

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/04-01/10 OA 4

Date: 7 March 2012

THE APPEALS CHAMBER

Before: Judge Erkki Kourula, Presiding Judge
Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Anita Ušacka
Judge Daniel David Ntanda Nsereko

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF THE PROSECUTOR v. CALLIXTE MBARUSHIMANA

URGENT

Public document

Decision on the “Prosecution’s Request for an Extension of the Page Limit for its Document in Support of Appeal against the ‘Decision on the confirmation of charges’ (ICC-01/04-01/10-465-Red)”

No: ICC-01/04-01/10 OA 4

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

The Office of the Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Fabricio Guariglia

Counsel for the Defence
Mr Arthur Vercken
Ms Yael Vias-Gvirsman

Registrar
Ms Silvana Arbia



The Appeals Chamber of the International Criminal Court,

In the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled “Decision on the confirmation of charges” of 16 December 2011 (ICC-01/04-01/10-465-Conf),

Having before it the “Prosecution’s Request for an Extension of the Page Limit for its Document in Support of Appeal against the ‘Decision on the confirmation of charges’ (ICC-01/04-01/10-465-Red)” of 5 March 2012 (ICC-01/04-01/10-489),

Renders the following

DECISION

The page limit for the documents to be filed in this appeal under regulation 65 (4) and (5) of the Regulations of the Court is extended by 15 pages.

REASONS

1. On 16 December 2012, Pre-Trial Chamber I (hereinafter: “Pre-Trial Chamber”) rendered its “Decision on the confirmation of charges”,¹ (hereinafter: “Impugned Decision”) by which the Majority declined to confirm the charges against Mr Mbarushimana, Judge Monageng dissenting.² The Pre-Trial Chamber granted in part the “Prosecution’s Application for Leave to Appeal the ‘Decision on the confirmation of charges’”³ on 1 March 2012⁴ in relation to the following issues:

(i) Whether the correct standard of proof in the context of Article 61 allows the Chamber to deny confirmation of charges supported by the Prosecution evidence, by resolving inferences, credibility doubts and perceived inconsistencies against the Prosecution and thereby preventing it from presenting its case at trial ;

(ii) Whether a proper interpretation of the scope and nature of a confirmation hearing, as defined by Article 61, allows the Pre-Trial Chamber to evaluate the credibility and consistency of witness interviews, summaries and statements

¹ ICC-01/04-01/10-465-Conf.

² Judge Monageng’s Dissent is appended to the Impugned Decision.

³ 27 December 2011, ICC-01/04-01/10-480.

⁴ “Decision on the ‘Prosecution’s Application for Leave to Appeal the “Decision on the confirmation of charges’”, ICC-01/04-01/10-487 (hereinafter: “Decision Granting Leave to Appeal”).

without the opportunity to examine the witnesses that would be possible at trial;
and

(iii) Whether the mode of liability under Article 25 (3) (d) requires that the person make a 'significant' contribution to the commission or attempted commission of the crimes.⁵

2. On 5 March 2012, the Prosecutor filed the "Prosecution's Request for an Extension of the Page Limit for its Document in Support of Appeal against the 'Decision on the confirmation of charges' (ICC-01/04-01/10-465-Red)" (hereinafter: "Request"). Recalling the "number, novelty and complexity of the issues, the factual complexity of the case and the lengthy [Impugned Decision]",⁶ he requests the Appeals Chamber to grant him an extension of the page limit for his document of support of the appeal from 20 to 50 pages. He submits that the first two issues on appeal are complex and of "particular importance to both the present case and all future cases", while "resolution of these issues may define the confirmation process in this and future cases."⁷ As to the third issue on appeal, the Prosecutor simply underlines that it is brought before the Appeals Chamber for the first time.⁸

3. On 6 March 2012, the Appeals Chamber issued an order authorising Mr Mbarushimana to file a response to the Request by 7 March 2012 at 16h00.⁹ On 7 March 2012, Mr Mbarushimana filed his response not objecting to the Request. In turn, he requests to be granted permission to use, for his response to the document in support of the appeal, the same number of pages as the Prosecutor plus 30%, noting the specificities of the French language and grammar.¹⁰

4. Regulation 37 (2) of the Regulations of the Court provides:

1. A document filed with the Registry shall not exceed 20 pages, unless otherwise provided in the Statute, Rules, these Regulations or ordered by the Chamber.

⁵ Decision Granting Leave to Appeal, p. 16.

⁶ Request, para. 8.

⁷ Request, para. 6.

⁸ Request, para. 7.


⁹ "Order on the filing of responses to the 'Requête pour la traduction de tout document essentiel a [sic] l'appel du Procureur contre la Décision de la Chambre Préliminaire ICC-01/04-01/10-465' and to the 'Prosecution's Request for an Extension of the Page Limit for its Document in Support of Appeal against 'Decision on the confirmation of charges' (ICC-01/04-01/10-465-Red)'" of 6 March 2012, ICC-01/04-01/10-491.

¹⁰ « Réponse de la Défense à la demande d'extension de pages du Procureur », 7 March 2012, ICC-01/04-01/10-492.

2. The Chamber may, at the request of a participant, extend the page limit in exceptional circumstances.

5. The Appeals Chamber considers that in the specific circumstances of the case and in light of the issues on appeal, there are “exceptional circumstances” in terms of regulation 37 (2) of the Regulations of the Court that justify a extension of the page limit for the document in support of the appeal. Nevertheless, considering that the two first issues, both relating to the standard of proof at the confirmation of the charges stage, are inextricably connected, the Appeals Chamber decides to extend the page limit for the document in support of the appeal by 15 pages only. Noting that neither regulation 34 of the Regulations of the Court nor any other applicable text makes any distinction between languages as to the number of pages, the Appeals Chamber also extends the page limit by 15 pages only for Mr Mbarushimana’s response to the document in support of the appeal.

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



Judge Erkki Kourula
Presiding Judge

Dated this 7th day of March 2012

At The Hague, The Netherlands