

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/07 (OA)
Date: 18 December 2007

THE APPEALS CHAMBER

Before: Judge Philippe Kirsch, Presiding Judge
Judge Georghios M. Pikis
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. GERMAIN KATANGA**

**Public document
URGENT**

**Decision on the “Prosecution’s Urgent Application for Extension of Time to File
Document in Support of Appeal”**

The Office of the Prosecutor
Mr. Luis Moreno-Ocampo, Prosecutor
Mrs. Fatou Bensouda, Deputy Prosecutor
Mr. Fabricio Guariglia, Senior Appeals Counsel
Mr. Eric Macdonald, Trial Lawyer

Counsel for the Defence
Mr. David Hooper
Ms. Caroline Buisman

The Appeals Chamber of the International Criminal Court,

In the appeal of the Prosecutor pursuant to the decision of Pre-Trial Chamber I of 14 December 2007, entitled “Decision on the Prosecution Request for Leave to Appeal the First Decision on Redactions” (ICC-01/04-01/07-108), against the decision entitled “First Decision on the Prosecution Request for Authorisation to Redact Witness Statements” (public redacted version dated 7 December 2007, ICC-01/04-01/07-90),

Having before it the “Prosecution’s Urgent Application for Extension of Time to File Document in Support of Appeal” (ICC-01/04-01/07-109)

Renders unanimously the following

DECISION

The Prosecutor’s document in support of the appeal may be filed by 12 o’clock noon on Wednesday 2 January 2008 at the latest.

The Defence response to the Prosecutor’s document in support of the appeal may be filed by 12 o’clock noon on Monday 14 January 2008 at the latest.

REASONS

1. On 17 December 2007, the Prosecutor filed the “Prosecution’s Urgent Application for Extension of Time to File Document in Support of Appeal” (ICC-01/04-01/07-109; hereinafter: “Prosecutor’s Application”). At paragraph 12 of this document, the Prosecutor requests that the Appeals Chamber, on an urgent basis, extend the time limit for the filing of the document in support of the appeal, pursuant to regulation 35(2) of the Regulations of the Court, “so that the time limit for the filing of the document in support of appeal be taken to commence running at the end of the court recess”.

2. The Prosecutor notes that the “Decision on the Prosecution Request for Leave to Appeal the First Decision on Redactions” (ICC-01/04-01/07-108; hereinafter: “Decision

Granting Leave to Appeal”), by which Pre-Trial Chamber I granted an application of the Prosecutor for leave to appeal the decision of Pre-Trial Chamber I entitled “First Decision on the Prosecution Request for Authorisation to Redact Witness Statements” (public redacted version dated 7 December 2007, ICC-01/04-01/07-90; hereinafter: “Impugned Decision”), was notified to the Prosecutor at 17:36 hours on 14 December 2007 and that, at that time, the Court recess had already commenced (Prosecutor’s Application, paragraph 4). The Prosecutor submits that the Court recess generally constitutes a suspension of judicial activity and that because of the relevance of the issue, the timing of the Decision Granting Leave to Appeal, and the Court recess, he will not be in a position adequately to address the issues arising in the appeal within the time limit prescribed in regulation 65(4) of the Regulations of the Court (Prosecutor’s Application, paragraphs 6 and 7). He submits that the issues arising in this appeal are significant, that they have a substantive and complex factual dimension and that the Appeals Chamber “should have the benefit of properly researched and reasoned submissions” (Prosecutor’s Application, paragraph 10). He submits furthermore that there is no need to decide the present appeal during the court recess because the redactions concerned do not materially impair the ability of the Defence to prepare for the confirmation hearing (Prosecutor’s Application, paragraph 8). The Prosecutor notes that the Defence has also applied for leave to appeal the Impugned Decision and that, if leave were granted, all issues arising out of that decision should be dealt with together (Prosecutor’s Application, paragraph 9).

3. On 17 December 2007, the Appeals Chamber issued an order pursuant to which the Defence could respond to the Prosecutor’s Application by 2 p.m. on 18 December 2007 (ICC-01/04-01/07-112).

4. On 18 December 2007, the Defence filed the “Defence Response to the ‘Prosecution’s Urgent Application for Extension of Time to File Document in Support of Appeal’” (ICC-01/04-01/07-113). The Defence did not object to the Prosecution’s request for an extension of time and agreed with the Prosecution that it would be in the interests of judicial economy for all issues arising out of the Impugned Decision to be dealt with together.

5. Pursuant to regulation 35 (2), first sentence, of the Regulations of the Court, a Chamber may extend time if good cause is shown. What amounts to good cause has been addressed in a previous Decision of the Appeals Chamber (ICC-01/04-01/06-834). In the circumstances of the present case, the Appeals Chamber considers that good cause exists to extend the time limit for the filing of the Prosecutor's document in support of the appeal to 12 o'clock noon on Wednesday 2 January 2008. Sequentially, the filing of the Defence response to the Prosecutor's document in support of the appeal will be due at 12 o'clock noon on Monday 14 January 2008.

6. The Appeals Chamber notes that if the time limit for the document in support of the appeal were not extended, the Prosecutor would have to file his document in support of the appeal during the final week of the year (commencing 24 December 2007) and the Defence would have to begin its response to the filing during the same week. This week is unusual in that, over and above the fact that it falls during the three week Court recess, it comprises two public holidays and special days of leave. On that basis, the Appeals Chamber regards it as appropriate to extend the prescribed time limits to take those factors into account.

7. However, the Appeals Chamber does not consider it appropriate to extend the time limit in the manner requested by the Prosecutor, namely so that it would commence running only at the end of the court recess (i.e. from 7 January 2008). Taking into account the fact that, pursuant to regulation 65(4) of the Regulations of the Court, the Prosecutor has ten days in which to file the document in support of the appeal and that, pursuant to regulation 65(5) of the Regulations of the Court, the Defence "may file a response within ten days of notification of the document in support of the appeal", the filings of both parties would, if the request of the Prosecutor were granted, then only be received by the week commencing 28 January 2008 at the earliest. The consideration and determination of the Appeals Chamber would necessarily only be able to occur thereafter. In this context, the Appeals Chamber notes that, in the Decision Granting Leave to Appeal, the Single Judge of Pre-Trial Chamber I stated, at page 6, that, "there is a need for an urgent ruling by the Appeals Chamber on the issues for which leave to appeal is sought in the Prosecution's Application for Leave to Appeal", given that the Single Judge

had to rule upon all of the Prosecution requests for authorisation of redactions (including those that form the subject-matter of the present appeal) prior to 29 January 2008 as a result of the confirmation hearing having been scheduled to start on 28 February 2008 and pursuant to rule 121 of the Rules of Procedure and Evidence.

8. While it is of paramount importance that the parties to the appeal have an appropriate period of time in which to file their arguments and that the Appeals Chamber is able to give the appeal the appropriate time required for a proper consideration of the issues, the Appeals Chamber has taken into account the timetable set out by the Pre-Trial Chamber in determining the dates by which the filings of the parties should be made. In the present circumstances, granting the extension sought by the Prosecutor would make it impossible for the appeal to be decided sufficiently in advance of the scheduled confirmation hearing.

9. In addition, the Appeals Chamber points out that, contrary to the submission of the Prosecutor, the three week Court recess does not generally constitute a suspension of judicial activity. Furthermore, the Prosecutor has not put forward any convincing reasons, over and above the argument that it is currently the Court recess, as to why the document in support cannot be filed by 2 January 2008. Moreover, while the Prosecutor is correct to state that the issues themselves do not require a determination during the Court recess, the Appeals Chamber needs to be in a position to have received and considered the filings of both the Prosecutor and the Defence, and to render a decision thereafter, bearing in mind the timetable of the Pre-Trial Chamber.

10. For the above reasons, the Appeals Chamber extends the period of time allowed for the filings in this appeal in the manner set out in this Decision.

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

A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by a long, horizontal line that tapers to a point on the right.

Judge Philippe Kirsch
Presiding Judge

Dated this 18th day of December 2007

At The Hague, The Netherlands