

Pursuant to Trial Chamber I's order , dated 20 November 2024, this document has been reclassified as "Public"

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

**No. ICC-02/05-01/20
Date: 4 November 2024**

TRIAL CHAMBER I

Before: Judge Joanna Korner, Presiding Judge
Judge Reine Alapini-Gansou
Judge Althea Violet Alexis-Windsor

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF
THE PROSECUTOR v. ALI MUHAMMAD ALI ABD-AL-RAHMAN ('ALI
KUSHAYB')**

Confidential, *ex parte*, available to the Defence only

**Decision on the Defence's request for reconsideration of the Decision on the
Defence's and the CLRV's Requests seeking an extension of the page limit for
their final briefs under Regulation 37(2) of the Regulations of the Court**

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

The Office of the Prosecutor	Counsel for the Defence Cyril Laucci Iain Edwards
Legal Representatives of Victims	Legal Representatives of Applicants
Unrepresented Victims	Unrepresented Applicants for Participation/Reparations
The Office of Public Counsel for Victims	The Office of Public Counsel for the Defence
States Representatives	<i>Amicus Curiae</i>

REGISTRY

Registrar Osvaldo Zavala Giler	Counsel Support Section
Victims and Witnesses Unit	Detention Section
Victims Participation and Reparations Section	Other

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I. Procedural history

1. On 11 December 2023, Trial Chamber I (the 'Chamber') issued its Third Directions on the Conduct of Proceedings, setting out, *inter alia*, the general timeline for the final briefs and closing statements and deciding that the Prosecution and Defence final briefs shall not exceed 200 pages, and the Common Legal Representative for Victims (the 'CLRV') final brief shall not exceed 125 pages.¹
2. On 25 September 2024, following a joint request from the Prosecution, the Defence and the CLRV,² the Chamber set the deadline for the filing of final briefs to 4 November 2024.³
3. On 9 October 2024, following a joint request from the parties seeking an extension of the page limit for their final briefs to up to 300 pages (the 'First Request for Extension of the Page Limit'),⁴ the Chamber partially granted the request and fixed a 250-page limit for each party's final brief.⁵
4. On 21 October 2024, the Defence filed a request under Regulation 37(2) of the Regulations of the Court (the 'Regulations') seeking a further extension of the page limit for its final brief from 250 to 370 pages (the 'Second Request for Extension of the Page Limit').⁶
5. On 28 October 2024, the Chamber partially granted the Second Request for Extension of the Page Limit and decided that the Defence's and Prosecution's final briefs shall not exceed 300 pages (the 'Impugned Decision').⁷
6. On 1 November 2024, the Defence filed a request for reconsideration of the Impugned Decision, asking the Chamber to grant the 370-page limit requested in the Second Request for Extension of the Page Limit (the 'Reconsideration Request').⁸

¹ Third directions on the conduct of proceedings, ICC-02/05-01/20-1046 (hereinafter: the 'Third Directions'), paras 12-13.

² Email from the Defence, the Prosecution and the CLRV, 11 September 2024, at 12:25.

³ Order regarding the final briefs and closing statements, ICC-02/05-01/20-1191.

⁴ E-mail from the Prosecution and the Defence, 8 October 2024, at 14:01.

⁵ E-mail from the Chamber, at 14:30.

⁶ Requête en vertu de la Norme 37-2 du Règlement de la Cour (dated 21 September 2024, with a confidential, *ex parte*, Defence only annex), ICC-02/05-01/20-1194.

⁷ Decision on the Defence's and CLRV's Requests seeking an extension of the page limit for their final briefs under Regulation 37(2) of the Regulations of the Court, ICC-02/05-01/20-1201.

⁸ Requête aux fins de reconsidération de la décision ICC-02/05-01/20-1201, ICC-02/05-01/20-1204-Conf-Exp. A public redacted version was filed the same day, ICC-02/05-01/20-1204-Red.

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7. On the same date, the Prosecution⁹ and the CLRV¹⁰ indicated that they do not intend to respond to the Reconsideration Request.

II. Applicable law

8. The Chamber incorporates by reference the general framework applicable to the reconsideration of judicial decisions, as set out in a previous decision.¹¹

III. Submissions and analysis

9. The Defence submits that reconsideration of the Impugned Decision is warranted, given that: (i) the Impugned Decision is tainted by three errors of legal reasoning;¹² (ii) reconsideration is necessary to prevent an injustice;¹³ (iii) the Impugned Decision is manifestly unfounded;¹⁴ and (iv) reconsideration of the Impugned Decision is necessary considering the new circumstance it brought about, namely the Chamber's decision therein to grant a 300-page limit for the Prosecution's final brief.¹⁵

10. The Chamber recalls that a request for reconsideration 'cannot be used as an attempt to re-argue points which have already been made before the Chamber'¹⁶ or 'to correct the record or to make new submissions that could have been made when the request [...] was discussed'.¹⁷

11. The Chamber further recalls that reconsideration is an exceptional measure. As such, it is incumbent upon the Defence to demonstrate that there was either a clear error of reasoning or that it is necessary to do so to prevent an injustice.¹⁸

12. As regards the first limb of the Defence's submissions, the Defence identifies three purported errors of reasoning. First, that the Chamber failed to fully reason its determination

⁹ E-mail from the Prosecution, at 12:29.

¹⁰ E-mail from the CLRV, at 09:36.

¹¹ Decision on the Defence's request for reconsideration of the Decision on the Defence's renewed request for admission of prior recorded testimony of Witness D-0028 under Rule 68(2)(c), 24 September 2024, ICC-02/05-01/20-1190-Conf, para. 17. A public redacted version was notified on the same date, ICC-02/05-01/20-1190-Red.

¹² Reconsideration Request, ICC-02/05-01/20-1204-Conf-Exp, paras 6-11.

¹³ Reconsideration Request, ICC-02/05-01/20-1204-Conf-Exp, paras 12-13.

¹⁴ Reconsideration Request, ICC-02/05-01/20-1204-Conf-Exp, para. 14.

¹⁵ Reconsideration Request, ICC-02/05-01/20-1204-Conf-Exp, paras 15-17.

¹⁶ Decision on Defence request for reconsideration of "Decision on Defence submissions on cooperation with Sudan", 29 March 2022, ICC-02/05-01/20-650-Conf (hereinafter: 'Decision on the reconsideration request of the cooperation decision'), para. 10. A public redacted version was notified on the same date, ICC-02/05-01/20-650-Red.

¹⁷ Decision on the Defence's request for reconsideration or, alternatively, leave to appeal the Decision on the Defence's Request for postponement of the presentation of its case, 11 May 2023, ICC-02/05-01/20-938-Conf, para. 12. A public redacted version was notified on 31 May 2023, ICC-02/05-01/20-938-Red.

¹⁸ Decision on the reconsideration request of the cooperation decision, ICC-02/05-01/20-650-Conf, para. 10.

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to only grant part of the requested extension of the page limit.¹⁹ Second, that the Chamber reached its decision without complete knowledge of the arguments that the Defence wishes to address in its final brief.²⁰ Third, that the Chamber failed to consider the second argument of the Defence's request as contained in the Annex to the Second Request for Extension of the Page Limit, which is based on Regulation 38(1)(c) of the Regulations, an Appeals Chamber Judgment in this case and a previous decision by the Chamber.²¹ The Defence further argues that the Impugned Decision is "manifestly unfounded".²²

13. The Chamber notes the Appeal Chamber's finding '[t]here is no prescribed formula for what is or is not sufficient, and the extent to which the duty to provide reasons applies may vary according to the nature of the decision.'²³

14. Although the Defence may disagree with the outcome of the Impugned Decision, in light of the nature of decisions on the extension of page limits,²⁴ the Chamber's reasons were sufficient. The Chamber considered: (i) that unlike its previous request, in its Second Request for Extension of the Page Limit, the Defence provided details of what it claimed to be exceptional circumstances warranting a further extension of the page limit for its final brief;²⁵ (ii) that it is in the interest of the parties, participants and the Chamber to have final briefs which are comprehensive and accurate to the greatest extent possible;²⁶ and (iii) the Prosecution's and the CLRV's neutral stance on the Defence's request.²⁷ The Chamber found that, taken holistically, these amounted to exceptional circumstances warranting an extension of the page limit under Regulation 37(2) of the Regulations.²⁸

¹⁹ Reconsideration Request, ICC-02/05-01/20-1204-Conf-Exp, paras 6-8.

²⁰ Reconsideration Request, ICC-02/05-01/20-1204-Conf-Exp, para. 9.

²¹ Reconsideration Request, ICC-02/05-01/20-1204-Conf-Exp, paras 10-11 *referring to* Appeals Chamber, Judgment on the appeal of Mr Abd-Al-Rahman against the Pre-Trial Chamber II's "Decision on the Defence 'Exception d'incompétence' (ICC-02/05-01/20-302)", 1 November 2021, ICC-02/05-01/20-503, para. 91, and the Chamber's Decision on the Defence's application for leave to file a motion for acquittal, 10 March 2023, ICC-02/05-01/20-900.

²² Reconsideration Request, ICC-02/05-01/20-1204-Conf-Exp, para. 14. The Chamber notes that the Defence uses the French term 'manifestement mal fondée'.

²³ Appeals Chamber, Judgment on the appeal of Mr Ali Muhammad Ali Abd-Al-Rahman against two oral decisions of the Pre-Trial Chamber and the decision entitled 'Decision on the Defence Request to provide written reasoning for two oral decisions', 18 December 2020, ICC-02/05-01/20-236, para. 14.

²⁴ The Chamber notes in this respect that Regulation 37(2) of the Regulations provides that the Chamber 'may, at the request of a participant, extend the page limit in exceptional circumstances' (emphasis added).

²⁵ Impugned Decision, ICC-02/05-01/20-1201, para. 11.

²⁶ Impugned Decision, ICC-02/05-01/20-1201, para. 11.

²⁷ Impugned Decision, ICC-02/05-01/20-1201, para. 11.

²⁸ Impugned Decision, ICC-02/05-01/20-1201, para. 11.

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15. Moreover, noting the issues the Defence intends to raise in its brief (as identified in its request and its Annex), the Chamber decided that a 300-page limit was sufficient.²⁹ In light of the above, the Chamber finds that the alleged first³⁰ and third³¹ errors of reasoning outlined by the Defence amount to mere re-litigation of points already made before the Chamber. For the same reasons, the Chamber rejects the Defence's submission³² that the Impugned Decision is manifestly unfounded.

16. In addition, while the Defence contends that the Chamber was only apprised of certain arguments the Defence wishes to address in its brief,³³ the Chamber underscores that, when rendering the Impugned Decision, it could only do so on the basis of the information before it. Failure by the Defence to raise *all* relevant arguments in the context of its Second Request for Extension of the Page Limit is not a ground for reconsideration. On this point, given the significant amount of time elapsed since the issuance of the Chamber's directions,³⁴ and the imminent deadlines for the filing of the final briefs, the Chamber considers that the Defence could have well anticipated and explained these arguments in its previous request. The Chamber therefore rejects the Defence's submissions concerning the purported second error of reasoning.³⁵

17. As regards the second limb of the Defence's submissions, the Chamber finds that the Defence has failed to demonstrate that reconsideration is necessary to prevent an injustice. In this regard, the Defence contends that the current page limit would prevent the Defence from fully presenting its case and that reconsideration would thus prevent this injustice.³⁶ For the avoidance of doubt, the Chamber stresses that it is not trying to limit Mr Abd-Al-Rahman's right to a fair trial. The current page limit is ample to set out the issues the Defence has raised over the course of this trial and in its Second Request for Extension of the Page Limit. Importantly, the Chamber observes that it was not until this very late stage of the proceedings

²⁹ Impugned Decision, ICC-02/05-01/20-1201, para. 12 *referring to* Second Request for Extension of the Page Limit, ICC-02/05-01/20-1194, paras 3-8; Annex to Second Request for Extension of the Page Limit, ICC-02/05-01/20-1194- Conf-Exp-Anx.

³⁰ Reconsideration Request, ICC-02/05-01/20-1204-Conf-Exp, paras 6-8.

³¹ Reconsideration Request, ICC-02/05-01/20-1204-Conf-Exp, paras 10-11.

³² Reconsideration Request, ICC-02/05-01/20-1204-Conf-Exp, para. 14.

³³ Reconsideration Request, ICC-02/05-01/20-1204-Conf-Exp, para. 9.

³⁴ Third Directions, ICC-02/05-01/20-1046.

³⁵ Reconsideration Request, ICC-02/05-01/20-1204-Conf-Exp, para. 9.

³⁶ Reconsideration Request, ICC-02/05-01/20-1204-Conf-Exp, paras 12-13.

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that the Defence sought, within a short time span, two largely divergent page-limit extensions for its final brief.

18. The Chamber further notes the Defence's submission that, should the current page limit not be reconsidered, it would be placed in the 'double deontological impossibility' of either: (i) filing a final brief compliant with the page limit ordered by the Chamber, but 'sacrificing' part of Mr Abd-Al-Rahman's interests; or (ii) filing a final brief in contravention of the Chamber's order, but fully accounting for its client's interests.³⁷ The Chamber deplores these *in terrorem* submissions, recalls that the Chamber's initial decision on the length of the final briefs was issued on 11 December 2023, giving the Defence ample time to plan and litigate any related issues, and emphasises that its orders must be complied with under the Court's legal framework.³⁸

19. Furthermore, the Chamber is not persuaded that, as submitted by the Defence, the Chamber's decision to grant a 300-page limit for the Prosecution's final brief amounts to a new circumstance warranting reconsideration of the Impugned Decision.³⁹ Contrary to the Defence's submissions,⁴⁰ the Chamber does not consider that Regulation 38(1)(c) of the Regulations provides a legal basis for granting, in addition to the page limits for the closing briefs, a supplementary 100 pages in order to address arguments concerning the Court's jurisdiction and the principle of legality *nullum crimen sine lege*. Given this, the Chamber considers that no equality of arms issue, as argued by the Defence, arises from the allocation of the same page limits to the Prosecution and the Defence in the present circumstances. Relatedly, the Chamber recalls that in the joint First Request for Extension of the Page Limit to 300 pages, the Defence did not raise any equality of arms issue concerning the equal allocation of page limits.

20. Notwithstanding the Chamber's view that 300 pages is more than ample to deal fully with all issues which are relevant to its Article 74 judgment, if either party feels it is incapable of properly dealing with such issues within the page limit, they may request leave from the Chamber to address supplementary arguments during their closing statements.

³⁷ Reconsideration Request, ICC-02/05-01/20-1204-Conf-Exp, para. 13. *See also*, E-mail from the Defence, 1 November 2024, at 16:06.

³⁸ *See* Regulation 29 of the Regulations.

³⁹ Reconsideration Request, ICC-02/05-01/20-1204-Conf-Exp, paras 15-17.

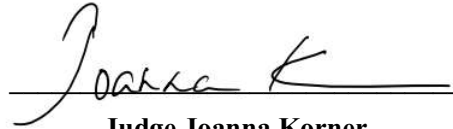
⁴⁰ Reconsideration Request, ICC-02/05-01/20-1204-Conf-Exp, paras 15-17.

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IV. Conclusion

21. For these reasons, the Chamber:

REJECTS the Reconsideration Request in its entirety.

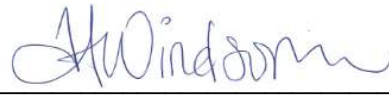


Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated this 4 November 2024

At The Hague, The Netherlands