedings provided the very limited scope of the confirmation of charges hearing. In the same vein, the Defence would have been obliged to unnecessarily deploy its resources - deemed limited by the Defence itself - to conduct investigations with regard to the additional evidence to be produced by the Prosecution.

14. The Common Legal Representative contends in this regard that should the Chamber decide to dismiss the Prosecution's Request, the subsequent course of the proceedings as prescribed by the Decision adjourning the confirmation hearing is

very likely to materially affect the principle of judicial economy as one of the constituent elements of the integrity of the proceedings.

15. Indeed, the principle of judicial economy requires the “[e]fficiency in the management of a particular litigation or the courts in general; [and] refers to measures taken to avoid unnecessary effort or expense on the part of the court or the court system”.¹⁹

16. The Common Legal Representative is of the view that preventing the disruption of the integrity of the proceedings as clearly aimed by the Prosecution shall with no doubt constitute a “good cause” justifying the extension of a deadline within the meaning of regulation 35(2) of the Regulations of the Court.

17. In this regard, the Common Legal Representative submits that any disruption of the proceedings inevitably affects not only the interests of the parties but also the personal interests of the victims admitted to participate in the present case,²⁰ and, in particular, their interest to have the truth been established and the case been adjudicated in a proper manner and with no undue delay.²¹

¹⁹ See WALLACE (J.), WILD (S.E.), *Webster’s New World Law Dictionary*, Webster’s New World, 2006. The definition is available at the following address: <http://www.yourdictionary.com/judicial-economy>.

²⁰ In this regard, the Common Legal Representative recalls that the requirements of the integrity of the proceedings as well as fair trial guarantees apply to all the parties and the participants in the proceedings before the Court. See the “Decision on the admission of material from the ‘bar table’” (Trial Chamber I), No. ICC-01/04-01/06-1981, 24 June 2009, para. 42. See also in the same sense TRAPP (K.), *Excluding Evidence: The Timing of a Remedy*, non-published manuscript (1998), Faculty of Law, McGill University, Canada, p. 21; quoted in TRIFFTERER (O.), *Commentary on the Rome Statute of the International Criminal Court – Observer’s Notes, Article by Article*, Verlag C.H Beck, Munich, 2008, p. 1335, footnote 139. See also the “DECISION ON THE PROSECUTION’S APPLICATION FOR LEAVE TO APPEAL THE CHAMBER’S DECISION OF 17 JANUARY 2006 ON THE APPLICATIONS FOR PARTICIPATION IN THE PROCEEDINGS OF VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 AND VPRS 6” (Pre-Trial Chamber I), No. ICC-01/04-135-tEN, 20 April 2006 (dated 31 March 2006), para. 38.

²¹ See DONAT-CATTIN (D.), “Article 68”, in TRIFFTERER (O.) (ed.), *Commentary on the Rome Statute of the International Criminal Court, Observers’ Notes, Article by Article*, Nomos, 1999, pp. 876-877: “The victims’ genuine wish is that the truth be established and the case solved. [...] The second [concept of due process for defendant] is fair trial, which is comprehensive of, but not limited to, the respect for all the rights of the suspect/accused; it means equitable justice for defendants, victims and international society as such, the foundation of all procedural norms of the Statute”.

18. The Common Legal Representative observes that the extensive practice of the Court as developed in particular by the Appeals Chamber demonstrates that an extension of time-limits was granted on a regular basis and for the reasons deemed “good causes” which globally appear at the least not as serious as the one advanced by the Prosecution, insofar they concerned the interests of one of the parties or participants.²² In contrast, the cause advanced by the Prosecution clearly affects the integrity of the proceedings as a whole, as well as the interests of all the parties and participants. In this respect, the jurisprudence of the Court clearly advocates for a possibility for an extension of time-limits being granted in the interests of judicial economy and for the benefit of all the parties or/and participants.²³

²² See, for instance, the “Decision on the ‘Prosecutor’s Motion for Extensions of the Time and Page Limits’” (Appeals Chamber), No. ICC-01/04-01/06-177 OA3, 3 July 2006, para. 5; the “Decision on the Request by Mr. Thomas Lubanga Dyilo for an Extension of Time” (Appeals Chamber), No. ICC-01/04-01/06-562 OA5, 12 October 2006, para. 5; the “Reasons for the ‘Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007’” issued on the 16 February 2007” (Appeals Chamber), No. ICC-01/04-01/06-834 OA8, 21 February 2007, paras. 7 and 10; the “Reasons for the ‘Decision on the ‘Application for Extension of Time Limits Pursuant to Regulation 35 of the Regulations of the Court to Allow the Defence to Submit its Observations on the Prosecutor’s Appeal regarding the Decision on Evidentiary Scope of the Confirmation Hearing and Preventative Relocation’” (Appeals Chamber), No. ICC-01/04-01/07-653 OA7, 27 June 2008, paras. 5-6; the “Decision on the request for an extension of the time limit” (Appeals Chamber), No. ICC-01/05-01/08-827 OA3, 15 July 2010, paras. 7-8; the “Decision on the Central African Republic’s request for an extension of the time limit” (Appeals Chamber), No. ICC-01/05-01/08-878 OA3, 8 September 2010, para. 19; the “Decision on the ‘Defence request for an extension of the time limit for filing the document in support of its appeal against Pre-Trial Chamber I’s Decision: ICC-01/04-01/10-163’” (Appeals Chamber), No. ICC-01/04-01/10-193 OA, 26 May 2011, para. 2; the “Decision on Mr Mbarushimana’s request for time extension” (Appeals Chamber), No. ICC-01/04-01/10-497 OA4, 09 March 2012, para. 6; the “Decision on ‘Requête urgente en prorogation de délai et en levée de l’ex parte touchant au mémoire d’appel du Procureur’” (Appeals Chamber), No. ICC-01/04-02/12-71 A, 16 May 2013, para. 12 ; the “Decision on Mr Gbagbo’s request for translation and an extension of time for the filing of a response to the document in support of the appeal” (Appeals Chamber), No. ICC-02/11-01/11-489 OA5, 22 August 2013, para. 16; the “Decision on requests for an extension of the time limit” (Appeals Chamber), No. ICC-01/04-01/06-3050 A4 A5 A6, 20 September 2013, para. 3.

²³ See the “Decision on the ‘Prosecution’s Urgent Application for Extension of Time to File Document in Support of Appeal’” (Appeals Chamber), No. ICC-01/04-01/07-115 OA, 18 December 2007, paras. 4-6; the “Decision on the ‘Defence Application for Extension of Time to File Document in Support of Appeal’: (Appeals Chamber), No. ICC-01/04-01/07-121 OA2, 21 December 2007, para. 5; the “Decision on the Prosecutor’s application for an extension of time to file submissions on the legal recharacterisation pursuant to article 25(3) (d) of the Statute” (Trial Chamber II), No. ICC-01/04-01/07-3340-tENG, 11 January 2013, para. 8.

For the foregoing reasons, the Common Legal Representative respectfully requests the Pre-Trial Chamber

- to grant the Prosecution' Request to extend the 15 November 2013 deadline until two weeks after the Appeals Chamber has rendered its judgement on the Prosecution's Appeal.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line underneath the name.

**Paolina Massidda
Principal Counsel**

Dated this 31st day of October 2013

At The Hague, The Netherlands