

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 23 March 2012

THE APPEALS CHAMBER

Before:
Judge Erkki Kourula, Presiding Judge
Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Anita Ušacka
Judge Silvia Fernández de Gurmendi

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF THE PROSECUTOR v. CALLIXTE MBARUSHIMANA

Public document

**Decision on the “Requête urgente aux fins de reconsidération de la décision
n°ICC-01/04-01/10 OA4, de protestation et de réserve”**



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 urgente aux fins de reconsidération de la décision n°ICC-01/04-01/10 OA4, de protestation et de réserve” of 12 March 2012 (ICC-01/04-01/10-498),

Renders the following

DECISION

Mr Mbarushimana may file his response to the Prosecutor’s document in support of the present appeal by Monday 2 April 2012 at 16h00.

REASONS

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

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. 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””² (hereinafter: “Decision Granting Leave to Appeal”), granting the “Prosecution’s Application for Leave to Appeal the ‘Decision on the confirmation of charges””³ (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

¹ ICC-01/04-01/10-465-Conf.

² ICC-01/04-01/10-487.

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

Préliminaire ICC-01/04-01/10-465”⁴ (hereinafter: “Request”), requesting the Appeals Chamber to order that all documents essential to the Prosecutor’s appeal, in 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 into French 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.⁵

3. On 6 March 2012, the Appeals Chamber issued an order authorising the Prosecutor to file a response to the Request by 7 March 2012.⁶ On 7 March 2012, the Prosecutor filed his response⁷ (hereinafter: “Prosecutor’s Response to the Request”), opposing the Request.⁸

4. On 9 March, the Appeals Chamber rendered its “Decision on Mr Mbarushimana’s request for time extension”⁹ (hereinafter: “Decision on Time Extension”), extending the time limit for the filing of Mr Mbarushimana’s response to the Prosecutor’s document in support of the present appeal from 10 to 15 days from the notification of the original version of that document.

5. On 12 March 2012, Mr Mbarushimana filed his “Requête urgente aux fins de reconsidération de la décision n. ICC-01/04-01/10 OA4, de protestation et de réserve”¹⁰ (hereinafter: “Request for Reconsideration”). He requests the Appeals Chamber to reconsider its Decision on Time Extension, arguing that the Appeals Chamber made an error in its reasoning when it considered that Mr Mbarushimana demonstrated his English skills by responding within the prescribed time limit of three days to the Application for Leave to Appeal.¹¹ He underlines that as a result of the

⁴ ICC-01/04-01/10-488.

⁵ Request, p. 8.

⁶ “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.

⁷ “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.

⁸ Prosecutor’s Response to the Request, paras 1, 9, p. 9.

⁹ ICC-01/04/01/10-497.

¹⁰ ICC-01/04-01/10-497.

¹¹ Request for Reconsideration, paras 3-6.

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)"¹² of 27 December 2011 (hereinafter: "Decision of 27 December 2011"), he had two months, and not only three days, to respond to the Application for Leave to Appeal.¹³ Furthermore, he "protests"¹⁴ against the Decision on Time Extension, reiterating his arguments that his defence team is francophone and that the Prosecutor's document in support of the appeal will necessarily be of a complex nature. He added that due to the page extension granted, the document to which he needs to respond will now be 35 pages instead of 20.¹⁵ Mr Mbarushimana also points out that Ms Yael Vias-Gvisrman, the legal assistant of the team, who also served as the team's "informal interpreter", is pregnant and shall give birth around 17 March 2012.¹⁶ Mr Mbarushimana claims that, therefore, the Decision on Time Extension amounts to a breach of his right to a fair trial, considering the imbalance between the Prosecutor's and his resources.¹⁷

6. On 12 March 2012, the Prosecutor filed "Prosecution's Document in Support of Appeal against the 'Decision on the Confirmation of Charges' (ICC-01/04-01/10-465-Red)"¹⁸ (hereinafter "Document in Support of the Appeal").

7. On 22 March 2012, the Prosecutor filed the "Prosecution's Response to the Defence's 'Requête urgente aux fins de reconsidération de la décision ICC-01/04-01/10 OA4, de protestation et de reserve' (ICC-01/04-01/10-498 OA4)"¹⁹ (hereinafter: "Prosecutor's Response to the Request for Reconsideration"), opposing the Request for Reconsideration. The Prosecutor agrees with Mr Mbarushimana that, in principle, "Chambers have the discretion to reconsider their decisions".²⁰ However, he submits that in the present case, the grounds advanced by Mr Mbarushimana do

¹² ICC-01/04-01/10-481.

¹³ Request for Reconsideration, paras 5-6.

¹⁴ Request for Reconsideration, title and para. 9.

¹⁵ Request for Reconsideration, paras. 9-17; "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)"", 7 March 2012, ICC-01/04-01/10-495.

¹⁶ Request, para. 12.

¹⁷ Request for Reconsideration, para. 13-16.

¹⁸ ICC-01/04-01/10-499.

¹⁹ ICC-01/04-01/10-502, dated 21 March 2012 and registered on 22 March 2012.

²⁰ Prosecutor's Response to the Request for Reconsideration, para. 3.

not justify a reconsideration of the Decision on Time Extension.²¹ Furthermore, referring to paragraph 15 of the Request for Reconsideration, he submits that it “itself acknowledges that Counsel reads and speaks English”.²² He alleges that Mr Mbarushimana has competence in English and recalls that it would be possible to give him “access to a competent interpreter as provided for in article 67 (1) (f) of the Statute”.²⁴

II. DETERMINATION BY THE APPEALS CHAMBER

8. The Appeals Chamber notes that Mr Mbarushimana’s Request for Reconsideration is based on an error allegedly made by the Appeals Chamber, namely that, in paragraph 5 of the Decision on Time Extension, the Appeals Chamber wrongly considered that Mr Mbarushimana had demonstrated his English skills by responding to the Application for Leave to Appeal within three days. However, the Appeals Chamber considers that Mr Mbarushimana misrepresents the Decision on Time Extension. The Appeals Chamber made no such finding as to Mr Mbarushimana’s English skills. Rather, the Appeals Chamber found that the purported need for translation of the Application for Leave to Appeal and the Decision granting Leave to Appeal did not establish good cause for a time extension for Mr Mbarushimana’s response to the Document in Support of the Appeal.

9. The reasons why the Appeals Chamber granted a limited extension of time for responding to the Document in Support of the Appeal are laid down only in paragraph 6 of the Decision on Time Extension. It is important to note that, in that context, the Appeals Chamber found the fact that French is the language that Mr Mbarushimana fully understands and speaks to be one of the factors establishing good cause for an extension of the time limit to respond to the Document in Support of the Appeal.

10. Given that Mr Mbarushimana’s Request for Reconsideration is based on a misrepresentation of the Decision on Time Extension, the Appeals Chamber finds it unnecessary to consider the Request for Reconsideration on its merits or to address the question of whether or under what circumstances the Appeals Chamber may reconsider its prior decisions. The Request for Reconsideration is therefore dismissed

²¹ Prosecutor’s Response to the Request for Reconsideration, paras 5-8.

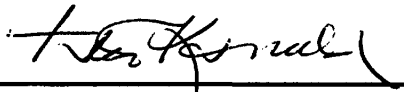
²² Prosecutor’s Response to the Request for Reconsideration, para. 9.

²⁴ Prosecutor’s Response to the Request for Reconsideration, para. 9.

in limine. The Appeals Chamber notes, however, that it fully considered Mr Mbarushimana's arguments in relation to his defence team being francophone in the Decision on Time Extension. In that context, the Appeals Chamber recalls that article 67 (1) (a) and (f) of Statute relates to the language ability and knowledge of the suspect and/or accused, not of his/her Counsel and/or defence team. As to the submission relevant to Ms Vias-Gvirsman, the Appeals Chamber notes that this information could already have been brought to the Chamber's attention in the Request.

11. However, considering the specific circumstances related to the composition of the Appeals Chamber in this case²⁵ and their consequences for the issuance of this decision, the Appeals Chamber decides, in the interest of justice, to extend further the time limit for the filing of Mr Mbarushimana's response to the Document in Support of the Appeal to Monday 2 April 2012 at 16h00.

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



Judge Erkki Kourula
Presiding Judge

Dated this 23rd day of March 2012

At The Hague, The Netherlands

²⁵ See "Decision replacing a judge in the Appeals Chamber", 15 March 2012, ICC-01/04-01/10-500 and "Decision replacing a judge in the Appeals Chamber", 22 March 2012, ICC-01/04-01/10-503.