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Hi, my name is Jo Stigen. I am a Law professor from Oslo, Norway. I have been asked to introduce article 18 on preliminary rulings regarding admissibility.

Now, you probably already know that when a Prosecutor has decided to open an investigation, he or she must already have assessed the admissibility of a case, or rather of a situation in question. Under article 15(3), the Prosecutor must determine whether there is a “reasonable basis” to proceed. One criterion within this main criterion of reasonable basis is that he or she must find that there is one or more admissible cases. If, alternatively, the Prosecutor has decided to open an investigation *proprio motu*, the Pre-Trial Chamber will have assessed the admissibility under article 15(4).

Now, article 18 adds yet another layer of admissibility assessment. Whereas article 19 lets a State challenge the admissibility once a case has already started before the ICC, article 18 lets a State raise the admissibility issue at an earlier stage, in a preemptive manner.

Now, according to article 18(1), when the Prosecutor has decided that he or she will open an investigation, the Prosecutor must notify all States Parties and any State which would normally exercise jurisdiction over one or more cases in question. And, within one month upon such notification, any of these States may request the Prosecutor to defer. The State must then argue that we are conducting, or there have been conducted, investigations in our States, and that these investigations are, or were, genuine according to article 17.

Now, in light of such a request, the Prosecutor may now either defer or, alternatively, if he or she find that there is no genuine true proceeding, or not a sufficient number of genuine proceedings within the relevant situation, alternatively, the Prosecutor may then seek an authorisation from the Pre-Trial Chamber to proceed.

Under Rule 55(2), the Pre-Trial Chamber shall now consider the factors in article 17 of admissibility.

Now, having read the decision of the Pre-Trial Chamber, the Prosecutor or the State concerned may now, within five days, under article 18(4), appeal the Pre-Trial Chamber’s

decision. Now, this appeal has no suspensive effect, unless the Appeals Chamber so decides. - The Appeals Chamber may now either “confirm, reverse or amend the decision of the Pre-Trial Chamber.”

Under article 18(3), the Prosecutor may, after six months, review a decision to defer. That is, either a decision that the Prosecutor made on his or her own, or a decision that is instructed from the Pre-Trial Chamber, as we just said. The Prosecutor may, that is, review such a decision after six months or at any point when there has been a significant circumstance or a significant change of circumstance regarding the State’s unwillingness or inability to proceed genuinely. And this provision underscores the obvious point that national proceedings must remain genuine until a final acquittal or conviction has been handed down, or the case has been closed for legitimate reasons.

Now, if the Prosecutor, upon such a review, decides that he or she wants to take up the investigation yet, they must now seek an authorization from the Pre-Trial Chamber.

There is another important provision as well in article 18, and that is article 18(5). The Prosecutor may request a State to periodically inform him or her as to the progress of the national proceeding. Because there is no guarantee that if this proceeding initially is genuine, there is no guarantee that the proceeding will remain genuine. There can be a political shift, which means that at this later point, the State seeks to shield the perpetrator from responsibility.

This duty of course is only a duty that a State Party would have and only upon a request from the Prosecutor.

Lastly, I will mention a certain safety mechanism in Article 18(6). - The Prosecutor has a special opportunity to preserve evidence because despite the one month, the brief one month limit for States to request a deferral, and despite all these other provisions in Article 18 aimed at speeding up things, there is a certain risk that there would be an unfortunate delay in the proceedings.

So, Article 18(6) lets the Prosecutor seek an authorization from the Pre-Trial Chamber to pursue necessary investigative steps to preserve evidence, if there is a unique opportunity to obtain evidence or if - there is a danger that otherwise this - evidence will become unavailable at a later point.

Now, this may seem a very efficient provision, if you like, but remember if the Prosecutor is faced with an unwilling State, there will be enforcement problems whatsoever. So, this provision may look more efficient than it will actually turn out to be in reality.

That was article 18. Thank you.