

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/05-01/08

Date: 4 December 2008

PRE-TRIAL CHAMBER III

Before: Judge Ekaterina Trendafilova, Single Judge

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
*v. JEAN-PIERRE BEMBA GOMBO***

Public Document

Decision on the Defence's Request Related to Language Issues in the Proceedings

Decision to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Fatou Bensouda, Deputy Prosecutor
Petra Kneuer, Senior Trial Lawyer

Counsel for the Defence

Nkwebe Liriss
Karim A.A. Khan
Aimé Kilolo-Musamba

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Ekaterina Trendafilova, acting as Single Judge for Pre-Trial Chamber III (the “Chamber”) of the International Criminal Court (the “Court”),¹ is seised with the “Requête pour la Communication des Actes de Procédure dans la Langue Choisie par le Suspect, à savoir le Français” filed by the Defence on 7 November 2008 (the “Defence Application”).²

1. On 4 July 2008 Mr Jean-Pierre Bemba Gombo (“Mr Jean-Pierre Bemba”) had his first appearance before the Chamber, at which he addressed the Court in French.³

2. On 9 October 2008 the Chamber held a status conference *in camera* with the Defence, during which the Defence submitted that Mr Jean-Pierre Bemba chose to follow the proceedings in French. The Defence accordingly requested that the time limit should only start to run after the receipt of the French translation of the documents which the Defence wishes to appeal or respond to.⁴ The same request was reiterated in the Defence Application submitted to the Chamber on 7 November 2008.⁵ The Defence also recalled that during his initial appearance Mr Jean-Pierre Bemba indicated that French was the language in which he wished to follow the proceedings before the Court.⁶

3. The Defence also asserted that the rights enshrined in article 67(1)(a) and (f) of the Rome Statute (the “Statute”) would not be respected if the documents continued to be communicated to it in a language other than that chosen by Mr Jean-Pierre Bemba.⁷

¹ “Decision Designating a Single Judge”, ICC-01/05-01/08-293.

² ICC-01/05-01/08-221.

³ ICC-01/05-01/08-T-3-ENG ET WT, see in particular pp 2, line 19 to p. 3, line 4.

⁴ ICC-01/05-01/08-T-7-CONF-EXP-ENG ET, p. 11, lines 4 to 14.

⁵ ICC-01/05-01/08-221, paras. 10, 18, 20 and p. 6.

⁶ ICC-01/05-01/08-221, paras. 6 and 14.

⁷ ICC-01/05-01/08-221, para. 19.

4. The Defence further referred to the Appeals Chamber's judgment of 27 May 2008,⁸ in which the latter affirmed that the person subjected to the proceedings has to be informed of the nature, cause and content of the charges in a language that he fully understands and speaks. The Defence contended that this should also apply to the counsels, notably to Mr Jean-Pierre Bemba's principal counsel and associate counsel,⁹ who must be able to work in a language that they fully master, which is in their case French.¹⁰

5. On 1 December 2008 the Prosecutor responded to the Defence Application,¹¹ in which he requested the Chamber to dismiss it in its entirety.¹² He submitted that the whole application lacked merit in light of the proper interpretation of article 67(1)(a) and (f) of the Statute.¹³ He further argued that the Court's jurisprudence referred to by the Defence was ill-founded.¹⁴

6. The Prosecutor emphasised that, pursuant to rule 76(3) of the Rules of Procedure and Evidence (the "Rules"), he continues to disclose witness statements in the language of the suspect and has disclosed his charging document as well as the list of evidence in French.¹⁵ He further asserted that the expression "translations as are necessary to meet the requirements of fairness" used in article 67(1)(f) of the Statute applies to the charging document and the witness statements, which were already disclosed to the Defence.¹⁶

7. Finally, the Prosecutor submitted that regulation 35(2) of the Regulations of the Court (the "Regulations") sets out the conditions necessary to be fulfilled in order for

⁸ Appeals Chamber, "Judgment on the appeal of Mr. Germain Katanga against the decision of Pre-Trial Chamber I entitled 'Decision on the Defence Request Concerning Languages'", ICC-01/04-01/07-522

⁹ ICC-01/05-01/08-221, paras. 7 to 9.

¹⁰ ICC-01/05-01/08-221, para. 16.

¹¹ "Réponse de l'Accusation à la « Requête de la Défense pour la communication des actes de procédure dans la langue choisie par le suspect, à savoir le français »", ICC-01/05-01/08-303 and its English translation (ICC-01/05-01/08-303-AnxA).

¹² ICC-01/05-01/08-303-AnxA, para. 7

¹³ ICC-01/05-01/08-303-AnxA, para. 3.

¹⁴ ICC-01/05-01/08-303-AnxA, paras. 3 and 5.

¹⁵ ICC-01/05-01/08-303-AnxA, para. 4.

¹⁶ ICC-01/05-01/08-303-AnxA, para. 5.

a request for extension of time to be granted and which should be addressed by the Chamber on a case-by-case basis.¹⁷

8. The Single Judge notes articles 21(1)(a) and (b), (2) and (3), 50(2) and 67(1) of the Statute, rules 76(3) and 121(3) of the Rules and regulation 40(2)(a) and (3) of the Regulations.

9. The Single Judge acknowledges that at Mr Jean-Pierre Bemba's first appearance before the Chamber he spoke French.¹⁸ His counsel asserted that although he speaks French "a lot better", he has some knowledge of English.¹⁹ In addition, the Single Judge notes that some previous Defence filings were submitted in English.²⁰ Thus, the question to be decided by the Single Judge is whether Mr Jean-Pierre Bemba is entitled to have all documents of the proceedings with respect to the present case translated into French.

10. The Single Judge refers, in particular, to article 67(1)(a), (c) and (f) of the Statute and considers it necessary to analyse this provision to properly address the subject matter. The Single Judge is aware of the high standard required by article 67 of the Statute and the respective Appeals Chamber's interpretation of the expression "fully understands and speaks".²¹

11. In the view of the Single Judge, article 67 of the Statute differentiates between the accused's right to have, free of any cost, the assistance of a competent interpreter throughout the proceedings and the right to have all documents translated into a language which he fully understands and speaks. The right to have, free of any cost, the assistance of a competent interpreter, pursuant to article 67(1)(f) of the Statute, is secured to Mr Jean-Pierre Bemba without any limitations. However, the Single Judge

¹⁷ ICC-01/05-01/08-303-AnxA, para. 6.

¹⁸ ICC-01/05-01/08-T-3-ENG ET WT, in particular p. 3, lines 2-4

¹⁹ ICC-01/05-01/08-T-7-CONF-EXP-ENG ET, p. 11, lines 7-8.

²⁰ See for example, ICC-01/05-01/08-49.

²¹ ICC-01/04-01/07-522, paras. 40, 49 and 56.

does not consider that Mr Jean-Pierre Bemba has an absolute right to have all documents translated into a language which he fully understands and speaks.

12. According to article 67(1)(a) of the Statute, the accused has the right to be informed promptly, in detail and in a language which he fully understands and speaks, of the *nature, cause and content* of the charge.²² Nature is defined as “the basic or inherent features, qualities or character of a thing”²³ and as “a fundamental quality that distinguishes one thing from another; the essence of something”.²⁴ Cause is defined as “a thing that gives rise to an action, phenomenon or condition” or “reasonable grounds for a belief or action”;²⁵ and as “something that produces an effect or result”.²⁶ In the Single Judge’s opinion, this suggests that the accused shall not be served with all documents in a language he fully understands and speaks but only with those documents which are essential for his proper preparation to face the charges presented by the Prosecutor and which form the basis of the determination by the Chamber of those charges.²⁷

13. This interpretation is consistent with the drafting history of the Statute²⁸ and with the jurisprudence of this Court.²⁹ The European Court of Human Rights

²² The right to be promptly and in detail informed of the nature, cause and content of the charges is an essential prerequisite for ensuring that the proceedings are fair, and has also been recognised by the human rights courts and the *ad hoc* international criminal tribunals - see Article 14(3)(a) of the International Covenant on Civil and Political Rights; Article 6(3)(a) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Article 21(2) and 21(4)(a) of the Statute of the International Criminal Tribunal for the Former Yugoslavia; Article 20(2) and 20(4)(a) of the Statute of the International Criminal Tribunal for Rwanda; and Article 17(4) of the Statute of the Special Court of Sierra Leone.

²³ Concise Oxford English Dictionary, 11th ed., Oxford University Press, p. 954.

²⁴ Black’s Law Dictionary, 7th ed., p. 1050.

²⁵ Concise Oxford English Dictionary, 11th ed., Oxford University Press, p. 225.

²⁶ Black’s Law Dictionary, 7th ed., p. 212.

²⁷ ICTY, *The Prosecutor v. Delalic et al.* (Case No. IT-96-21), Trial Chamber Decision on the Defence Application for Forwarding the Documents in the Language of the Accused, 25 September 1996, para. 8; *The Prosecutor v. Naletilic and Martinovic* (Case No. IT-98-34-T), Trial Chamber Decision on Defence’s Motion Concerning Translation of All Documents, 18 October 2001, p. 3; see also the Judicial Supplement 28 - the Trial Chamber clarified in the oral order of 13 November 2001 its Decision of 18 October 2001.

²⁸ Pre-Trial Chamber I, “Decision on the Defence Request Concerning Languages”, ICC-01/04-01/07-127, para. 30. See also the Report of the Working Group on Procedural Matters, A/Conf. 183 C.I/WGPM/L. 2/Add. 6 (11 July 1998) in ICC-01/04-01/07-81, p. 6.

²⁹ Pre-Trial Chamber I, “Decision on the Requests of the Defence of 3 and 4 July 2006”, ICC-01/04-01/06-268; “Decision on the Defence Request concerning time limits”, ICC-01/04-01/07-304; “Decision on the Defence for Mathieu Ngudjolo Chui’s Request concerning translation of documents”, ICC-01/04-01/07-477 and “Decision on the Defence for Mathieu Ngudjolo Chui’s request for leave to appeal the Decision concerning the translation of documents”, ICC-01/04-01/07-538.

(the “ECtHR”) has also endorsed a similar interpretation. In *Kamasinski v. Austria*, the ECtHR stated:

[P]aragraph 3 (e) (art. 6-3-e) does not go so far as to require a written translation of all items of written evidence or official documents in the procedure. The interpretation assistance provided should be such as to enable the defendant to have knowledge of the case against him and to defend himself, notably by being able to put before the court his version of the events.³⁰

This approach was also followed in the *Delalic* and *Naletilic* cases before the International Criminal Tribunal for the Former Yugoslavia (the “ICTY”).³¹

14. The interpretation adopted by the Single Judge is further supported by the language of article 67(1)(f) of the Statute, which provides for the accused’s right to have “such translations as are necessary to meet the requirements of fairness”.³² Article 67(1)(f) of the Statute represents a constituent element of the right to a fair trial³³ and in conjunction with article 67(1)(a) of the Statute requires that the accused be in a position to have knowledge of the charges against him and the supporting evidence thereto. Therefore, if the accused cannot fully understand or speak the language used in the court proceedings, for the purpose of participating effectively in his criminal trial,³⁴ he has the right to be furnished with the translation of *all those documents* which are necessary for him to understand the nature, cause and content of those charges.³⁵

³⁰ ECtHR, *Kamasinski v. Austria*, Judgment of 19 December 1989, para. 74; see also *Hermi v. Italy*, Judgment of 18 October 2006, paras. 69-70; and *Lagerblom v. Sweden*, Judgment of 14 January 2003, para. 61.

³¹ ICTY, *The Prosecutor v. Delalic et al.*, (Case No. IT-96-21), Trial Chamber Decision on the Defence Application for Forwarding the Documents in the Language of the Accused, 25 September 1996, paras. 6, 8; and *The Prosecutor v. Naletilic and Martinovi*, (Case No. IT-98-34-T), Trial Chamber Decision on Defence’s Motion Concerning Translation of All Documents, 18 October 2001, p. 3.

³² See H. Friman, “Rights of Persons Suspected or Accused of a Crime”, in Roy S. Lee (ed.), “The International Criminal Court: The Making of the Rome Statue”. Kluwer Law International, The Hague, The Netherlands, 1999, pp. 252-253.

³³ ECtHR, *Monnell and Morris v. the United Kingdom*, Judgment of 2 March 1987, para. 53, *Kamasinski v. Austria*, Judgment of 19 December 1989, para. 62, *Kostovski v. The Netherlands*, Judgment of 20 November 1989, para. 39; *Granger v. the United Kingdom*, Judgment of 28 March 1990, Series A no. 174, para. 43; and *Poutrmol v. France*, Judgment of 23 November 1993, para. 29.

³⁴ ECtHR, *Stanford v. the United Kingdom*, Judgment of 23 February 1994, para. 26; and *V v. United Kingdom*, Judgment of 16 December 1999, para. 85.

³⁵ ECtHR, *Kamasinski v. Austria*, Judgment of 19 December 1989, para. 74, and *Luedicke, Belkacem and Koç v. Germany*, Judgment of 28 November 1978, para. 48.

15. This approach is also consistent with the right of the accused to be tried without undue delay enshrined in article 67(1)(c) of the Statute. In this regard, the Single Judge emphasises that the Court has to ensure the fairness and expeditiousness of the proceedings. Thus, the translation of every document into French beyond what is actually necessary to guarantee the right of the accused to be informed promptly and in detail of the nature, cause and content of the charges may seriously jeopardize the expeditiousness of the proceedings due to the substantial time required for the translation of all documents.³⁶

16. In light of the foregoing, the Single Judge is of the opinion that the use of the phrase “as are necessary to meet the requirements of fairness” in article 67(1)(f) of the Statute shall not be read as granting Mr Jean-Pierre Bemba the right to have *all* evidentiary material disclosed by the Prosecutor and *all* documents in the proceedings translated into the language he fully understands and speaks. Rather, in accordance with article 67(1)(a) and (f) of the Statute, Mr Jean-Pierre Bemba should enjoy the right to interpretation throughout the whole proceedings but is only entitled to receive the French translation of *such* documents that inform him in detail of the nature, cause and content of the charges brought against him. Accordingly, Mr Jean-Pierre Bemba should be provided with a French version of the following documents: (i) the Prosecutor’s application for a warrant of arrest and the Chamber’s decision thereon; (ii) the Document Containing the Charges and the List of Evidence as well as any amendment thereto; and (iii) the statements of prosecution witnesses.

17. In relation to the Defence’s submissions that its working language is French and that the rights enshrined in article 67(1) of the Statute also apply to the Defence counsels,³⁷ the Single Judge recalls the Appeals Chamber’s judgment on the issue of languages.³⁸ According to the Appeals Chamber, the language requirement of “fully

³⁶ ICTY, *The Prosecutor v Ljubičić* (Case No. IT-00-41-PT), Trial Chamber Decision on the Defence Counsel’s Request for Translation of All Documents, 20 November 2002, p. 3; and ICC-01/04-01/06-268, p. 3 citing the Prosecutor’s submission, ICC-01-04/01-01/06-192.

³⁷ ICC-01/05-01/08-221, paras 7 to 9 and 16.

³⁸ ICC-01/04-01/07-522.

understands and speaks” in article 67(1)(a) and (f) of the Statute refers exclusively to the “accused”.³⁹ Therefore, the Single Judge considers that these rights are only applicable to Mr Jean-Pierre Bemba and not his Defence counsels.

18. The Single Judge observes that, the transcripts of the hearings are available to Mr Jean-Pierre Bemba in both working languages of the Court and that, pursuant to regulation 40(2)(a) of the Regulations, he enjoys the right to interpretation throughout the entire proceedings.⁴⁰ Nevertheless, in the Single Judge’s opinion, Mr Jean-Pierre Bemba would benefit from the permanent assistance of a French-English interpreter in order to facilitate his adequate knowledge of the evidentiary materials and documents filed in English as well as his proper understanding of the decisions and orders of the Chamber pending their official written translations pursuant to regulation 40(3) of the Regulations.⁴¹

19. Finally, in light of the above, the Single Judge considers that all statutory time limits shall commence from the notification of the original document and, accordingly, the Defence request to have all time limits running from the notification of the French translation of the documents concerned should be rejected.

FOR THESE REASONS, THE SINGLE JUDGE

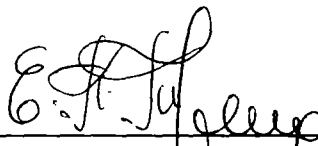
- a) rejects** the Defence Application;
- b) orders** the Registrar to provide Mr Jean-Pierre Bemba Gombo and his Defence team with a French-English interpreter to be available throughout the proceedings including the confirmation hearing and free of cost to assist with documents of the case which are only available in English.

³⁹ ICC-01/04-01/07-522, para. 59.

⁴⁰ ICTY, *The Prosecutor v Delalic*, (Case No. IT-96-21), Trial Chamber Decision on the Defence Application for Forwarding the Documents in the Language of the Accused, 25 September 1996, para. 12.

⁴¹ ICC-01/04-06-268, p. 8; ICC-01/04-01/07-127, para. 43; and ICC-01/04-07-304, pp. 4 and 7.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Thursday, 4 December 2008

At The Hague, The Netherlands