Cour
Pénale
Internationale

International
Criminal
Court

Original: English

No. ICC-01/04-02/12 A
Date: 11 April 2013

THE APPEALS CHAMBER

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF THE PROSECUTOR v. MATHIEU NGUDJOLO CHUI

Public document

Decision on Mr Ngudjolo's request for translation and suspension of the time limit

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 Jean Pierre Kilenda
Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of Victims
Mr Jean-Louis Gilissen
Mr Fidel Nsita Luvengika

REGISTRY

Registrar
Ms Silvana Arbia

The Appeals Chamber of the International Criminal Court,

In the appeal of the Prosecutor against the decision of Trial Chamber II entitled "Jugement rendu en application de l'article 74 du Statut" of 18 December 2012 (ICC-01/04-02/12-3),

Having before it the "Requête URGENTE de la Défense de Mathieu Ngudjolo sollicitant la traduction en langue française du mémoire d'appel du Procureur et la suspension des délais (Article 67-1-a), b) et f) du *Statut de Rom* [*sic*] et les normes 35-2 et 59-1 du Règlement de la Cour)" of 20 March 2013 (ICC-01/04-02/12-41),

Renders unanimously the following

DECISION

(1) Mr Ngudjolo's request for leave to reply to the "Prosecution Response to « *Requête URGENTE de la Défense de Mathieu Ngudjolo sollicitant la traduction en langue française du mémoire d'appel du Procureur et la suspension des délais (Article 67-1-a), b) et f) du Statut de Rom et les normes 35-2 et 59-1 du Règlement de la Cour)* »" is rejected.

(2) The Registry shall provide Mr Ngudjolo with a draft translation into French of the "Prosecution's Document in Support of Appeal against the 'Jugement rendu en application de l'article 74 du Statut'" by 26 April 2013.

(3) The time limit for the filing of Mr Ngudjolo's response to the Prosecutor's document in support of the appeal is extended by 30 days to 18 June 2013.

REASONS

I. PROCEDURAL HISTORY

1. On 18 December 2012, Trial Chamber II delivered the "Jugement rendu en application de l'article 74 du Statut"[1] (hereinafter: "Decision on Acquittal") in which Mr Mathieu Ngudjolo Chui (hereinafter: "Mr Ngudjolo") was acquitted of all charges against him.

[1] ICC-01/04-02/12-3.

2. On 20 December 2012, the Prosecutor filed her appeal against the Decision on Acquittal.[2]

3. On 19 March 2013, the Prosecutor filed the "Prosecution's Document in Support of Appeal against the "Jugement rendu en application de l'article 74 du Statut"[3] (hereinafter: "Document in Support of the Appeal").

4. On 20 March 2013, Mr Ngudjolo filed the "Requête URGENTE de la Défense de Mathieu Ngudjolo sollicitant la traduction en langue française du mémoire d'appel du Procureur et la suspension des délais (Article 67-1-a), b) et f) du *Statut de Rom* [*sic*] et les normes 35-2 et 59-1 du Règlement de la Cour)"[4] (hereinafter : "Request"). Mr Ngudjolo seeks an order from the Appeals Chamber 1) for the Prosecutor's Document in Support of the Appeal to be translated into French and 2) that the time limit, pursuant to regulation 59 of the Regulations of the Court, for him to file his response thereto be suspended until he has received a French translation of the Prosecutor's Document in Support of the Appeal.[5]

5. With respect to his request for a translation, Mr Ngudjolo submits that given that he has been acquitted, he has the right to be fully informed of the content of the present appeal in a language which he speaks and understands, in this case French.[6] Mr Ngudjolo further submits that he has only a limited understanding of English.[7] In support of his Request, Mr Ngudjolo refers to article 67 (1) (a) and (f) of the Statute,[8] to the jurisprudence of the Court and that of other international courts, based on which he submits he is entitled to translations of documents which are essential to the adequate preparation of his defence.[9] Mr Ngudjolo also submits that the appellate proceedings lead to a final decision, rendering his ability to understand the grounds of appeal and to participate in the preparation of the response thereto even more crucial.[10] Furthermore, Mr Ngudjolo notes that the lead counsel for the Defence and

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[2] "Prosecution's Appeal against Trial Chamber II's 'Jugement rendu en application de l'article 74 du Statut'", ICC-01/04-02/12-10.
[3] ICC-01/04-02/12-39-Conf-Exp.
[4] ICC-01/04-02/12-41.
[5] Request, para. 4, p. 10.
[6] Request, para. 5.
[7] Request, para. 5.
[8] Request, para 6.
[9] Request, paras 8-9.
[10] Request, para. 10.

all the other members of the team are French speakers and/or have French as their mother tongue, and that French is the only language used by his Defence.[11] He avers that his Defence has always expressed itself in French in its written and oral communications with Trial Chamber II, that the proceedings before Trial Chamber II were conducted in French and that in those proceedings the Office of the Prosecutor, as well as the participants, were French speakers.[12] Mr Ngudjolo further submits that according to rule 22 (1) of the Rules of Procedure and Evidence, his Defence Counsel is required to have an excellent knowledge of at least one of the working languages of the Court.[13]

6. In relation to his request for suspension of the time limit, Mr Ngudjolo submits that, since the Document in Support of the Appeal is written in English, the sixty day-time limit for the filing of his response thereto should be suspended until the notification of the French translation of the Document in Support of the Appeal.[14] Furthermore, Mr Ngudjolo further submits that the detention centre at Schiphol is not suitable to house detainees facing criminal charges. He argues that the conditions in the detention centre are inadequate for long term detention, are not suited to facilitate free access between him and his Defence lawyer to communicate confidentially and do not facilitate access to his electronic file.[15]

7. On 27 March 2013, following an order by the Appeals Chamber,[16] the Prosecutor filed her response to the Request[17] (hereinafter: "Prosecutor's Response"). The Prosecutor submits that "Mr Ngudjolo does not have a right to have the Appeal Brief translated into French",[18] arguing that "[a]ccording to Article 67(1)(a), Mr Ngudjolo has a right to be informed of the 'nature, cause and content of the charge, in a language which [he] fully understands and speaks'",[19] but that "[t]he

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[11] Request, para. 12.
[12] Request, para 12.
[13] Request, para. 13.
[14] Request, para. 17.
[15] Request, para. 23.
[16] "Order on the filing of submissions by the Prosecutor on the Defence request of 20 March 2013 for translation and an extension of the time limit", ICC-01/04-02/12-44, p. 3.
[17] Prosecution Response to « *Requête URGENTE de la Défense de Mathieu Ngudjolo sollicitant la traduction en langue française du mémoire d'appel du Procureur et la suspension des délais (Article 67-1-a), b) et f) du Statut de Rom et les normes 35-2 et 59-1 du Règlement de la Cour)* », ICC-01/04-02/12-50.
[18] Prosecutor's Response, para. 5.
[19] Prosecutor's Response, para. 5.

Appeal Brief does not contain any such charge".[20] The Prosecutor further submits that "a French translation of the Appeal Brief is also not necessary to 'meet the requirements of fairness' under Article 67(1)(f)".[21] The Prosecutor avers that "[a]ppellate proceedings are fundamentally different from trial or pre-trial proceedings",[22] that "[i]n particular, the appellate proceedings in this case concern, first, technical legal and procedural matters"[23] and that "[t]he Defence can be expected to deal with the issues raised by the Prosecution in its Appeal Brief without there being a need to seek regular instructions from their client".[24] The Prosecutor indicates that "[a]s to the factual issues involved, these arise from the trial record and the appealed judgment under Article 74, which are fully available in French".[25]

8. Finally, the Prosecutor notes that "any rights to translation under Article 67(1) apply exclusively to the accused, and not to the Defence".[26] Nevertheless, the Prosecutor "understands that counsel for the Defence have difficulties in understanding documents drafted in English" and "[i]t is for that reason that the Prosecution does not object to the relief requested by the Defence",[27] considering however, "that all efforts should be made to ensure that the relief requested does not excessively impact on the expeditious conduct of the proceedings".[28] "In order to minimize any delay", the Prosecutor offers "the assistance of its internal Language Support Unit to cooperate with the Registrar with a view to ensuring that the Appeal Brief be translated into French as soon as possible".[29]

9. On 28 March 2013, Mr Ngudjolo filed the "Requête de la Défense tendant à obtenir de la Chambre d'appel une autorisation de répliquer à la « Prosecution Response to « *Requête URGENTE de la Défense de Mathieu Ngudjolo sollicitant la traduction en langue française du mémoire d'appel du Procureur et la suspension des délais (Article 67-1-a) b) et f) du Statut de Rome et les normes 35-2 et 59-1 du*

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[20] Prosecutor's Response, para. 5.
[21] Prosecutor's Response, para. 5
[22] Prosecutor's Response, para. 5.
[23] Prosecutor's Response, para. 5.
[24] Prosecutor's Response, para. 5
[25] Prosecutor's Response, para. 5.
[26] Prosecutor's Response, para. 7.
[27] Prosecutor's Response, para. 7.
[28] Prosecutor's Response, para. 8.
[29] Prosecutor's Response, para. 8.

Règlement de la Cour » du 27 mars 2013[30] (hereinafter: "Request for Leave to Reply"), seeking leave to reply to two specific arguments made in the Prosecutor's Response, namely the Prosecutor's assertion that, as an acquitted person, he is not entitled to receive the French translation of the Document in Support of the Appeal and the Prosecutor's offer of assistance for the translation of the same document.[31]

II. MERITS

10. As a preliminary matter, the Appeals Chamber notes Mr Ngudjolo's Request for Leave to Reply. Pursuant to regulation 24 (5) of the Regulations of the Court, the parties may only reply to a response with the leave of the Chamber. In the present circumstances, the Appeals Chamber does not deem it necessary to receive further submissions, from Mr Ngudjolo on the arguments made in the Prosecutor's Response, in order to make its decision. Accordingly, the Request for Leave to Reply is rejected.

11. As regards the merits of the Request, the Appeals Chamber notes that Mr Ngudjolo seeks an order for the translation into French of the Document in Support of the Appeal. However, the principal objective of the Request is to seek an extension of the time limit to allow Mr Ngudjolo to file his response to the French translation of the Document in Support of the Appeal. The Appeals Chamber therefore considers the Request under regulation 35 (2) of the Regulations of the Court, which bestows upon the Appeals Chamber the discretion to "extend or reduce a time limit if good cause is shown". Accordingly, the question before the Appeals Chamber is whether Mr Ngudjolo has established "good cause" justifying an extension of the sixty day-time limit for the filing of his response to the Document in Support of the Appeal. In this regard, the Appeals Chamber notes that, in addition to the language issues as summarised above, Mr Ngudjolo also refers to the conditions of his administrative detention to establish "good cause" for an extension of the time limit. The Appeals Chamber observes, however, that these submissions are reiterated in another pending application before the Appeals Chamber.[32] The Appeals Chamber therefore deems it more appropriate to address these submissions when considering the aforementioned application and will refrain from doing so here.

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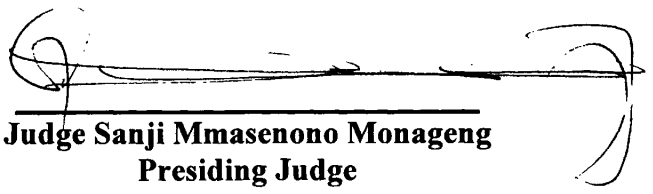
[30] ICC-01/04-02/12-51.
[31] Request for Leave to Reply, paras 8-13.
[32] "URGENT application by Mathieu Ngudjolo's Defence seeking the Appeals Chamber's instructions on the modalities of preparation for the appeals procedure in view of Mathieu Ngudjolo's current situation (Article 67 of the Rome Statute)", ICC-01/04-02/12-40-tENG, 20 March 2013.

12. As to the remainder of Mr Ngudjolo's arguments, the Appeals Chamber notes the nature and impact of an appeal against a decision on acquittal on the acquitted person, the fundamental importance of the document in support of the appeal to the merits of the appeal and the fact that the trial proceedings giving rise to the appeal were primarily conducted in French. In light of this, the Appeals Chamber considers that "good cause" has been established for an extension of the time limit prescribed under regulation 59 of the Regulations of the Court.

13. As to the period of extension of the time limit, the Appeals Chamber considers that work on Mr Ngudjolo's Response may commence based on the English version of the Document in Support of the Appeal. In this regard, the Appeals Chamber recalls that Mr Ngudjolo has previously responded to filings in English.[33] Furthermore, in an effort to assist Mr Ngudjolo, the Appeals Chamber directs the Registry to make available to Mr Ngudjolo a draft translation of the Document in Support of the Appeal by 26 April 2013. In light of the foregoing, the Appeals Chamber considers that a thirty-day extension of the sixty-day time limit stipulated in regulation 59 of the Regulations of the Court would provide Mr Ngudjolo and his counsel with sufficient time to adequately respond to the Document in Support of the Appeal. Accordingly, the Appeals Chamber extends the time limit for Mr Ngudjolo's response pursuant to regulation 59 of the Regulations of the Court by thirty days to 18 June 2013.

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



Judge Sanji Mmasenono Monageng
Presiding Judge

Dated this 11th day of April 2013

At The Hague, The Netherlands

[33] Request for Leave to Reply.