

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **5 June 2018**

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 “Prosecution Notification of Conduct by Blé Goudé Defence Team Member”

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Eric MacDonald

Counsel for Laurent Gbagbo

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Mr Geert-Jan Alexander Knoops

Mr Claver N'dry

Legal Representatives of Victims

Ms Paolina Massidda

Legal Representatives of 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

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber I of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Articles 21, 64(6) and 71 of the Rome Statute (“Statute”) and Articles 24 and 34 of the Court’s Code of Professional Conduct for counsel (“Code of Conduct”), issues this ‘Decision on the “Prosecution Notification of Conduct by Blé Goudé Defence Team Member”’ (“Prosecutor’s Request”).¹

1. In the Prosecutor’s Request dated 29 March 2018,² the Prosecutor informed the Chamber that on 22 April 2017, Mr Seri Zokou, member of the Defence team for Mr Blé Goudé in these proceedings, participated in a public conference and “made comments before a live audience on the merits of the evidence presented during the Prosecution’s case against the Accused, including commenting on the credibility and reliability of the witnesses”. In the view of the Prosecutor this was against Article 24(1) of the Code of Conduct, as the manner in which Mr Zokou made his comments risked prejudicing ongoing proceedings and bringing the Court into disrepute. The Prosecutor also submits that counsel’s conduct infringed the Code of Ethics adopted by the Brussels Bar (of which Mr Zokou is a member), in particular its Articles 7.4 and 7.5, governing counsel’s conduct in respect of communications and commentaries outside of the courtroom. Accordingly, the Prosecutor “invites” the Chamber “to remind counsel for Blé Goudé and their defence team of their duty towards the Court”.
2. In its response dated 11 April 2018,³ the Defence for Mr Blé Goudé notes that Mr Zokou participated in the said conference in the belief that this was appropriate and within his client’s right to defence inside and outside the courtroom. Referring to the European Court of Human Rights’ interpretation

¹ ICC-02/11-01/15-1143-Conf.

² ICC-02/11-01/15-1143-Conf.

³ ICC-02/11-01/15-1148-Conf.

to the right to freedom of expression, and previous case law of this Court,⁴ the Defence for Mr Blé Goudé requests the Chamber to provide guidance as to what is permissible and appropriate.

3. The Chamber notes that the Prosecutor's Request was filed more than a year after the alleged infringement of professional obligations by Mr Zokou. Likewise, there is no information on the record suggesting that counsel continued with such actions or if he did, that these in any way affected ongoing proceedings. The Chamber also observes that the Prosecutor has concluded with the presentation of her case, and it appears that this has been done with no prejudice as a result of the said statements of Mr Zokou or any other counsel in this case. Neither is there any information on the record suggesting that Mr Zokou's actions brought the Court into disrepute.
4. Accordingly, the Chamber does not consider it necessary or appropriate to "remind counsel" of their deontological duties towards the Court or their respective bars.
5. As regards the request of the Defence of Mr Blé Goudé to receive guidance, the Chamber equally considers that the analysis of counsel's professional and ethical obligations must be done on a case-by-case basis and before the appropriate jurisdiction or forum. In the present case, any alleged misconduct must be addressed to the respective bar of which counsel are members or the appropriate body established by the Code of Conduct.
6. In effect, Article 34 of the Code of Conduct establishes a clear procedure to follow whenever it appears that counsel has committed misconduct. Although the Chamber dealing with a case may file a complaint, it does not make a decision on the merits of the alleged misconduct. Accordingly, any complaint must be submitted to the Registrar, who shall then transmit the complaint to

⁴ *Case of the Prosecutor v Thomas Lubanga Dyilo*, "Decision on the press interview with Ms Le Fraper du Hellen", 12 May 2010, ICC-01/04-01/06-2433.

the Commissioner. It is ultimately the Commissioner and the Disciplinary Board that analyse the merits of the case and decide whether there was misconduct.

FOR THE FOREGOING REASONS, THE CHAMBER, HEREBY

REJECTS the Prosecutor's Request;

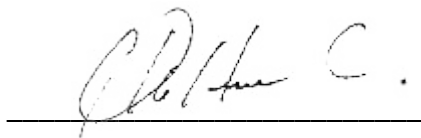
ORDERS the Registry to reclassify filings ICC-02/11-01/15-1143 and ICC-02/11-01/15-1148 as public.

Judge Cuno Tarfusser appends a separate opinion.

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



Judge Cuno Tarfusser, Presiding Judge



Judge Olga Herrera Carbuca



Judge Geoffrey Henderson

Dated 5 June 2018

The Hague, The Netherlands