

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04-01/05
Date: 13 July 2006

THE APPEALS CHAMBER

Before: Judge Georghios M. Pikis, Presiding Judge
Judge Philippe Kirsch
Judge Navanethem Pillay
Judge Sang-Hyun Song
Judge Erkki Kourula

Registrar: Mr Bruno Cathala

**SITUATION IN UGANDA
CASE 01/05**

**UNDER SEAL
EX PARTE only available to the Prosecutor**

Decision on the Prosecutor's "Application for Appeals Chamber to Give Suspensive Effect to Prosecutor's Application for Extraordinary Review"

The Office of the Prosecutor
Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Ms Christine Chung, Senior Trial Lawyer



The Appeals Chamber of the International Criminal Court (the “Court”),

In the application of the Prosecutor dated 11 May 2006 entitled “Application for Appeals Chamber to Give Suspensive Effect to Prosecutor’s Application for Extraordinary Review” (ICC-02/04-01/05-84-US-Exp),

After deliberation,

Unanimously,

Delivers the following

DECISION

The application is dismissed.

I. THE NATURE OF THE APPLICATION

1. In proceedings initiated in the context of the Uganda situation, Pre-Trial Chamber II, assigned¹ with responsibility to deal with cases deriving from that source, ruled² that the Registrar is legitimized to file a document in the proceedings in his own right. The Prosecutor sought the leave of the Pre-Trial Chamber to appeal the decision pursuant to article 82 (1) (d) of the Rome Statute (“Statute”).³ Pending consideration of his application, the Prosecutor moved⁴ the Appeals Chamber to stay the proceedings arising from his application for leave to appeal, in anticipation of the delivery of the judgment of the Appeals Chamber in another case, notably in proceedings for the

¹ *Situation in Uganda* “Decision assigning the situation in Uganda to Pre-Trial Chamber II” 5 July 2004 (ICC-02/04-1).

² *Situation in Uganda* “Decision on the Prosecutor’s Application that the Pre-Trial Chamber disregard as irrelevant the submission filed by the Registry on 5 December 2005” 9 March 2006 (ICC-02/04-01/05-77-US-Exp).

³ Annex A (ICC-02/04-01/05-84-US-Exp-AnxA) to *Situation in Uganda* “Application for Appeals Chamber to Give Suspensive Effect to Prosecutor’s Application for Extraordinary Review” 11 May 2006 (ICC-02/04-01/05-84-US-Exp).

⁴ *Situation in Uganda* “Application for Appeals Chamber to Give Suspensive Effect to Prosecutor’s Application for Extraordinary Review” 11 May 2006 (ICC-02/04-01/05-84-US-Exp) (“Application of the Prosecutor”).



“Extraordinary Review”⁵ of a decision⁶ of Pre-Trial Chamber I refusing leave to appeal in the context of proceedings arising from the situation in the Democratic Republic of the Congo.

2. The wording of the application of the Prosecutor “Application for Appeals Chamber to Give Suspensive Effect to Prosecutor’s Application for Extraordinary Review” does not convey an accurate picture of the relief sought. Notwithstanding the name attached to the application, its object as manifested by its content and the relief sought is to stay the hearing of an application of the Prosecutor for leave to appeal an interlocutory decision of Pre-Trial Chamber II in the aforesaid case in the Uganda situation. The elicitation of the provisions of article 82 (1) (d) of the Statute, especially the prerequisites set down therein for the statement of an appealable issue, is uppermost in his mind. Through the authoritative pronouncement of the Appeals Chamber the law will, in his view, be clarified. With that enlightenment the Prosecutor hopes that erroneous, according to him, decisions of the Pre-Trial Chambers on the subject will be avoided or not repeated in the future.

II. REASONS

3. Neither the Statute nor the Rules of Procedure and Evidence confer power upon the Appeals Chamber to grant the remedy sought. Nonetheless, the Prosecutor argued that the Appeals Chamber may assume such power in view of the provisions of article 82 (3) of the Statute enabling the Appeals Chamber to order, in its discretion, that an appeal should have suspensive effect.⁷ Suspension involves the non-enforcement of a decision, the subject of an appeal.⁸ This is not the object of the application before the Appeals

⁵ *Situation in the Democratic Republic of the Congo* “Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal” 24 April 2005 (ICC-01/04-141).

⁶ *Situation in the Democratic Republic of the Congo* “Decision on the Prosecution’s application for leave to appeal the Chamber’s decision of 17 January 2006 on the applications for participation in the proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6” 31 March 2006 (ICC-01/04-135-tEN).

⁷ Application of the Prosecutor, paragraphs 6 to 8.

⁸ *Garner B. A.* (Editor in chief), *Black’s Law Dictionary*, Eighth Edition, Thomson West, St. Paul, Minn., 1999, page 106: “**suspensive appeal**. An appeal that stays the execution of the underlying judgment.” *Köbler G.*, *Juristisches Wörterbuch*, Eighth Edition, Munich, 1997, at page 381: “**Suspensiv-effekt** ist das Hinausschieben der formellen Rechtskraft einer Entscheidung.” *Cabrillac R.* (Editor), *Dictionnaire du vocabulaire juridique*, Paris, 2002, page 159: “Effet Suspensif: Effet produit par certaines *voies de recours* et en vertu duquel le délai pour exercer le recours puis celui nécessaire à son examen suspendent

Chamber. The application is designed to stay proceedings, pending the outcome of an application of the Prosecutor in another case. This is a remedy unknown to the Statute and wholly separate from the one envisaged by article 82 (3) of the Statute that the Prosecutor invokes in aid of his application.

4. Stay of proceedings pending before another Chamber at the instance of the Appeals Chamber under any guise or in any circumstances is not, as indicated, known to the law applicable to proceedings before the Court. Akin to the remedies sought are orders of common law courts to stay proceedings regarded as an abuse of the judicial process.⁹ Even in that case, power to stay resides with the trial court, not the appeal court. Romano-Germanic jurisdictions too, as in Germany, make provision¹⁰ for stay of criminal proceedings pending the outcome of civil proceedings where the dispute concerns in essence a civil matter; there again jurisdiction to stay lies with the trial court. Whether power to stay proceedings vests in the Pre-Trial or Trial Chambers does not concern the Appeals Chamber in this case and nothing said in this decision should be construed as shedding light on the possible answer to that question.

5. The writ of prohibition available in common law jurisdictions is another remedy to which the application of the Prosecutor in these proceedings bears some resemblance. No jurisdiction is conferred upon the Appeals Chamber to issue orders similar to a writ of prohibition. Even if it were otherwise, no order in the nature of a writ of prohibition could be issued in this case for the following reasons. The writ of prohibition¹¹ is available to

l'exécution de la décision contre laquelle il est formé à moins que celle-ci soit assortie de l'exécution provisoire [...]".

⁹ See *Murphy P.* (Editor in chief), *Blackstone's Criminal Practice 2006*, Oxford University Press 2005, D10.41 and D19.10.

¹⁰ Section 262 of the German Criminal Procedure Code reads: "[Preliminary Civil Law Questions] (1) If the criminal liability for an act depends on the evaluation of a legal relationship under civil law, the criminal court shall also give a decision thereon according to the provisions applicable to procedure and evidence in criminal cases. (2) The court, however, shall be entitled to suspend the investigation and to set a time limit within which one of the participants is to bring a civil action, or to await the judgment of the civil court." (translation provided by the *German Federal Ministry of Justice*, available at <http://www.iuscomp.org/gla/statutes/StPO.htm> (last accessed on 8 July 2006)).

¹¹ Compare for an overview on the usage of this term: *Lord Hailsham of St. Marylebone* (Editor in chief), *Halsbury's Laws of England, Fourth Edition, Reissue*, 11 (2), 1990, Criminal Law, Evidence and Procedure, Para 1487; *Lord Mackay of Clashfern* (Editor in chief), *Halsbury's Laws of England, Fourth Edition*, 2001 Reissue, 1 (1) Administrative Law, Admiralty, Para 59, Para 117, Para 119; *Murphy P.* (Editor in chief) *Blackstone's Criminal Practice 2006*, Oxford University Press 2005, D27.25.



restrain excess of jurisdiction by inferior courts,¹² that is courts of limited jurisdiction according to English law wherefrom such jurisdiction derives. The Pre-Trial Chamber is not an inferior court in that sense and the order sought is not designed to stop transgression of jurisdiction but to stay proceedings pending the outcome of the decision of the Appeals Chamber in another case; a relief unassociated with an order of prohibition, unknown to the law in the country where such remedy was evolved.

6. In the judgment of the Appeals Chamber the Prosecutor's application lacks procedural and substantive foundation. The Prosecutor's prayer for relief is one unknown to the law applicable in proceedings before the Court and one that the Appeals Chamber has no power to grant; a conclusion sealing the outcome of the application before the Appeals Chamber.

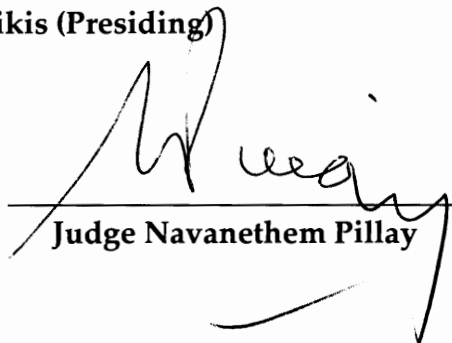
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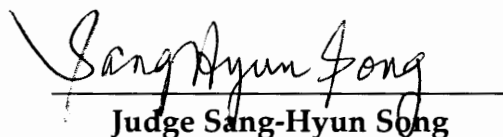
Judge Georghios M. Pikis (Presiding)



Judge Philippe Kirsch



Judge Navanethem Pillay



Judge Sang-Hyun Song



Judge Erkki Kourula

Dated this 13 July 2006

At The Hague, The Netherlands

¹² See *Murphy P.* (Editor in chief), *Blackstone's Criminal Practice 2006*, Oxford University Press 2005, D27.25 and D27.19.