

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

**No. ICC-01/04-01/07 OA 13**

**Date: 8 January 2013**

**THE APPEALS CHAMBER**

**Before:**

**Judge Sang-Hyun Song, Presiding Judge  
Judge Sanji Mmasenono Monageng  
Judge Cuno Tarfusser  
Judge Erkki Kourula  
Judge Ekaterina Trendafilova**

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

**IN THE CASE OF THE PROSECUTOR v. GERMAIN KATANGA**

**Public document**

**Decision on the “Urgent Defence Application for Extension of Page Limit for its  
Document in Support of Appeal against Trial Chamber II’s Decision of 21  
November 2012 on Regulation 55 (Decision 3319)”**

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

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

**Counsel for the Defence**  
Mr David Hooper  
Mr Andreas O'Shea

**REGISTRY**

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**Registrar**  
Ms Silvana Arbia



The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Germain Katanga against the decision of Trial Chamber II entitled “Decision on the implementation of regulation 55 of the Regulations of the Court and severing the charges against the accused persons” of 21 November 2012 (ICC-01/04-01/07-3319-tENG/FRA),

Having before it the “Urgent Defence Application for Extension of Page Limit for its Document in Support of Appeal against Trial Chamber II’s Decision of 21 November 2012 on Regulation 55 (Decision 3319)” of 7 January 2013 (ICC-01/04-01/07-3330),

*Renders* unanimously the following

## DECISION

The page limits for Mr Katanga’s document in support of the appeal and for the Prosecutor’s response to the document in support of the appeal are extended by 20 pages.

## REASONS

1. On 21 November 2012, Trial Chamber II rendered the “Decision on the implementation of regulation 55 of the Regulations of the Court and severing the charges against the accused persons”<sup>1</sup> (hereinafter: “Impugned Decision”), in which it, *inter alia*, decided, by majority, “to trigger regulation 55 of the Regulations of the Court” in relation to the mode of liability under which Mr Katanga stands charged.<sup>2</sup>
2. On 28 December 2012, Trial Chamber II granted Mr Katanga leave to appeal the Impugned Decision.<sup>3</sup>
3. On 7 January 2013, Mr Katanga submitted the “Urgent Defence Application for Extension of Page Limit for its Document in Support of Appeal against Trial Chamber II’s Decision of 21 November 2012 on Regulation 55 (Decision 3319)”<sup>4</sup>

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<sup>1</sup> ICC-01/04-01/07-3319-tENG/FRA.

<sup>2</sup> Impugned Decision, p. 29.

<sup>3</sup> “Decision on the ‘Defence Request for Leave to Appeal the Decision 3319’”, ICC-01/04-01/07-3327.

<sup>4</sup> ICC-01/04-01/07-3330.

(hereinafter: “Request”). Mr Katanga requests the Appeals Chamber to grant him an extension of the page limit for his document in support of the appeal to 40 pages, pursuant to regulation 37 (2) of the Regulations of the Court.<sup>5</sup>

4. Mr Katanga submits that the issue on appeal is complex, novel and significant,<sup>6</sup> and that the appeal “involves widespread issues of both fact and law”.<sup>7</sup> Mr Katanga argues that:

Regulation 55, the scope of which is at the heart of the appeal, is unique to the ICC. A detailed analysis of the law and comparative systems, including consideration of each of the fair trial guarantees contained in article 67(1) of the Statute, is required. With regard to the factual component, it will be necessary to present fully the context in which the impugned decision arose, as well as its consequences on the case at trial and on the possible re-opening of the trial with a new mode of liability, which itself has yet to be defined.<sup>8</sup> [Footnote omitted.]

5. For those reasons, and emphasising “the number and complexity of the issues, together with the extraordinary nature of a possible change of legal characterisation of the facts relating to the mode of liability at this stage of the proceedings”,<sup>9</sup> Mr Katanga submits that “exceptional circumstances” justify the granting of his request.<sup>10</sup>

6. Regulation 37 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.
2. The Chamber may, at the request of a participant, extend the page limit in exceptional circumstances.

7. Noting the arguments raised by Mr Katanga in his Request, and having considered the nature of the appeal as a whole, including the issues that are potentially relevant to its resolution and their complexity, the Appeals Chamber determines that “exceptional circumstances” exist for the purpose of regulation 37 (2) of the Regulations of the Court.<sup>11</sup> The page limit is therefore extended by 20 pages. The

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<sup>5</sup> Request, paras 1, 6.

<sup>6</sup> Request, paras 2, 4.

<sup>7</sup> Request, para. 2.

<sup>8</sup> Request, para. 4.

<sup>9</sup> Request, para. 6.

<sup>10</sup> Request, paras 1, 5-6.

<sup>11</sup> See also *Prosecutor v. Thomas Lubanga Dyilo*, “Decision on the ‘Prosecutor’s Motion for Extensions of the Time and Page Limits’”, 3 July 2006, ICC-01/04-01/06-177, para. 6; *Situation in the*



Appeals Chamber considers that it is also appropriate to permit the Prosecutor, if she so desires, to file a response to the document in support of the appeal of up to 40 pages.

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

  
**Judge Erkki Kourula**  
**For the Presiding Judge**

Dated this 8th day of January 2013

At The Hague, The Netherlands

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*Democratic Republic of the Congo*, “Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal”, 13 July 2006, ICC-01/04-168, para. 4; *Prosecutor v. Thomas Lubanga Dyilo*, “Decision on the Prosecutor’s application for an extension of page limit for his document in support of appeal”, 22 July 2010, ICC-01/04-01/06-2532, para. 6.