

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 9 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

Public document

Decision on Mr Mbarushimana's request for time extension



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 “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” of 5 March 2012 (ICC-01/04-01/10-488),

Renders the following

DECISION

The time limit for the filing of Mr Mbarushimana’s response to the Prosecutor’s document in support of the present appeal is extended to 15 days from the notification of the original version of that document.

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 it declined to confirm the charges against Mr Mbarushimana.² On 1 March 2012, the Pre-Trial Chamber issued the “Decision on the ‘Prosecution’s Application for Leave to Appeal the ‘Decision on the confirmation of charges’”³ (hereinafter: “Decision Granting Leave to Appeal”), granting the “Prosecution’s Application for Leave to Appeal the ‘Decision on the confirmation of charges’”⁴ (hereinafter: “Application for Leave to Appeal”).

2. On 5 March 2012, Mr Mbarushimana filed 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”⁵ (hereinafter: “Request”). He requests the Appeals Chamber to order that all documents essential to the Prosecutor’s appeal, in

¹ ICC-01/04-01/10-465-Conf.

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

³ ICC-01/04-01/10-487.

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

⁵ ICC-01/04-01/10-488.

particular the Application for Leave to Appeal, the Decision Granting Leave to Appeal, and the Prosecutor's yet to be filed document in support of the appeal, be translated as soon as possible and that any time limit provided for in the Court's legal texts start running for Mr Mbarushimana only once the translations into French of those documents have been notified to him.⁶ Mr Mbarushimana notes that under regulation 65 (5) of the Regulations of the Court, he may file a response to the Prosecutor's document in support of the appeal.⁷ He submits that, in order to ensure the quality of his filing, he needs a translation into French of all the documents essential to this appeal.⁸ Mr Mbarushimana recalls that the Pre-Trial Chamber gave credence to his claim that French is the sole working language that he fully understands and speaks,⁹ and underlines that since the designation of his new counsel in November 2011, his defence team is exclusively francophone.¹⁰ Mr Mbarushimana notes that it is the first time that a party is given leave to appeal a decision on the confirmation of charges, the first time that a Pre-Trial Chamber declines to confirm the charges by majority and the first time that a Chamber ruled on the characterisation of the "contribution" in terms of article 25 (3) (d) of the Statute.¹¹

3. On 6 March 2012, the Appeals Chamber issued an order authorising the Prosecutor to file a response to the Request by 7 March 2012.¹² On 7 March 2012, the Prosecutor filed his response¹³ (hereinafter: "Prosecutor's Response to the Request"),

⁶ Request, p. 8.

⁷ Request, paras 13 *et seq.*

⁸ Request, para. 15.

⁹ See "Decision on the 'Prosecution's request for the assessment of the English proficiency of Callixte Mbarushimana'", 12 May 2012, ICC-01/04-01/10-145. Mr Mbarushimana also recalls the Pre-Trial Chamber's "Decision on the 'Requête de la Défense en interprétation ou en demande de délai prolongé de réponse à un éventuel appel interlocutoire du Procureur contre la décision infirmant les charges (ICC-01/04-01/10-465-RED)'", 27 December 2011, ICC-01/04-01/10-481, p. 5, where the Pre-Trial Chamber decided that "the three-day period to respond to the Prosecution Application set out in regulation 65(3) of the regulations shall start running for the Defence as of the date of notification of the French translation of the confirmation Decision".

¹⁰ Request, paras 4-5.

¹¹ Request, para. 11.

¹² "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 the "Decision on the confirmation of charges" (ICC-01/04-01/10-465-Red)'" , 6 March 2012, ICC-01/04-01/10-491.

¹³ "Prosecution's Response to the Defence's 'Requête pour la traduction de tout document essentiel a [sic] l'appel du Procureur contre la Décision de la Chambre Préliminaire'- ICC-01/04-01/10-488", 7 March 2012, ICC-01/04-01/10-493.

opposing the Request.¹⁴ He submits that “granting the Defence Request is not justified on the grounds of fairness”¹⁵ to Mr Mbarushimana, while it would rather be unfair to the Prosecutor¹⁶ and would “delay the proceedings unnecessarily”.¹⁷ This is because “in light of the ability to date of the Suspect to participate notwithstanding the English language filings and the absence of any statutory basis for this request, the Prosecution submits that the Suspect’s preference that documents be translated first into French does not support the request to delay these proceedings”.¹⁸ The Prosecutor submits that the Court’s legal framework does not support Mr Mbarushimana’s preference for one of the two working languages of the Court and his request for translation of filings in general.¹⁹ He emphasises that the Pre-Trial Chamber’s previous order that he be provided translation of documents was limited to the specific circumstances surrounding the Impugned Decision.²⁰ In the alternative, if the Appeals Chamber finds merit in the Request, the Prosecutor submits that the designation of a competent interpreter pursuant to article 67 (1) (f) of the Statute provides for an adequate resolution that would preserve the expeditiousness of the proceedings on appeal.²¹ Finally, the Prosecutor notes that Mr Mbarushimana “has previously responded within the prescribed time limits to Prosecution applications filed in English”²² and recalls a counsel’s duties and responsibilities.²³

4. At the outset, the Appeals Chamber notes that Mr Mbarushimana requests the Appeals Chamber to order that certain documents be translated into French as soon as possible. The principal objective of the Request is, however, for the Appeals Chamber to rule that the time limit for Mr Mbarushimana’s response to the Prosecutor’s document in support of the appeal should start running only with the notification of the translations into French of this document. The Appeals Chamber therefore considers the Request under regulation 35 (2) of the Regulations of the Court. The question before the Appeals Chamber is whether Mr Mbarushimana has established

¹⁴ Prosecutor’s Response to the Request, paras 1, 9, p. 9.

¹⁵ Prosecutor’s Response to the Request, para. 2.

¹⁶ Prosecutor’s Response to the Request, paras 2, 9, 13, 20.

¹⁷ Prosecutor’s Response to the Request, para. 9.

¹⁸ Prosecutor’s Response to the Request, para. 17.

¹⁹ Prosecutor’s Response to the Request, paras 10, 12-13.

²⁰ Prosecutor’s Response to the Request, para. 11.

²¹ Prosecutor’s Response to the Request, para. 14.

²² Prosecutor’s Response to the Request, para. 18.

²³ Prosecutor’s Response to the Request, para. 19.


“good cause” justifying an extension of the ten-day time limit for filing Mr Mbarushimana’s response to the Prosecutor’s document in support of the appeal.

5. The Appeals Chamber notes that Mr Mbarushimana submits that, to ensure the quality of his filing, he needs a translation into French of all the documents essential to this appeal. In particular, he requests translations of the Application for Leave to Appeal, the Decision Granting Leave to Appeal, and the document in support of the appeal. As regards the former two documents, the Appeals Chamber notes that Mr Mbarushimana responded to the Application for Leave to Appeal within the prescribed time limit.²⁴ Thus, the purported need for translation of the Application for Leave to Appeal and the Application for Leave to Appeal does not establish “good cause” in terms of regulation 35 (2) of the Regulations of the Court.

6. Given the specific circumstances at hand, namely the particular nature, importance and possible impact of a decision on the confirmation of charges on a suspect, the fundamental importance of the document in support of the appeal to the merits of the appeal, the fact that the Prosecutor’s document in support of the appeal is likely to be filed in English and the fact that the Pre-Trial Chamber has considered that Mr Mbarushimana fully understands and speaks French, the Appeals Chamber considers that good cause has been shown for an extension of the time limit prescribed under regulation 65 (5) of the Regulations of the Court. At the same time, the Appeals Chamber notes that Mr Mbarushimana has responded without difficulty to documents filed in English in previous appeals and that a modest extension would provide Mr Mbarushimana and/or his counsel with an opportunity to institute appropriate measures to facilitate his understanding of the Document in Support of the Appeal. Accordingly, the Appeals Chamber finds it appropriate to extend the time limit for his response from ten to fifteen days. This time limit shall start running from the notification to Mr Mbarushimana of the Prosecutor’s document in support of his appeal *in its original form*. The Appeals Chamber considers that with this five-day extension, Mr Mbarushimana will be able to prepare and file his response under regulation 65 (5) of the Regulations of the Court, even though the Prosecutor’s document in support of the appeal is likely to be filed in English.

²⁴ “Réponse de la Défense à ‘Prosecution’s Application for Leave to Appeal the “Decision on the confirmation of charges” (ICC-01/04-01/10-480)”, dated 26 February 2012 and registered on 27 February 2012, ICC-01/04-01/10-486.

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



Judge Erkki Kourula
Presiding Judge

Dated this 9th day of March 2012

At The Hague, The Netherlands