

## **II. Background**

### **1. General complaints**

The defence made a number of general complaints that called into question the very principle of the proceedings against the defendant. Although these complaints sometimes overlap, three themes emerge: the theory of a conspiracy organised by CIVITAS MAXIMA and the GJRP, the quality of the criminal information and the identification of the defendant by the plaintiffs and witnesses. These three themes form the basis of the Court's preliminary analysis of the case.

#### **1.1 Conspiracy theory organised by CIVITAS MAXIMA and the GJRP**

The defence contends that the testimony against Alieu Kosiah is false. In the defendant's opinion, expressed throughout the proceedings, the people accusing him had been paid to lie and had received instructions as to what they should say to the Court. The conspiracy was allegedly organised and directed by Me WERNER, respectively CIVITAS MAXIMA, with the assistance in particular of Hassan BILITY and the GJRP (see in particular MPC 13-01-0494; TPF 40.731.069 s.; CAR 5.301.005 s. and 174).

#### **1.1.1 Arguments of the parties**

1.1.1.1 In its pleadings, the defence put forward a series of arguments (CAR 5.200.364 to 415), corresponding in substance to those formulated at first instance (TPF 40.721.470 to 497), which are as follows. It criticises Me Werner and Hassan Bility for having worked together, at the instigation of the former, to conduct investigations into the defendant, it being specified that Hassan BILITY, who, like his organisation, the GJRP, was subordinate to Mr WERNER, was neither credible nor professional. The defence complained that the two men had drawn up affidavits in favour of Mohammed Vamba KROMAH in the context of his asylum procedure, which would constitute proof of the assistance provided to the plaintiffs. The defence further submits that the charges against Agnes TAYLOR, Charles TAYLOR's ex-wife, in the UK were dropped in 2019 and that witnesses provided by CIVITAS MAXIMA and the GJRP falsely accused Gibril MASSAQUOI in the proceedings against him in Finland, it being noted that Gibril MASSAQUOI was acquitted on 29 April 2022. The defence also produced several documents during the appeal proceedings to demonstrate the existence of a conspiracy (supra, C.25). These documents consisted mainly of emails sent by Alan WHITE and Alvin SMITH to Mr GIANOLI and press articles alleging that Mr WERNER, Hassan BILITY and the organisations they headed had bought and tampered with witnesses. The defence sees this as confirmation of the theory that the plaintiffs had been prepared by CIVITAS MAXIMA and the GJRP, a theory that is further corroborated by the fact

that the statements made by the plaintiffs are sometimes - indeed often - contradictory. It is therefore on this basis that evidence was "fabricated" (CAR 5.200.434, 450, 469, 523, 531, 539 and 592).

1.1.1.2 The MPC submits that there is no evidence of a conspiracy hatched by CIVITAS MAXIMA and the GJRP (CAR 5.200.723 et seq.). He challenged the defence's argument that there was evidence of a conspiracy both when the plaintiffs contradicted each other and when they did not. With regard to the press articles produced during the proceedings, the MPC maintained that they contained allegations whose origin was unknown and referred to the context of an election year in Liberia, stressing that the fight against impunity was a major issue there.

1.1.1.3 In his pleading on behalf of all the plaintiffs, Mr JAKOB contested the existence of a conspiracy and the logic of the defence's arguments on this subject, emphasising that the defence criticised the plaintiffs for lying if they said two different things and for having learned a lesson if they said the same thing (CAR 5.200.813). During the appeal debates, Mr JAKOB also took a position on the documents brought into the proceedings by the defence (RAC 5.100.038 et seq. and 042 et seq.). In particular, he noted that Mohammed Vamba KROMAH had stated that he had not received any consideration in connection with his testimony and that the said testimony was not unfavourable to Alieu KOSIAH, adding that there was nothing problematic, troubling or false about the certificates signed by Me WERNER and Hassan BILITY. Me JAKOB also pleaded for the articles to be put into their proper context, namely that of a political battle waged against Sayma CEPHUS former Solicitor General of Liberia.

1.1.1.4 In his closing address, Mr. Werner commented in particular on the proceedings to which CIVITAS MAXIMA had contributed abroad (CAR 5.200.796 et seq.). With regard to the proceedings in the United Kingdom against Agnes Taylor, he pointed out that she had never been acquitted and that she had not been tried because of the lack of evidence concerning a legal prerequisite - control of the territory by the National Patriotic Front of Liberia (NPFL) - for criminal proceedings for the crime of torture. As for the proceedings in Finland against Gibril MASSAQUOI, Mr WERNER indicated that people claiming to have been bribed by Hassan BILITY had been interviewed, but pointed out that the judgment of acquittal did not identify any criminal, problematic or inappropriate acts on the part of members of CIVITAS MAXIMA or the GJRP. Mr Werner had also given his opinion during the debates on the press articles produced by the defence, insofar as he was directly concerned (CAR 5.200.203-A). He explained that he had been the target of absurd accusations as part of a smear campaign launched against Hassan BILITY and in

which Alan WHITE was said to have played a large part, without the latter ever repeating his allegations before an authority.

1.1.1.5 With regard to Hassan BILITY, it should first be recalled that he has already been confronted, at the adversarial stage of the proceedings and in the presence of the accused, with the theory that testimony had been bought and prepared, and that he has consistently refuted any criticism in this regard (MPC 12-31-0001 ff). Following the new elements put forward by the defence, the Court gave him the opportunity to express his views through the complainants. He then made the following written observations, which were produced during the hearing (CAR 5.200.203-A). He explained that a public smear campaign with ramifications in the Liberian political debate had been launched against him in the context of the proceedings against Gibril MASSAQUOI and that Darius TWEH and Alvin SMITH were among his accusers. With regard to Darius TWEH, Hassan BILITY maintained that he had never been his employee or the employee of the GJRP. He contested all the accusations made against him and considered that he had always acted honestly and in accordance with the ideal aims of the GJRP in all his activities relating to the case concerning Alieu KOSIAH and, more generally, in all the activities of the GJRP.

### **1.1.2 Examination *in casu***

1.1.2.1 To begin with, the Court notes that the defence has produced press articles about the methods allegedly used by CIVITAS MAXIMA and the GJRP, in the form of three files, dated 17, 24 and 31 January 2023, without any reference to the methods used by CIVITAS MAXIMA and the GJRP to sort through the articles transmitted. It also notes that the defence did not refer specifically to the content of those files in its submissions and that it did not draw any conclusions from them as to the practical impact that those press articles should have on the present proceedings. The Court notes that the defence nevertheless had sufficient time to do so inasmuch as it received the first press articles and the first email from Alan WHITE in May and July 2021, that is to say approximately 18 months before the appeal proceedings.

1.1.2.2 The Court also emphasises that various elements in the case file make it possible to understand the origin of some of the criticisms made by the defence. For example, it has been established that Mr Werner and Mr Hassan Bility assisted Mohammed Vamba Kromah in his asylum proceedings by signing certificates (18-01-0643 et seq. and 0648 et seq.). However, in these documents, Me WERNER and Hassan BILITY merely express their opinion that the person concerned would be in danger if returned to Liberia. Their approach is therefore in no way open to criticism. Moreover, to claim that Mr Werner and Hassan Bility had

enabled Mohammed Vamba Kromah to obtain asylum in Switzerland is tantamount to ignoring the way the asylum procedure works in that country. It should also be pointed out that the testimony given by the person concerned in these proceedings was anything but negative towards the defendant. He stated that Alieu KOSIAH "had the reputation of being a philanthropist who took great care of children, even those from the Lofa ethnic groups who had hunted us down" (MPC 12-25-0018, lines 17 f.). Furthermore, none of the complainants applied for asylum in Switzerland during their various visits to this country, and the only person to have made use of this right was Abraham TOWAH, who fought under the orders of Alieu KOSIAH during the war. The file also contains information that may have fuelled the defence's allegations that the plaintiffs and witnesses benefited from material advantages. Gayflor SMITH, for example, stated that when he travelled from Zorzor to Monrovia, to the offices of the GJRP, for a four-day stay, in order to recount what had happened to him during the war, the GJRP had paid USD 10 per night for accommodation and USD 5 per day for catering costs, and had covered transport costs (MPC 12-28-0007 et seq.). These modest amounts and the reasons given for them clearly constitute mere out-of-pocket expenses and do not appear to amount to financial rewards, even in the specific socio-economic context of Liberia. On the contrary, the absence of compensation for the loss of earnings inevitably caused by such a stay tends to highlight the sincerity of the complainant's approach. There is therefore no tangible evidence to suggest that the testimonies were bought or falsified by CIVITAS MAXIMA and the GJRP. In particular, the Court notes that minor variations and contradictions within one or other of the testimonies or between different testimonies are not evidence of a conspiracy, but rather indicators of credibility (see also *infra*, recital 11.1 .2.4.2). These variations considerably weaken the thesis of "witness coaching", the very purpose of which is to provide the authorities with "irreproachable" testimony (see also *infra*, recital 11.1 .3.4.2). Similarly, the few inconsistencies noted by the defence in Hassan BILITY's statements do not demonstrate either a conspiracy or a desire to cause harm on his part. In particular, it is difficult to understand how documents MPC 12-31-00218 and 0232, the latter of which, according to the PJF report of 20 April 2018 (MPC 10-01-0213 ff), were drafted - in part - by Hassan BILITY, would lend credence to the conspiracy theory, given that they consist of the words "date and place" on a power of attorney and a note about contacts made at Lofa. As for the accusation that Hassan BILITY had lied in the proceedings by not admitting that he was the author of these documents, although his denials were contrary to the PJF's conclusions, it should be noted that the PJF's report did not provide any

certainty as to the author of these documents. More generally, it should be pointed out that the GJRP is a relatively young organisation and that its director has explained that it has improved its processes since its creation. The care taken by CIVITAS MAXIMA and the GJRP to train the latter's staff - from an internationally recognised institution - on how to investigate in the field of international criminal law also attests to the seriousness of their approach. As for the proceedings in the United Kingdom and Finland in which CIVITAS MAXIMA and the GJRP are also involved, the absence of any convictions of Gibril MASSAQUOI and Agnes TAYLOR does not allow the existence of evidence of witness tampering. The prosecution was moreover dropped against the latter on a legal ground relating to an impediment to proceeding, without a trial having been able to take place (THF GI JARDIAN, Judge dismisses torture charges against Charles Taylor's ex-wife, 6 December 2019, <<https://www.theguardian.com/world/2019/dec/06/uk-judge-dismisses-torture-charges-against-charles-taylors-ex-wife-liberia>>, accessed 27 February 2024; see also LE MOLI, Torture by Non-state Actors: Four Inquiries, Journal of International Criminal Justice, 2021, vol. 19(2), pp. 363 ff).

1.1.2.3 It is now appropriate to examine the documents produced by the defence in support of its conspiracy theory during the appeal proceedings. In his e-mail of 19 July 2021 (CAR 5.200.028 et seq.), addressed to Mr GIANOLI, Alan WHITE states that Mr WERNER and Hassan BILITY allegedly earned millions of euros by prosecuting Liberian nationals outside Liberia, through the recruitment of false witnesses paid with money or relocation, in particular to Europe. He added that Mohammed Vamba KROMAH had been granted asylum in Switzerland in exchange for giving false testimony against Alieu KOSIAH, and that he had personally spoken to witnesses who said that Hassan BILITY had offered them money and relocation in exchange for giving false testimony against Alieu KOSIAH. In a second email, dated 29 April 2022, Alan WHITE apparently spontaneously sent Mr GIANOLI two press articles concerning the acquittal of Gibril MASSAQUOI and the work of CIVITAS MAXIMA and the GJRP (CAR 5.200.064). The Court recalls that the allegations contained in the e-mail of 19 July 2021 concerning witnesses to whom Hassan BILITY had allegedly offered advantages in exchange for false testimony have been negated by the information transmitted by Alan WHITE's lawyer to Mr GIANOLI, from which it transpires that her client has retracted his statement ("the hearing of [Alan WHITE] in his capacity as 'expert investigator' would be of little interest in any case, since he considers that he does not personally have sufficiently relevant information directly related to the cases" supra, recital 1.6.3.2). It should also be noted that the rest of Alan White's allegations are vague and based on information obtained

indirectly (infra, recital 11.1 . 1.2.5). Moreover, the fact that he spontaneously contacted Mr GIANOLI seems to indicate that he acted out of personal interest. His e-mail of 19 July 2021, copied to the lawyer in charge of Gibril MASSAQUOI's defence, to whom he allegedly recommended that he contact Mr GIANOLI, also suggests that he is involved in the Finnish proceedings alongside the defence.

1.1.2.4 In various e-mails sent to Mr GIANOLI from 24 January 2023 onwards, i.e. during the appeal proceedings, Alvin SMITH forwarded a number of press articles alleging that Mr WERNER and Hassan BILITY and the organisations they headed had bought and tampered with witnesses (CAR 5.200.096 et seq. and 207 et seq.). In one of these emails, Alvin SMITH states that he has hard evidence that the two men used such methods, particularly in the proceedings against Alieu KOSIAH (CAR 5.200.096). It should also be recalled that the Court had expressed surprise at the level of English used in the e-mails in question, given the functions alleged (supra, recital 1.6.3.3).

1.1.2.5 The press articles submitted by the defence emanated mainly from Alvin SMITH and covered a period from May 2021 to January 2023. The Court notes at the outset, in connection with the lack of sorting mentioned above, that one of the articles produced, on the subject of juvenile delinquency, has no connection with the proceedings, or with Mr WERNER or Hassan BILITY (CAR 5.200.288 et seq.), and that other articles were produced on several occasions. As for the content of the articles produced by the defence, it is characterised by the reproduction of vague information and the recurrence, as a source, of Darius TWEH, whose credibility is undermined by the fact that he is described as an undercover witness (see also supra, recital 1.6.3.3) and that Hassan BILITY maintains that he never employed him. It is also pointed out that most of the articles do not mention sources or avoid naming them. However, one article refers to more specific accusations made during the trial of Gibril MASSAQUOI in Monrovia, according to which Hassan BILITY offered a witness USD 16,000 to lie about the accused and also asked him to testify against Alieu KOSIAH (CAR 5.200.159 ff). However, these are mere allegations, containing few details - and even no details on the nature of what this witness was allegedly asked to do in connection with the proceedings against Alieu KOSIAH. It also turns out that the credibility of this witness is undermined in the same article. The article refers to the prosecution's response, which allegedly revealed that the witness in question had exchanged Whatsapp messages with Alan WHITE. The Court also noted that the same information was frequently repeated. This is particularly the case of witnesses who were allegedly lodged in hotels in West Africa and paid to give false testimony in the proceedings against Agnes TAYLOR (CAR 5.200.038 s., 054, 056, 062, 099, 209 and 319), but also material advantages, including asylum in a Western country, offered in exchange for false testimony (CAR 5.200.061; 1 59, 253

and 319), or, as far as the present proceedings are concerned, reports that Mohammed Vamba KROMAH had given false testimony in the proceedings against Agnes TAYLOR, before being granted asylum in Switzerland (CAR 5.200.099, 106, 115 and 227). However, it is not enough to repeat a thesis for it to prove to be well-founded. The Court has already had occasion to note that the evidence in the case file makes it possible to understand the origin of the accusations relating to alleged material benefits offered in return for false testimony, in particular that of Mohammed Vamba KROMAH. It also points out that there is no concrete evidence in the file to support this theory (*supra*, recital II. 1.1 .3). While the conspiracy theory cannot be accepted in the light of these elements, it should be noted that the theory of a smear campaign directed in particular against Hassan BILITY and Me WERNER is supported. The style used in some of these articles is also compatible with such a campaign. For example, Hassan BILITY, Me WERNER and their organisations are accused of having "run a criminal cartel by producing coached witnesses into incriminating innocent Liberians" [CAR 5.200.034], of being "criminals engaged in a Global Organized criminal enterprise and pathological liars" [CAR 5.200.034], of having "committed a criminal cartel by producing coached witnesses into incriminating innocent Liberians" [CAR 5.200.034], of having "committed a criminal cartel by producing coached witnesses into incriminating innocent Liberians" [CAR 5.200.034], and of being "criminals engaged in a Global Organized criminal enterprise and pathological liars" [CAR 5.200.034]. "Criminal Enterprise and pathological liars" [CAR 5.200.209]) or "are involved With a well-crafted international syndicate for money making scheme under the disguised as Human Rights Groups" [CAR 5.200.227]). Finally, it is surprising that six articles are dated 25 and 26 January 2023, i.e. during the debates. This is a further indication of the implementation of a smear campaign.

1.1.2.6 Thus, on the basis of the documents produced by the defence, and in the absence of any tangible evidence, on the contrary, it seems highly improbable that the aforementioned organisations were behind the plot.

### **1 .1 . 3 Conclusion**

In view of the above, the conspiracy theory must be dismissed.