

1 International Criminal Court
2 Appeals Chamber
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Laurent Gbagbo and Charles Blé
5 Goudé - ICC-02/11-01/15
6 Presiding Judge Piotr Hofmański
7 Appeals Judgment - Courtroom 1
8 Wednesday, 19 July 2017
9 (The hearing starts in open session at 4.32 p.m.)
10 THE COURT USHER: [16:32:33] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE HOFMAŃSKI: [16:32:56] Good afternoon.
14 Would the court officer please call the case.
15 THE COURT OFFICER: [16:33:08] Good afternoon, your Honour. Situation in the
16 Republic of Côte d'Ivoire, in the case of the Prosecutor versus Laurent Gbagbo and
17 Charles Blé Goudé. Case reference ICC-02/11-01/15. And for the record we are in
18 open session.
19 PRESIDING JUDGE HOFMAŃSKI: [16:33:28] Thank you.
20 My name is Piotr Hofmański, and I am the Presiding Judge on the appeal OA 10
21 arising from the case the Prosecutor versus Laurent Gbagbo and Charles Blé Goudé.
22 The other judges of the Appeals Chamber on this appeal are Judge Kuniko Ozaki,
23 Judge Sanji Mmasenono Monageng, Judge Howard Morrison, and Judge Chang-ho
24 Chung. I am joined today by the legal staff of the Appeals Chamber, Mr Dražan
25 Djukic, Mr Anthony Abato, Ms Nora Godkin and Ms Jessica Proskos.

1 May I ask the parties and participants to introduce themselves for the record, starting
2 with the Office of the Prosecutor.

3 MS BRADY: [16:34:16] Good afternoon, your Honour. I'm here today with
4 Reinhold Gallmetzer, appeals counsel; Melissa Pack, trial lawyer; and Mateos Costi,
5 appeals counsel. And my name is Helen Brady, I'm the senior appeals counsel.
6 Thank you.

7 PRESIDING JUDGE HOFMAŃSKI: [16:34:33] Thank you very much.
8 Defence for Mr Gbagbo.

9 MR ALTIT: [16:34:37] (Interpretation) Thank you, Mr President. Accompanying
10 me, Ms Agathe Baroan, Dov Jacobs, and behind me, Hélène Bolou, Emeline Swiderski
11 and Barbara Le Guennec. I am Emmanuel Altit.

12 PRESIDING JUDGE HOFMAŃSKI: Thank you.
13 And Legal Representative of Victims, please.

14 MS MASSIDDA: [16:35:09] Good afternoon, Mr President. For the victims
15 participating in the case, appearing today, Mr Enrico Carnero-Rojo, Ms Ludovica
16 Vetruccio, and I am Paolina Massidda.

17 PRESIDING JUDGE HOFMAŃSKI: [16:35:21] Thank you.

18 Today the Appeals Chamber is delivering its judgment on the appeal of Mr Gbagbo
19 against the decision of Trial Chamber I entitled "Decision on Mr Gbagbo's Detention,"
20 rendered on 10 March 2017. In today's summary, I will refer to this decision as the
21 Impugned Decision.

22 In a moment I shall summarise the public version of the Appeals Chamber's judgment,
23 which was taken unanimously. This summary is not part of the written judgment.
24 The written judgment is the only authoritative account of the Appeals Chamber's
25 ruling and reasons. The written judgment will be filed in a confidential version and

1 a public version. They will be made available to the parties and participants at the
2 conclusion of this hearing.

3 By way of background, Mr Gbagbo has been in detention at the Court since his
4 surrender to the Court on 30 November 2011. On 6 December 2016, the Trial
5 Chamber invited the parties to file submissions for the purposes of Article 60(3) of the
6 Statute concerning any new developments since its last decision of the review of
7 Mr Gbagbo's detention.

8 After receiving submissions on interim release from the Prosecutor, the victims
9 participating in the proceedings and Mr Gbagbo, on 3 February 2017, the Trial
10 Chamber rendered its Impugned Decision on 10 March 2017, deciding that
11 Mr Gbagbo shall remain in detention.

12 On 20 March 2017, Mr Gbagbo filed the document in support of his appeal, and on 27
13 March 2017, the Prosecutor and the victims participating in the proceedings
14 submitted their respective responses thereto.

15 I shall now summarise the merits of the present appeal.

16 First, I will address Mr Gbagbo's first and third grounds of appeal as they are related
17 to one another. I will then address the fourth and fifth grounds of appeal as they
18 both relate to the Trial Chamber's findings on the grounds for detention. I will then
19 address the second ground of appeal.

20 In Mr Gbagbo's first ground of appeal, he alleges that the majority's refusal to
21 examine the Defence submissions constitutes an error of law; in particular, he submits
22 that his arguments were not a repetition of previous arguments presented to the Trial
23 Chamber, but supported the current non-existence of a pro-Gbagbo network of
24 supporters. In Mr Gbagbo's third ground of appeal, he essentially challenges the
25 Trial Chamber's finding as to the existence of a network of supporters and he raises

1 three arguments in that regard.

2 First, that the Trial Chamber failed to provide any indication as to the structure and
3 identity of the members of the pro-Gbagbo network of supporters.

4 Second, that the Trial Chamber failed to adduce any information on the resources at
5 the disposal of this network.

6 And, third, that the finding of the Trial Chamber that the members of the network
7 indeed intended to assist Mr Gbagbo in evading justice is baseless.

8 With respect to the first ground of appeal, the Appeals Chamber first notes that

9 Mr Gbagbo does not point to the specific new submissions that the Trial Chamber

10 purportedly failed to address, and that the Trial Chamber did consider arguments by

11 the Prosecutor and Mr Gbagbo as to whether the network was still operational. It

12 did not need to address arguments that it found were repetitive of arguments

13 disposed of in previous decisions.

14 The Appeals Chamber therefore finds that Mr Gbagbo has not demonstrated that the

15 Trial Chamber erred by not considering his arguments on the network.

16 Turning to the third ground of appeal, the Appeals Chamber recalls that the

17 Impugned Decision is a decision taken pursuant to Article 60(3) of the Statute.

18 A Chamber carrying out a periodic review of a ruling on detention under this

19 provision must revert to the ruling on detention to determine whether there has been

20 a change in the circumstances underpinning the ruling.

21 A Chamber must also determine whether there are any new circumstances that have a

22 bearing on the conditions under Article 58(1) of the Statute.

23 What is crucial is that the Chamber is satisfied at the time of the review decision that

24 grounds remain to detain.

25 The Appeals Chamber notes that the original decision on detention as well as the

1 subsequent detention review decisions under Article 60(3) of the Statute contain
2 findings as to the organisation and resources of the pro-Gbagbo supporters and the
3 resources available to Mr Gbagbo himself.

4 As summarised in the applicable law mentioned earlier, the Trial Chamber was then
5 required in the Impugned Decision to address the question of whether there has been
6 a change in circumstances and, in doing so, to satisfy itself that the bases for those
7 rulings were still current as of the date of the review.

8 The Appeals Chamber finds that the Trial Chamber carried out the required review in
9 concluding that, based on the review of the submissions and all material before it, the
10 circumstances had not changed to such an extent as to warrant Mr Gbagbo's release.

11 While the Trial Chamber should have been more explicit in its reference to the
12 material which it considered underpinned its decision, as explained more fully in the
13 judgment, and in future decisions the Trial Chamber should do this, in its reasoning
14 in the Impugned Decision it referred specifically to the new information before it in
15 making this determination.

16 Additionally, the Trial Chamber correctly considered whether, given its earlier
17 findings underpinning the decision on detention and the new evidence presented by
18 the Prosecutor, there continued to be a possibility that members of the network of
19 supporters would break the law.

20 The Appeals Chamber considers that Mr Gbagbo has not established that these
21 findings were unreasonable.

22 The Appeals Chamber therefore rejects Mr Gbagbo's arguments under the first and
23 third grounds of appeal.

24 Under Mr Gbagbo's fourth ground of appeal, he argues that the Trial Chamber's
25 majority erred in refusing to consider the accused's age and state of health in

1 determining his release.

2 In relation to the age, the Appeals Chamber notes that, taken on its own, it cannot be
3 said that a person's advanced age means per se that he or she will be less likely to
4 abscond or less likely to obstruct proceedings. However, without aiming to set out
5 all of the circumstances in which age may be considered in the context of interim
6 release, the Appeals Chamber finds that it is generally more appropriate for age to be
7 considered as a factor potentially in support of release, alongside other factors, rather
8 than as a factor that could evidence a motivation to abscond.

9 Accordingly, the Appeals Chamber finds that the Trial Chamber erred.

10 With regard to Mr Gbagbo's argument that the Trial Chamber refused to consider the
11 state of his health, the Appeals Chamber recalls that it previously addressed in this
12 case how issues related to a detainee's medical condition could have an impact on a
13 decision as to interim release.

14 It stated that the medical condition of a detained person may have an effect on the
15 risks under Article 58(1)(b) of the Statute, for instance, on his or her ability to abscond,
16 potentially negating those risks.

17 The Appeals Chamber observes that there does not appear to be any consideration in
18 the record of Mr Gbagbo's health condition since the Third Decision on the Review of
19 Detention. For that reason, and for the other reasons detailed in the confidential
20 version of the judgment, the Appeals Chamber finds that the Trial Chamber erred in
21 failing to consider whether circumstances had changed such that the risks
22 enumerated in Article 58(1)(b)(i) and (ii) of the Statute were impacted.

23 In Mr Gbagbo's fifth ground of appeal, he argues that the Trial Chamber erred in law
24 by basing the continued detention on its determination that Mr Gbagbo has a clear
25 incentive to abscond given the extreme gravity of the charges and on the fact that the

1 accused denies responsibility.

2 Mr Gbagbo further contends that the fact that the Trial Chamber considered his
3 denial of responsibility as a reason in favour of maintaining his detention amounts to
4 a breach of the principle of the presumption of innocence and his defence rights.

5 As to Mr Gbagbo's arguments regarding the Trial Chamber's assessment concerning
6 the gravity of the charges, the Appeals Chamber recalls that in prior jurisprudence,
7 the Appeals Chamber stated that the gravity of the charges and the resulting
8 expectation of a lengthy prison sentence are relevant factors for decisions on interim
9 release.

10 What is important is whether a given factor exists in respect of the particular detained
11 person. Whether charges may be similarly serious in respect of some or all other
12 suspects who are brought before the Court is irrelevant because even if this were the
13 case, this does not detract from the fact that the charges against Mr Gbagbo are
14 serious. The Trial Chamber therefore committed no error in this regard.

15 With regard to Mr Gbagbo's arguments as to the Trial Chamber's reference to the fact
16 that he denies any responsibility, however, the Appeals Chamber finds that the Trial
17 Chamber erred.

18 Under Article 66 of the Statute, Mr Gbagbo is entitled to a presumption of innocence,
19 and under Article 67(1)(g) of the Statute, Mr Gbagbo has the right not to be compelled
20 to testify or to confess guilt and to remain silent, without such silence being a
21 consideration in the determination of guilt or innocence.

22 As argued by Mr Gbagbo, taking into account the fact that the person denies
23 responsibility for the charges he faces as a factor favouring detention would clearly
24 place detained persons in a paradoxical situation. They could either decide to
25 maintain that they are innocent - which could then be taken into account as a factor

1 favouring detention - or accept responsibility for the crimes they are charged
2 with - which in all probability could also be taken into account as a factor favouring
3 detention. The Appeals Chamber considers that no one should be forced to accept
4 responsibility in order to achieve interim release. The Appeals Chamber therefore
5 finds that the Trial Chamber erred.

6 I will now turn to Mr Gbagbo's second ground of appeal, under which he avers that
7 the Trial Chamber erred in law by failing to take the time he has spent in detention
8 pending trial into account in assessing whether there have been changed
9 circumstances within the meaning of Article 60(3) of the Statute.

10 The Appeals Chamber recalls that it stated in a prior judgment that the lapse of time
11 in detention cannot be considered on its own to be a changed circumstance within the
12 meaning of Article 60(3) of the Statute. Nevertheless, the Appeals Chamber went on
13 to state in the same judgment that, in light of recognised human rights principles, the
14 duration of time in detention pending trial is a factor that needs to be considered
15 along with the risks that are being reviewed under Article 60(3) of the Statute in order
16 to determine whether, all factors being considered, the continued detention stops
17 being reasonable and the individual needs to be released.

18 The Appeals Chamber observes that, as set out in the judgment, the Trial Chamber
19 did not address the issue of the duration of Mr Gbagbo's detention in the Impugned
20 Decision.

21 The Appeals Chamber also recalls that Mr Gbagbo has been detained since 30
22 November 2011, the trial began on 28 January 2016, and the Prosecutor is still in the
23 process of calling evidence.

24 In such circumstances, the Appeals Chamber considers that the Trial Chamber should
25 have considered the duration of time Mr Gbagbo has spent in detention alongside the

1 risks being reviewed and it should have determined whether, all factors being
2 considered, Mr Gbagbo's detention continues to be reasonable. The Appeals
3 Chamber therefore finds that the Trial Chamber erred.

4 In conclusion, the Appeals Chamber considers that the errors mentioned previously
5 have materially affected the Impugned Decision. In light of these errors, the Appeals
6 Chamber decides to reverse the Impugned Decision and directs the Trial Chamber to
7 carry out a new review as to whether Mr Gbagbo should continue to be detained or
8 should be released, with or without conditions.

9 Until this matter has been so decided, Mr Gbagbo shall remain in detention.

10 In making this decision, the Appeals Chamber emphasises that it is not suggesting
11 what the outcome of the Trial Chamber's review should be.

12 The Appeals Chamber does not need to deal with Mr Gbagbo's arguments regarding
13 conditional release, including as to how his health condition may relate to conditional
14 release and as to how the Trial Chamber refused to consider the possibility of
15 conditional release. This is because the question of conditional release may only be
16 meaningfully addressed once it has been determined whether or not continued
17 detention appears necessary.

18 This concludes my summary of the judgment. I thank the interpreters, court
19 reporters, the parties and legal officers. This session is now closed.

20 THE COURT USHER: [16:54:27] All rise.

21 (The hearing ends in open session at 4.54 p.m.)