Cour Pénale Internationale

International Criminal Court

Original: **English**

No.: **ICC-01/13**
Date: **26 September 2016**

PRE-TRIAL CHAMBER I

Before: **Judge Joyce Aluoch, Presiding Judge**
Judge Cuno Tarfusser
Judge Péter Kovács

SITUATION ON THE REGISTERED VESSELS OF THE UNION OF THE COMOROS, THE HELLENIC REPUBLIC AND THE KINGDOM OF CAMBODIA

Public

Decision on the Requests for Withdrawal of the Legal Representative of Victims pursuant to Regulation 82 of the Regulations of the Court

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

The Office of the Prosecutor
Fatou Bensouda, Prosecutor
James Stewart, Deputy Prosecutor

Counsel for Defence

Legal Representatives of Victims
Geoffrey Nice
Rodney Dixon

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims
Paolina Massidda

The Office of Public Counsel for the Defence

States Representatives
Geoffrey Nice
Rodney Dixon

Amicus Curiae

REGISTRY

Registrar
Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Others

PRE-TRIAL CHAMBER I (the "Chamber") of the International Criminal Court (the "Court or "ICC") issues the present decision on the "Request in accordance with Regulation 82 of the Regulations of the Court"[1] (the "First Request" and its annex) and the "Request for Withdrawal from representing certain victims in article 53 proceedings"[2] (the "Second Request") submitted on 15 July and 2 September 2016 respectively.

1. On 6 November 2014, the Prosecutor decided that there is no reasonable basis to proceed with an investigation into the situation on the Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia.[3]

2. On 29 January 2015, the Union of the Comoros submitted the "Application for Review pursuant to Article 53(3)(a) of the Prosecutor's Decision of 6 November 2014 not to initiate an investigation in the Situation" asking that the Chamber request the Prosecutor to reconsider her Decision.[4]

3. On 24 April 2015, the Chamber issued the "Decision on the Victims' Participation",[5] in which, *inter alia*, it appointed "Paolina Massidda from the OPCV to be the legal representative of unrepresented victims for the purposes of the present article 53 proceedings"[6] (the "24 April 2015 Decision").

4. On 16 July 2015, the Chamber issued its decision on the request of the Union of the Comoros to review the Prosecutor's decision not to initiate an investigation, requesting the Prosecutor to reconsider her decision.[7] To date, the Prosecutor has not reconsidered that decision.

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[1] ICC-01/13-52-Conf-Exp and its Annex, ICC-01/13-52-Conf-Exp-Anx1.
[2] ICC-01/13-53.
[3] Office of the Prosecutor, *Situation on Registered Vessels of Comoros, Greece, and Cambodia: Article 53(1) Report*, 6 November 2014, ICC-01/13-6-AnxA.
[4] Pre-Trial Chamber I, ICC-01/13-3-Conf; a public available version is also available, ICC-01/13-3-Red.
[5] Pre-Trial Chamber I, ICC-01/13-18.
[6] Pre-Trial Chamber I, ICC-01/13-18, p. 10.
[7] ICC-01/13-34.

5. On 15 July 2016, the Chamber received the First Request in which Mr. Geoffrey Nice ("Mr. Nice") and Mr. Rodney Dixon ("Mr. Dixon"), the legal representatives of some of the victims, seek leave for the Office of Public Counsel for victims ("OPCV") to withdraw from representing 35 victims[8] it had been representing in accordance with the 24 April 2015 Decision. Mr. Nice and Mr. Dixon grounded their request in the powers of attorney signed by these victims appointing them as their legal representatives for the proceedings before the ICC.[9] Mr. Nice and Mr. Dixon also request the "VPRS […] pursuant to rule 90(1) to reassign […][them], to represent these 35 victims in accordance with their powers of attorney".[10]

6. On 2 September 2016, Paolina Massidda filed the Second Request, in which she requested the Chamber to declare inadmissible the First Request and to allow her to withdraw as legal representative of the 35 victims mentioned in the annex to the First Request.[11]

7. The Chamber notes regulations 23 *bis* (3) and 82 of the Regulations of the Court (the "Regulations").

8. According to regulation 82 of the Regulations, "[p]rior to withdrawal, legal representatives of victims shall seek the leave of the Chamber". Since the Chamber, in the 24 April 2015 Decision, appointed Paolina Massidda from the OPCV to represent, among others, the unrepresented 35 victims mentioned in the annex to the First Request in the course of the article 53 proceedings, she remains the legal representative required to request withdrawal in the present circumstances. This is so notwithstanding the fact that some or all 35 victims have expressed interest that Mr. Nice and Mr. Dixon represent them. It follows that neither Mr. Nice nor Mr. Dixon enjoy the procedural standing to

[8] ICC-01/13-52-Conf-Exp, para. 23.
[9] ICC-01/13-52-Conf-Exp, para. 2.
[10] ICC-01/13-52-Conf-Exp, para. 23.
[11] ICC-01/13-53, p. 4.

request withdrawal on behalf of Paolina Massidda, and accordingly, the First Request lodged by the two legal representatives should be dismissed *in limine*.

9. With respect to the Second Request, in view of the desire expressed by Paolina Massidda to withdraw her representation respecting the choice and wish of the victims concerned, and given that those 35 victims have chosen to be represented by Mr. Nice and Mr. Dixon and will therefore not be left without any legal representation, the Chamber grants the Second Request.

10. Finally, the Chamber observes that the First Request and the annex appended thereto are filed as confidential *ex parte*. As correctly pointed out by Paolina Massidda, Mr. Nice and Mr. Dixon do not provide any explanation as to the reason for such classification.[12] Whereas the Chamber is of the view that the annex which contains the names of the 35 concerned victims should retain its current level of classification, it does not see any impediment in revealing the information provided in the First Request to the public. Accordingly, the Chamber deems it appropriate to reclassify that request as public.

FOR THESE REASONS, THE CHAMBER HEREBY

a) **dismisses *in limine*** the First Request;

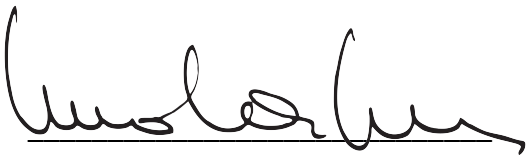
b) **grants** the Second Request; and

c) **orders** the Registry to reclassify as public document ICC-01/13-52-Conf-Exp.

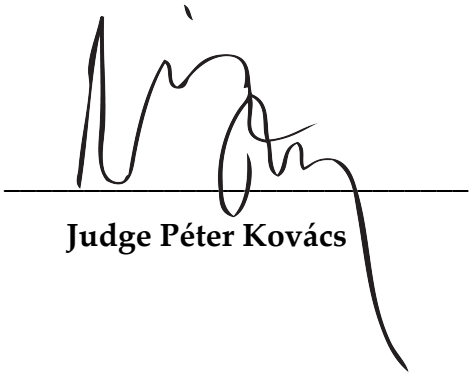
[12] ICC-01/13-53, para. 3.

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

Judge Joyce Aluoch
Presiding Judge



Judge Cuno Tarfusser



Judge Péter Kovács

Dated this Monday, 26 September 2016

At The Hague, The Netherlands