

Press Release : 2 September 2019

Situation on the Registered Vessels of Comoros, Greece and Cambodia: ICC Appeals Chamber rejects the Prosecutor's appeal

ICC-CPI-20190902-PR1477

[Photo - Judge Solomy Balungi Bossa, presiding on the delivery of the judgment of the Appeals Chamber of the International Criminal Court on 2 September 2019 at the seat of the Court in The Hague, Netherlands ©ICC-CPI]

On 2 September 2019, the Appeals Chamber of the International Criminal Court ("ICC" or "the Court"), Judge Solomy Balungi Bossa presiding, delivered its judgment and rejected the appeal of the Prosecutor against the [decision of Pre-Trial Chamber I on the "Application for Judicial Review by the Government of the Union of the Comoros" of 15 November 2018](#). The Appeals Chamber's judgment was taken by majority, with Judge Chile Eboe-Osuji and Judge Luz del Carmen Ibáñez Carranza issuing partly dissenting opinions.

By way of background, on 14 May 2013, a [referral](#) was received by the Office of the Prosecutor from the authorities of the Union of the Comoros, a State Party to the Rome Statute, in relation to an attack on 31 May 2010 by the Israeli Defence Forces on the Humanitarian Aid Flotilla bound for the Gaza strip. On 6 November 2014, the Prosecutor issued her decision not to investigate the attack. On 16 July 2015, Pre-Trial Chamber I, by majority, [requested](#) the Prosecutor to reconsider the 6 November 2014 [decision](#) not to investigate the attack. Subsequently, on 29 November 2017 the Prosecutor filed her [decision](#), which she considered to be final, reaffirming her previous decision not to investigate the attack. On 15 November 2018, Pre-Trial Chamber I [directed](#) the Prosecutor to reconsider her decision of 6 November 2014 not to investigate the attack in light of the specific directions of the Pre-Trial Chamber's 16 July 2015 [Decision](#). The Prosecutor then appealed this decision.

The Appeals Chamber Judgment today confirms the Pre-Trial Chamber's [decision](#) of 15 November 2018 to the effect that the Prosecutor must reconsider her decision on the Comoros' [referral](#), by 2 December 2019, in light of the specific directions of the Pre-Trial Chamber's 16 July 2015 [Decision](#) and the directions of the Appeals Chamber in its judgment. The Appeals Chamber nevertheless maintained, Judge Eboe-Osuji and Judge Ibáñez dissenting, that the 'ultimate decision' as to whether or not to initiate an investigation is that of the Prosecutor.

Legal reasoning

The Appeals Chamber considered that Pre-Trial Chamber I did not err in reviewing whether a decision of the Prosecutor that she considered to be 'final' subsequently to a first request for reconsideration, does actually amounts to a proper 'final decision'. The scope of the Pre-Trial Chamber's review in such a case is limited to establishing whether or not the Prosecutor carried out the reconsideration in accordance with the Pre-Trial Chamber's request.

The Appeals Chamber also noted that the Prosecutor is required to demonstrate how she addressed the relevant issues in light of the Pre-Trial Chamber's directions. It also indicated that

where questions of law arise, the only authoritative interpretation of the relevant law is that adopted by the judges of the Court. Also, the Prosecutor must comply, if directed by the Pre-Trial Chamber, to take into account certain available information when determining whether there is a sufficient factual basis to initiate an investigation. However, the Majority of the Appeals Chamber found, Judge Eboe-Osuji and Judge Ibáñez dissenting, that it is not for the Pre-Trial Chamber to direct the Prosecutor as to how to assess this information and which factual findings she should reach. The Appeals Chamber found that the Prosecutor failed to follow the Pre-Trial Chamber's legal interpretations and thus the Pre-Trial Chamber did not err when it decided to direct the Prosecutor to carry out a new reconsideration of her decision not to investigate.

[Judgment on the appeal of the Prosecutor against Pre-Trial Chamber I's 'Decision on the Application for Judicial Review by the Government of the Union of the Comoros'](#)

[Partly Dissenting Opinion of Judge Eboe-Osuji](#)

[Photographs of the hearing](#)

Audio-visual materials:

- [YouTube](#) (for viewing)
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