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No.: ICC-02/11-01/11 OA5

Date: 16 August 2013

APPEALS CHAMBER

Before: Judge Sanji Mmasenono Monageng, Presiding Judge
Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Anita Ušacka

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR v. LAURENT GBAGBO

Public

Prosecution response to Defence request for translation and additional time

Source: Office of the Prosecutor

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

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Introduction

1. The Prosecution objects to the Defence request that the Appeals Chamber order that the deadline for its response to the Prosecution Appeal against the Article 61 Decision shall run only from the notification to the Defence of a French translation of the Decision Granting Leave to Appeal, the dissenting opinion as well as the Prosecution Appeal Brief. The Prosecution also objects to the alternative request of the Defence to be provided an extension of four weeks to file its response.
2. The Prosecution submits that the Defence has not shown good cause to justify the requested relief. In particular, the Defence has demonstrated in the past that it is perfectly capable to understand and to respond to decisions by Chambers and to submissions by the Prosecution and the Registry that were filed in English without there being a need to be provided with a French translation.

Background

3. On 3 June 2013, the Majority of Pre-Trial Chamber I ("Majority") issued the "Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute" ("Article 61 Decision").¹ The Presiding Judge appended a dissenting opinion.²
4. On 31 July 2013, the Majority, the Presiding Judge dissenting,³ certified leave to appeal the Article 61 Decision ("Decision Granting Leave to Appeal").⁴
5. On 12 August 2013, the Prosecution filed its appeal against the Article 61 Decision ("Prosecution Appeal").⁵

¹ ICC-02/11-01/11-432.

² ICC-02/11-01/11-432-Anx-Corr.

³ ICC-02/11-01/11-464-Anx.

⁴ ICC-02/11-01/11-464.

⁵ ICC-02/11-01/11-474.

6. On 15 August, the Defence filed an urgent request for the Appeals Chamber to determine the date from which the deadline for the Defence to file its response to the Prosecution Appeal shall run ("Defence Request").⁶ In particular, the Defence requests that the Appeals Chamber order that the deadline for its response to the Prosecution Appeal against the Article 61 Decision shall run only from the notification to the Defence of a French translation of the Decision Granting Leave to Appeal and the dissenting opinion as well as the Prosecution Appeal. In the alternative, the Defence requests to be provided an extension of four weeks to file its response.⁷

Submissions

7. Under Regulation 35 of the Regulations of the Court, a Chamber may extend time limits ordered by a Chamber or prescribed in the Regulations of the Court "if good cause is shown".
8. The Prosecution submits that the Defence has not shown good cause to justify the requested relief. The Defence Request is primarily based on the fact that the Prosecution Appeal, to which the Defence intends to respond, is filed in English,⁸ and that French is the only language which Mr Gbagbo fully understands and speaks.⁹
9. The Prosecution submits that translation into French of the Prosecution Appeal Brief and other documents filed in English are, in the circumstances of this case, not necessary to ensure the fairness of the proceedings.
10. The Defence team of Mr Gbagbo has abundantly demonstrated that it is perfectly capable of understanding decisions and Prosecution submissions filed in English, of communicating the substance of these filings to Mr Gbagbo and of

⁶ ICC-02/11-01/11-480.

⁷ Defence Request, pp.18-19.

⁸ Defence Request, para.25.

⁹ Defence Request, paras.72-77.

responding to them in French. It has done so throughout the Pre-Trial proceedings and during appellate proceedings and in relation to very important issues.

11. For instance, on 4 June 2012, the Prosecution filed its response to the Defence request for provisional release pursuant to Article 60(2).¹⁰ This document was filed in English and no official French translation is on the record of the case. The corresponding decision was also rendered in English, with no recorded French translation.¹¹ Nevertheless, the Defence filed an appeal¹² and a document in support of appeal against that decision.¹³
12. Similarly, on 2 November 2012, the Pre-Trial Chamber rendered the decision on the fitness of Mr Gbagbo to participate in the confirmation proceedings.¹⁴ The Defence filed an application for leave to appeal,¹⁵ long before the French translation of that decision was notified on 17 April 2013.¹⁶ In the context of the litigation relevant to the fitness of Mr Gbagbo to participate in the confirmation proceedings, the Defence has also responded to many additional decisions¹⁷ and filings by the Prosecution¹⁸ or the Registry¹⁹ that were available only in English.
13. The Defence also filed its appeal²⁰ and document in support of the appeal²¹ against the Pre-Trial Chamber's decision on the Defence's challenge to the jurisdiction of the Court,²² which was issued in English.²³

¹⁰ ICC-02/11-01/11-137-Conf.

¹¹ ICC-02/11-01/11-180-Conf.

¹² ICC-02/11-01/11-193-Conf.

¹³ ICC-02/11-01/11-210-Conf.

¹⁴ ICC-02/11-01/11-286.

¹⁵ ICC-02/11-01/11-292-Conf, filed on 12 November 2012, followed by a corrigendum filed on 15 November 2012 (ICC-02/11-01/11-292-Conf-Corr; and ICC-02/11-01/11-292-Conf-Corr-Anx).

¹⁶ ICC-02/11-01/11-286-Conf-tFRA.

¹⁷ Decision ICC-02/11-01/11-201 - Defence application for leave to appeal ICC-02/11-01/11-207-Conf; Decision ICC-02/11-01/11-211 - Defence application for leave to appeal ICC-02/11-01/11-222.

¹⁸ Prosecution request ICC-02/11-01/11-204-Conf-Exp - Defence response ICC-02/11-01/11-206-Conf-Exp; Prosecution request ICC-02/11-01/11-224-Conf - Defence response ICC-02/11-01/11-232-Conf; Prosecution request ICC-02/11-01/11-242-Conf - Defence response ICC-02/11-01/11-247-Conf; Prosecution requests ICC-02/11-01/11-260-Conf and ICC-02/11-01/11-264-Conf - Defence responses ICC-02/11-01/11-262-Conf and ICC-02/11-01/11-283-Conf.

¹⁹ Registry submissions ICC-02/11-01/11-305-Conf and ICC-02/11-01/11-324-Conf - Defence response ICC-02/11-01/11-341-Conf.

²⁰ ICC-02/11-01/11-225.

14. The Prosecution further notes that the “Third decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute” was issued in English.²⁴ The Defence has filed a request for an extension of the time limit for the filing of the document in support of the appeal against that decision.²⁵ In spite of the similarity of the relief requested in that instance, the Defence did not indicate that it needed more time because that decision was issued in English. That request was primarily based on the workload of the Defence at the time.²⁶ The Prosecution submits that if the Defence team really had difficulties to fully comprehend Decisions and submissions filed in English and communicate their content to their client, it would have mentioned those difficulties in its previous submissions to the Appeals Chamber requesting for additional time.
15. On one instance only throughout the Pre-Trial proceedings, the Defence requested that the time limit for its application for leave to appeal a decision be ordered to run from the notification of the French translation of the Decision.²⁷ In that case, the Single Judge of Pre-Trial Chamber I found as follows: “In the present circumstances, the Single Judge is of the view, based on the previous course of proceedings in this case, that the unavailability at present of an official French translation of the Decision does not affect the ability of Mr Gbagbo's Defence to properly represent his interests. The Single Judge is therefore confident that the Defence is already in position to analyse the Decision”.²⁸ The Single Judge nevertheless granted the Defence’s request in that instance, but only because of “the importance of the Decision for the future proceedings in the case”.²⁹ The Prosecution submits that this assessment by the Single Judge, who has been presiding over the case against Mr Gbagbo since his initial appearance on 5 December 2011, should be given due weight.

²¹ ICC-02/11-01/11-240.

²² ICC-02/11-01/11-212.

²³ No French translation of this decision is on the record of the case.

²⁴ ICC-02/11-01/11-454.

²⁵ ICC-02/11-01/11-456-Red2.

²⁶ See also decision from the Appeals Chamber granting that request: ICC-02/11-01/11-458-Red, paras.3, 6.

²⁷ ICC-02/11-01/11-433-Conf.

²⁸ ICC-02/11-01/11-434, para.7.

²⁹ ICC-02/11-01/11-434, para.8.

16. Finally, the Prosecution notes that the Defence requests, among others, to be provided with a French translation of the Decision Granting Leave to Appeal, as well as the dissenting opinion of the Presiding Judge, which were issued already on 31 July 2013.³⁰ These two documents do not go to the merits of the Prosecution Appeal and are therefore not material for the purposes of the Defence response to the Prosecution Appeal. In fact, the Prosecution expressly submitted that its appeal does not concern the Leave to Appeal Decision and that that decision “is relevant only to the extent as it sets out the Issue certified for appeal”.³¹ Therefore, the Defence does not need a translation of these documents to respond to the Prosecution Appeal.
17. Based on the above, the Prosecution submits that the Defence Request in fact amounts to a request for additional time to respond to the Prosecution Appeal. This is because the Defence has abundantly demonstrated its ability to respond to decisions and submissions filed in English and the Defence Request extends to documents that are irrelevant for filing a response to the Prosecution Appeal. The Defence has not shown good cause for such an extension of the time limit and the Defence Request should therefore be rejected.

³⁰ The Prosecution notes that the Defence, knowing that leave to appeal has been granted, it could have requested the transaction of these documents much earlier.

³¹ Prosecution Appeal, para.8.

Conclusion

18. For the reasons set out above, the Prosecution submits that the Defence has not shown “good cause” within the meaning of Regulation 35 and the Defence Request should therefore be rejected.



Fatou Bensouda, Prosecutor

Dated this 16th day of August 2013

At The Hague, The Netherlands