

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04-01/06
Date: 17 November 2006

THE APPEALS CHAMBER

Before: Judge Georghios M. Piki (Presiding)
Judge Philippe Kirsch
Judge Navanethem Pillay
Judge Sang-Hyun Song
Judge Erkki Kourula

Registrar: Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR v. THOMAS LUBANGA DYILO**

Public Document

**Reasons for the Appeals Chamber's Decision of 16 November 2006 on the
"Prosecution's Request for an Extension of the Page Limit"**

The Office of the Prosecutor

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

In the appeal of Mr. Thomas Lubanga Dyilo (hereinafter referred to as “the appellant”) of 9 October 2006 entitled “Requête d’appel du Conseil de la Défense de la ‘Decision on the Defence Challenge to the jurisdiction of the Court pursuant to art.19.2. (a) of the Statute’ du 3 octobre 2006” (ICC-01/04-01/06-532),

Gives hereby its reasons for the decision issued on 16 November 2006 (ICC-01/04-01/06-703):

1. Before the lapse of the 21-day period envisaged by regulation 64 (4) of the Regulations of the Court to make response to the document in support of the appeal the Prosecutor petitioned the Appeals Chamber, by application dated 13 November 2006 (ICC-01/04-01/06-696), for an extension of the page limit of the document to be filed by 5 pages in order to accommodate his arguments in response to the document of the appellant, exceeding the limit of 20 pages, filed without the prior authorization of the Appeals Chamber. The irregularity in the filing of the document of the appellant was brought to the notice of the Appeals Chamber without seeking its invalidation or any directions relevant to remedying the alleged procedural impropriety. The Prosecutor supported his application by reference to a) the complexity of the arguments advanced in support of the appeal and b) the factual intensity, as labelled, of the issues raised.

2. The application of the Prosecutor is premised on the assumption that documents in support of and in response to an appeal on a question of jurisdiction are governed by the provisions of regulation 37 of the Regulations of the Court. This view is grounded on the fact that regulation 64 of the Regulations of the Court establishing in conjunction with rule 154 of the Rules of Procedure and Evidence the procedural framework of an appeal on a matter affecting the jurisdiction of the Court makes no provision for the page length of documents for the presentation of the case of the parties. Regulation 37 (1) of the Regulations of the Court lays down that “unless otherwise provided in the Statute, Rules or these Regulations or ordered by the Chamber” the page limit of documents to be filed in any proceedings before the Court should not exceed 20 pages.



3. In his response (ICC-01/04-01/06-697), the appellant submitted that the application of the Prosecutor is ill-founded inasmuch as the page limit of documents affecting challenges to the admissibility of a case or jurisdiction of the Court extends, in accordance with regulation 38 (1) (c) of the Regulations of the Court, to 100 and not 20 pages.

4. A second reason put forward in support of the submission of the appellant that the page limit of the documents to be filed in the proceedings extends to no less than 100 pages is that the provisions of regulation 58 and implicitly those of regulation 59 of the Regulations of the Court envisaging a 100 page limit for documents in support of and in response to an appeal under rule 150 of the Rules of Procedure and Evidence apply equally to appeals under rule 154 of the Rules of Procedure and Evidence in the absence of provision to the contrary in regulation 64 of the Regulations of the Court.

5. In light of his submissions, the appellant rejects the contention of the Prosecutor that the document filed in support of the appeal exceeding 20 pages breached any procedural requirement.

6. Regulation 38 (1) (c) of the Regulations of the Court makes specific provision for the page limit of documents filed in support of and in response to challenges to jurisdiction raised under article 19 (2) of the Rome Statute (“Statute”) specifying the page limit to extend up to 100 pages. It reads:

Unless otherwise ordered by the Chamber, the page limit shall not exceed 100 pages for the following documents and responses thereto, if any: (a) [...]; (b) [...]; (c) Challenges to the admissibility or jurisdiction of the Court under article 19, paragraph 2; (d) [...]; (e) [...]; (f) [...].

Unless the provisions of this regulation are confined to challenges to the jurisdiction of the Court raised before the Pre-Trial Chamber or Trial Chamber (see article 19 (4) of the Statute), their application would extend to appeal proceedings as the subject-matter of appellate proceedings too revolves around the validity of challenges made to the jurisdiction of the Court. The term “jurisdiction” in the context of regulation 38 (1) (c) of the Regulations of the Court read in the light of article 19 of the Statute is used in its broader sense signifying competence and therefore amenity on the part of the Court to



take cognisance of a cause or matter (a case); and not in the narrower sense defining the jurisdiction of the different judicial branches of the Court, first instance and appellate jurisdiction.


7. The question that has to be answered is whether an appeal against a decision on a matter of jurisdiction ceases to be a challenge to the acceptability of a given cause as the legitimate subject-matter of proceedings before the Court. Article 19 (6) of the Statute assures a right of appeal against first instance decisions pertaining to the jurisdiction of the Court while article 82 (1) (a) of the Statute defines the parameters of its exercise. In proceedings involving challenges to the jurisdiction of the Court, the core of the subject-matter of the proceedings before either Chamber is the same, namely resolution of challenges to the jurisdiction of the Court.

8. Regulation 38 (1) (c) of the Regulations of the Court does not apply to every issue raised before or by the Court affecting its jurisdiction but only to challenges pursuant to article 19 (2) of the Statute. Its provisions have no application to proceedings under article 19 (3) of the Statute for which a separate page limit is envisioned by sub-regulation 2 (b) of regulation 38 or questions of jurisdiction addressed by the Court on its own motion under article 19 (1) of the Statute. The expression “under article 19, paragraph 2” identifies the origin of the proceedings, the source wherefrom they emanate, not the stage of the proceedings at which challenges to the jurisdiction of the Court are addressed. Proceedings before either tier of Justice, first instance or on appeal, involve determining whether the Court has jurisdiction in light of the challenges made under article 19 (2) of the Statute to take cognisance of a cause or matter.

9. In the judgment of the Appeals Chamber, the specification of the length of documents to be filed in relation to challenges to the jurisdiction of the Court is the same before the first instance court and on appeal. The provisions of regulation 38 (1) (c) of the Regulations of the Court are applicable to both instances. Therefore, the application of the Prosecutor for an extension of the page limit is superfluous in that he has the right to do that which he seeks leave to do, a finding that warrants the dismissal of the application.



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



Judge Georghios M. Pikis
Presiding Judge

Dated this 17th day of November 2006

At The Hague, The Netherlands