



Original: English

No.: ICC-02/11-01/15

Date: 11 October 2017

TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Geoffrey Henderson

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ***

Public

**Decision on the “*Demande d’autorisation d’interjeter appel de la décision orale
rendue par la Chambre de première instance le 4 septembre 2017*”**

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

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Eric MacDonald

Counsel for Mr Laurent Gbagbo

Emmanuel Altit

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Counsel for Mr Charles Blé Goudé

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Legal Representatives of the Victims

Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber I (“Chamber”) of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Article 82(1)(d) of the Rome Statute, Rule 155 of the Rules of Procedure and Evidence, and Regulation 65 of the Regulations of the Court issues this decision on the “*Demande d’autorisation d’interjeter appel de la décision orale rendue par la Chambre de première instance le 4 septembre 2017*”, filed by the Defence of Laurent Gbagbo on 11 September 2017 (“Request”).¹

1. On 4 September 2017, the Chamber rejected a request by the Defence of Laurent Gbagbo not to recognise Witness P-583 as expert witness.²
2. In the Request, the Defence of Laurent Gbagbo seeks leave to appeal with respect to the following issues:
 - (i) whether the Chamber erred in law in refusing to examine the question of link of subordination between the person presented as expert and the Prosecutor (“First Issue”);
 - (ii) whether the Chamber erred in law in refusing to address the question of consequences of Witness P-583 having been a member of the French armed forces at a time at which the French armed forces were already engaged against the Ivorian armed forces (“Second Issue”); and
 - (iii) whether the Chamber erred in law in basing its decision on Regulation 44 of the Regulations of the Court even though this provision was not used by the Defence in support of its request (“Third Issue”).
3. On 14 September, the Prosecutor responded to the Request, objecting to the granting of leave to appeal.³

¹ ICC-02/11-01/15-1021.

² ICC-02/11-01/15-T-185-CONF-ENG, p. 6 l. 11 to p. 7 l. 3.

³ ICC-02/11-01/15-1026.

4. The provision applicable for the resolution of the Request is Article 82(1)(d) of the Statute. In brief, an interlocutory appeal can be allowed in respect of issues arising out of the impugned decision, meaning issues essential for the disposition of the matter. In addition, appeal can only be certified in respect of issues which would significantly affect either the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Chamber, immediate appellate resolution may materially advance the proceedings.

First Issue

5. In the First Issue, the Defence of Laurent Gbagbo submits that the Chamber failed to address the link between Witness P-583 and the Office of the Prosecutor, and that the Chamber pronounced on the witness's involvement in investigation without having had all relevant information or motivating its decision.
6. The Chamber considers that this issue is not appealable within the meaning of Article 82(1)(d) of the Statute. In its oral decision, the Chamber expressly mentioned the fact that Witness P-583 is a member of the Office of the Prosecutor, and further clarified that the appearance of this witness as expert witness does not prejudice or otherwise affect the right of the Defence to challenge his findings in its examination or by calling its own expert. Thus, the argument of the Defence of Laurent Gbagbo that the Chamber failed to address the question of a link between the witness and the Office of the Prosecutor does not correctly reflect the decision. In a similar vein, the Chamber indicated that Witness P-583 was called as forensic expert and "as such" not involved in investigative activities. Any further discussion of the witness's possible involvement in investigative steps not concerning his forensic expertise would not have impacted the Chamber's decision.
7. For the reasons outlined, the First Issue does not arise from the decision and leave to appeal cannot be granted.

Second Issue

8. In the Second Issue, the Defence of Laurent Gbagbo argues that the Chamber failed to pronounce on its argument concerning Witness P-583's former affiliation with the French armed forces.
9. The Chamber considers that this issue is not appealable within the meaning of Article 82(1)(d) of the Statute. Any argument on the mere fact of the witness's prior involvement with the French armed forces, without any further specifications, and alleged resultant repercussions on his testimony as expert witness before the Chamber is so tenuous as to not merit further consideration. As such, any explicit consideration of this argument would not have changed the Chamber's finding in any way. For this reason, the Second Issue does not arise from the decision and leave to appeal cannot be granted.

Third Issue

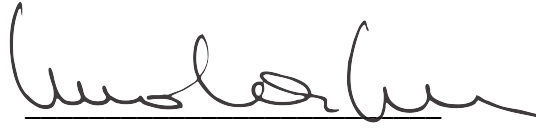
10. In the Third Issue, the Defence of Laurent Gbagbo submits that the Chamber did not respond to its arguments and used a legal basis not raised by the Defence.
11. In the view of the Chamber, this issue is not appealable within the meaning of Article 82(1)(d) of the Statute. The Chamber addressed the issue of Regulation 44 of the Regulations of the Court as it was brought up by the Defence of Laurent Gbagbo in its initial request.⁴ Furthermore, the provision was mentioned as part of the Chamber's reasoning which relied also on other factors, and it not having been mentioned would not have affected the ultimate conclusion. In any event, and more importantly, the Chamber is not bound for reaching its conclusions to exclusively rely on legal provisions that may have been invoked by the parties. Therefore, as the Third Issue does not qualify as appealable issue, leave to appeal cannot be granted.

⁴ "*Requête aux fins que le témoin P-0583 ne soit pas considéré comme témoin expert.*", 31 August 2017, ICC-02/11-01/15-1016, para. 5.

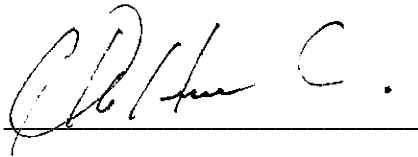
FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request.

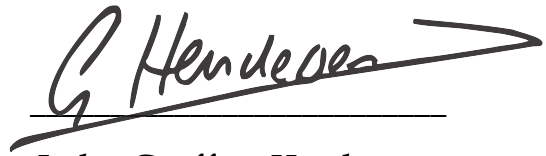
Done in both English and French, the English version being authoritative.



Judge Cuno Tarfusser, Presiding Judge



Judge Olga Herrera Carbuccion



Judge Geoffrey Henderson

Dated this 11 October 2017

At The Hague, The Netherlands