

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/07

Date: 17 March 2014

THE APPEALS CHAMBER

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Sang-Hyun Song
Judge Erkki Kourula
Judge Anita Ušacka
Judge Sanji Mmasenono Monageng

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. GERMAIN KATANGA***

Public

Prosecution Response to “Defence Application regarding the Translation and Notification of the Article 74 Decision, or alternatively, for an extension of the time limit to file an appeal”

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the*

Court to:

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Introduction

1. The Prosecution supports the Defence's request that the official notification of the Article 74 Decision¹ take place only when the full English translation of that Decision and the French translation of the Dissenting Opinion are provided to the Defence and/or its alternative request that the time to file an appeal be extended until 30 days after the above translations are available ("Application").² However, the Prosecution's support for the Application is premised on the notification being delayed and/or the deadlines being extended also for the Prosecution. If the Appeals Chamber grants the Defence's alternative request extending the time to file any appeal against the Decision, it should also extend the time under Regulation 58(1) for the filing of the document in support of appeal pursuant to Regulation 35(2) to 90 days after the above translations are provided.³ Otherwise, any extension granted for the filing of appeals pursuant to Rule 150(2) could be rendered otiose.

Arguments

The Defence has shown good cause in support of its Application

2. The relief sought by the Defence is for the benefit of the convicted person.⁴ The role of the Defence in appellate proceedings is different from that in pre-trial and trial proceedings which mainly focus on the establishment to the requisite threshold of the relevant facts. Appellate proceedings on the other hand are of a more legal and technical nature. The Defence must be able to fully understand the Article 74 Decision on points of law, fact and procedure to properly advise the convicted person if and on what grounds to appeal the Decision. This cannot be done in this case without an English translation.

¹ ICC-01/04-01/07-3436.

² ICC-01/04-01/07-3440 A.

³ This would mean that the document in support of the appeal would be due 60 days after the filing of an appeal and the response by the other party would be due 60 days thereafter (see Regulations 58(1) and 59(1)).

⁴ Application, para.15.

3. The Trial Chamber had indicated that some portions of the Article 74 Decision which are of particular interest for the conduct of the further proceedings before the Trial Chamber, including sentencing proceedings, would be made available in English by 14 March 2014.⁵ As at 17 March 2014, the Prosecution has been provided with the English translation of the Trial Chamber's factual findings in relation to Germain Katanga's functions and powers within the Ngiti militia and the Welendu Bindi *collectivité* (paragraphs 1235-1365) and the factual findings in relation to Article 25(3)(d) (paragraphs 1643-1691). While this and other partial translations that might follow are insufficient for a party to make an informed decision with respect to an appeal, such partial translations will contribute to expediting the full translation of the Article 74 Decision and limit the delay caused by granting this Application.

The delay of notice or extension of time should equally apply to the Prosecution

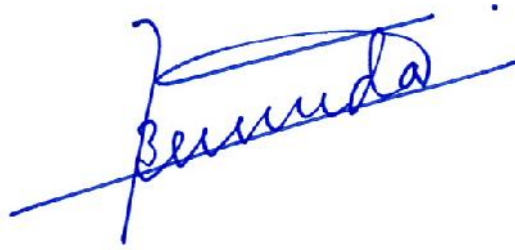
4. To equally extend any delay of notification of the Article 74 Decision and/or the relevant time limits to file an appeal and a document in support of appeal to both parties is mandated by considerations of fairness and judicial economy. First, it will ensure equality of arms between the parties by giving them the same amount of time to analyse the decision for the purposes of any appeal. Second, it will allow for a synchronised briefing schedule of the parties in eventual appellate proceedings.⁶ Synchronising the briefing schedule will facilitate the Appeals Chamber's and the parties' organisation of work in the event of an appeal by one or both parties. It will also ensure that the Defence does not gain an undue advantage by receiving advance notice of all the arguments on appeal by the Prosecution before filing its own appeal brief.

⁵ ICC-01/04-01/07-3437, para.3.

⁶ See for instance *Prosecutor v. Popovic et al.*, IT-05-88-A, Decision on Joint Motion for Extension of Time to File Notice of Appeal, 25 June 2010; *Prosecution v. Prlic et. al.*, IT-04-74-A, Decision on Motions for Extension of Time to File Appeal Briefs and for Authorization to Exceed Word Limit, 22 August 2013, para.15.

Conclusion

5. The Prosecution supports the Defence's Application to extend the time limits regarding the appeal, and requests that the same extensions of time be given to the Prosecution.



Fatou Bensouda, Prosecutor

Dated this 17th day of March 2014

At The Hague, The Netherlands