

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 April 2014

THE APPEALS CHAMBER

Before:

**Judge Sanji Mmasenono Monageng, Presiding Judge
Judge Sang-Hyun Song
Judge Cuno Tarfusser
Judge Erkki Kourula
Judge Joyce Aluoch**

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF THE PROSECUTOR v. GERMAIN KATANGA

Public document

**Decision on the requests of Mr Germain Katanga and the Prosecutor relating to
the time limits for their filings on appeal**



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
Ms Helen Brady

Counsel for the Defence
Mr David Hooper

REGISTRY

Registrar
Mr Herman von Hebel



The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Germain Katanga against the decision of Trial Chamber II entitled “Jugement rendu en application de l’article 74 du Statut” of 7 March 2014 (ICC-01/04-01/07-3436),

Having before it the “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” dated 13 March 2014 and registered on 14 March 2014 (ICC-01/04-01/07-3440), and the “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’” of 17 March 2014 (ICC-01/04-01/07-3442),

After deliberation,

Renders unanimously the following

DECISION

- 1) The time limit for the filing of Mr Germain Katanga’s document in support of the appeal is extended to 8 September 2014. The remainder of Mr Germain Katanga’s request is rejected.
- 2) The time limit for the filing of the Prosecutor’s document in support of the appeal is extended to 8 September 2014.
- 3) The Registry shall provide Mr Germain Katanga with a draft translation into English of all parts of the “Jugement rendu en application de l’article 74 du Statut” by 9 July 2014.



REASONS

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 7 March 2014, Trial Chamber II (hereinafter: “Trial Chamber”) delivered the “Jugement rendu en application de l’article 74 du Statut”¹ (hereinafter: “Conviction Decision”), in which Mr Germain Katanga (hereinafter: “Mr Katanga”) was found criminally responsible under article 25 (3) (d) of the Statute for one crime against humanity and four war crimes.² The Conviction Decision is 711 pages long and drafted in French. The partly dissenting opinion of Judge Christine Van den Wyngaert, which is attached to the Conviction Decision³ (hereinafter: “Partly Dissenting Opinion”), is 170 pages long and drafted in English.

2. On the same day, the Trial Chamber issued the “Ordonnance portant calendrier de la procédure relative à la fixation de la peine (article 76 du Statut)”⁴ (hereinafter: “Order of 7 March 2014”), which set out the schedule to be followed in relation to the sentencing proceedings. The Trial Chamber noted, *inter alia*, that those parts of the Conviction Decision that are particularly relevant to sentencing would be made available in English by 14 March 2014, and that translations of the remaining parts would be communicated regularly.⁵

3. On 13 March 2014, Mr Katanga filed the “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”⁶ (hereinafter: “Request”) before the Appeals Chamber. Mr Katanga requests that the Appeals Chamber order that the notification of the Conviction Decision be deemed to have occurred on the day he is notified of the English translation of that decision and of the French translation of the Partly Dissenting Opinion.⁷

4. With reference to article 67 (1) (f) of the Statute, Mr Katanga submits that it is “only fair” that he should receive a French translation of the Partly Dissenting

¹ ICC-01/04-01/07-3436.

² Conviction Decision, pp. 709-710.

³ ICC-01/04-01/07-3436-AnxI.

⁴ ICC-01/04-01/07-3437.

⁵ Order of 7 March 2014, para. 3.

⁶ ICC-01/04-01/07-3440 (A). The filing was registered on 14 March 2014.

⁷ Request, paras 1, 7, 18.

Opinion, in order to see “the totality of the circumstances of the [Conviction Decision], including the dissent”.⁸

5. As to the English translation of the Conviction Decision, Mr Katanga notes that his lead counsel “can best be described as ‘struggling’ in the French language” and further notes that the Conviction Decision is a lengthy document that addresses “significant and complex issues expressed in a heightened and precise vocabulary”.⁹ Mr Katanga also notes that, unlike his lead counsel, several of the relevant staff of the Office of the Prosecutor speak French as their primary language.¹⁰ He also underlines that, in any event, pursuant to article 50 (1) of the Statute, the Conviction Decision will be translated into English, and it is the notification of the translation that should trigger the time limits for the filing of the notice of appeal, as well as of the document in support of the appeal.¹¹ Mr Katanga submits that this would be in his own interest, and not that of his lead counsel, who may be seen as his “*alter ego*”, as he will need to rely on his counsel’s advice even if the Conviction Decision is drafted in a language that Mr Katanga himself understands.¹² Mr Katanga refers to the practice of other Chambers of this Court, which have ordered that notification of decisions should only be deemed to take place when they are notified in a language that counsel for the person concerned understands.¹³ Mr Katanga also recalls that this practice was followed in his case¹⁴ and notes that a proposal for an amendment of the Rules of Procedure and Evidence to reflect this practice is currently under discussion by the Hague Working Group.¹⁵

6. In the alternative, Mr Katanga requests that the Appeals Chamber order an extension of the time limit provided for in rule 150 (1) of the Rules of Procedure and Evidence, arguing that “good cause” for such an extension within the meaning of rule 150 (2) has been shown.¹⁶

⁸ Request, para. 8.

⁹ Request, para. 9.

¹⁰ Request, para. 10.

¹¹ Request, para. 11.

¹² Request, para. 15.

¹³ Request, para. 12.

¹⁴ Request, para. 13.

¹⁵ Request, para. 14.

¹⁶ Request, paras 1, 16-18.

7. On 17 March 2014, the Prosecutor responded to the Request¹⁷ (hereinafter: “Response”), indicating that she “supports the Defence’s Application to extend the time limits regarding the appeal, and requests that the same extensions of time be given to [her]”.¹⁸ She submits that Mr Katanga has shown good cause for the extension sought, submitting that the role of counsel in appellate proceedings is different from proceedings at the pre-trial and trial stage because appellate proceedings are “of a more legal and technical nature”.¹⁹ In her submission, the “Defence must be able to fully understand the [Conviction] Decision on points of law, fact and procedure to properly advise the convicted person if and on what grounds to appeal the Decision”.²⁰ She also submits that the transmission of translations of portions of the Conviction Decision is insufficient for Mr Katanga to make an informed decision as to whether to appeal, although this could contribute to expediting the full translation.²¹

8. Furthermore, the Prosecutor submits that, if the Appeals Chamber were to grant Mr Katanga’s alternative request to extend the time limit, it should extend the time limit not only for the filing of the notice of appeal, but also for the filing of the document in support of the appeal.²²

9. Finally, the Prosecutor submits that, because of “considerations of fairness and judicial economy”, any extension of the delay for the filing of submissions on appeal should be granted to both parties.²³

10. On 1 April 2014, Mr Katanga filed the “Defence Second Observations on the Translation and Notification of the Article 74 Decision”²⁴ (hereinafter: “Observations”). He notes that he has still not received an English translation of the Conviction Decision or a French translation of the Partly Dissenting Opinion.²⁵ He states that his counsel is “concerned that the decision of the Appeals Chamber has not

¹⁷ “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’”, ICC-01/04-01/07-3442 (A).

¹⁸ Response, para. 5. *See also* Response, para. 1.

¹⁹ Response, para. 2.

²⁰ Response, para. 2.

²¹ Response, para. 3.

²² Response, para. 1.

²³ Response, para. 4. *See also* Response, para. 1.

²⁴ ICC-01/04-01/07-3451 (A).

²⁵ Observations, paras 3-4.

yet been provided, particularly given the straight-forward nature of the application provided three weeks ago, and given little time remains before the 30 days period for notice of appeal expires".²⁶ Mr Katanga states furthermore that his counsel cannot review the Conviction Decision unless and until a translation is made available and that the fact that some of the members of the defence team speak French is not a substitute for this.²⁷

II. MERITS

11. Mr Katanga requests primarily that the Appeals Chamber order that notification of the Conviction Decision should be deemed to have taken place only with the notification of the English translation of that decision and of the French translation of the Partly Dissenting Opinion. The effect of such an order would be that the time limits for the filing of the notice of appeal pursuant to rule 150 (1) of the Rules of Procedure and Evidence and of the document in support of the appeal pursuant to regulation 58 (1) of the Regulations of the Court would commence to run only with such notifications. The Appeals Chamber notes that this would result, in essence, in an extension of those time limits. As the extension of these time limits is specifically regulated in rule 150 (2) of the Rules of Procedure and Evidence and regulation 35 of the Regulations of the Court, respectively, the Appeals Chamber will determine Mr Katanga's request according to the requirements of those provisions.

12. Before addressing the merits of Mr Katanga's request, the Appeals Chamber notes the filing of the Observations. The Appeals Chamber has decided not to consider the submissions made therein, given that they essentially contain additional arguments in support of the Request, to which the Prosecutor has already responded. In the view of the Appeals Chamber, at least in the normal course of events, a party seeking an extension of time is expected to make full submissions in support thereof in the original request. The Appeals Chamber, however, notes with regret the inappropriate remarks made at paragraph 4 of the Observations (reproduced above), which are unwarranted in the circumstances surrounding the Request.

²⁶ Observations, para. 4.

²⁷ Observations, para. 5.

A. Extension of the time limit for the notice of appeal

13. Pursuant to rule 150 (2) of the Rules of Procedure and Evidence, the Appeals Chamber may extend the time limit for the filing of the notice of appeal “for good cause”. In the circumstances of the present case and for the reasons that follow, the Appeals Chamber considers that no “good cause” for such an extension has been shown.

14. The Appeals Chamber recalls that the filing of a notice of appeal, which must take place within 30 days from the notification of the Conviction Decision to Mr Katanga, is not necessarily onerous.²⁸ Pursuant to regulation 57 of the Regulations of the Court, Mr Katanga merely has to state the name and number of the case, the date of the decision under appeal, whether he is appealing the entirety of the decision or only part of it, and the relief sought. Thus, the notice of appeal, while showing the appellant’s intention to challenge a decision, does not require any extensive analysis thereof. Therefore, irrespective of the validity of Mr Katanga’s arguments as to the need for a full translation of the Conviction Decision (which is discussed below), they cannot be said to apply to the filing of the notice of appeal. Rather, the Appeals Chamber considers that Mr Katanga, with the assistance of his counsel, should be able to make a decision as to whether to appeal the Conviction Decision and file a notice of appeal based on the information currently available to him.

15. Accordingly, the time limit for the filing of Mr Katanga’s notice of appeal against the Conviction Decision is not extended and this aspect of the Request is rejected.

B. Extension of the time limit for the document in support of the appeal

16. Pursuant to regulation 58 (1) of the Regulations of the Court, having filed a notice of appeal, “the appellant shall file a document in support of the appeal within 90 days of the notification of the relevant decision”. Pursuant to regulation 35 (2) of the Regulations of the Court, the Appeals Chamber may extend a time limit stipulated

²⁸ See Appeals Chamber, *Prosecutor v. Laurent Gbagbo*, “Decision on the ‘Requête aux fins de suspension des délais prévus par la Règle 154(1) du Règlement de procédure et de preuve et par la Norme 64(5) du Règlement de la Cour jusqu’à la fin des vacances judiciaires, fixée au lundi 6 août 2012’”, 19 July 2012, ICC-02/11-01/11-189 (OA), para. 5. On 26 October 2012, pursuant to an order of the Appeals Chamber, this decision was reclassified as “Public”, ICC-02/11-01/11-279-Conf.

in the Regulations of the Court “if good cause is shown”. For the reasons that follow, the Appeals Chamber considers that the arguments advanced by Mr Katanga and the circumstances of the case justify an extension of time.

17. The Appeals Chamber notes that Mr Katanga’s basic argument is that his lead counsel does not understand the French language sufficiently to advise him in relation to his potential appeal against the Conviction Decision.²⁹ The Appeals Chamber recalls that the trial of Mr Katanga was conducted before a francophone Trial Chamber and that the majority of the Trial Chamber’s decisions were issued in French. Thus, Mr Katanga and his counsel had to expect that the Conviction Decision would be issued in French, as indeed it was. It was therefore incumbent upon Mr Katanga and his counsel to organise his defence team in a way that facilitates these facts. In addition, the Appeals Chamber notes that draft translations of portions of the Conviction Decision into English have and will be provided to Mr Katanga on an ongoing basis, and that the Partly Dissenting Opinion is being translated into French and will be made available to Mr Katanga in due course. Finally, the Appeals Chamber notes that, in the Request, Mr Katanga indicates that he is francophone³⁰ and recalls that it has held that “article 67 (1) (a) and (f) of the Statute relates to the language ability and knowledge of the suspect and/or accused, not of his/her [c]ounsel and/or defence team”.³¹

18. Nevertheless, the Appeals Chamber considers that in the circumstances of this case, good cause for an extension of the time limit for the filing of the document in support of the appeal has been shown. The Conviction Decision and the Partly Dissenting Opinion are lengthy documents and are likely to raise significant issues of law and fact. The Appeals Chamber is of the view that this, coupled with the language challenges that Mr Katanga faces, justifies an extension of the time limit for the submission of Mr Katanga’s document in support of the appeal to 8 September 2014. Furthermore, in an effort to assist Mr Katanga, the Appeals Chamber directs the

²⁹ See Request, para. 9.

³⁰ Request, para. 1.

³¹ *Prosecutor v. Laurent Gbagbo*, “Decision on Mr Gbagbo’s request for translation and extension of time for the filing of a response to the document in support of the appeal”, 22 August 2013, ICC-02/11-01/11-489 (OA 5), para. 11, referring to *Prosecutor v. Callixte Mbarushimana*, “Decision on the ‘Requête urgente aux fins de reconsidération de la décision n° ICC-01/04-01/10 OA4, de protestation et de réserve’” 23 March 2012, ICC-01/04-01/10-505 (OA 4) para. 10.

Registry to make available to Mr Katanga a draft translation of the remaining portions of the Conviction Decision by 9 July 2014.

19. Accordingly, the time limit for Mr Katanga's potential document in support of the appeal is extended to 8 September 2014.

C. The Prosecutor's request

20. The Prosecutor argues that if the Appeals Chamber were to extend the time limits for Mr Katanga, it should equally extend the time limits for the Prosecutor for the appeal that she may file against the Conviction Decision.³² She invokes reasons of fairness and procedural economy in support of her request.³³ Given that the Appeals Chamber has rejected Mr Katanga's request for a time extension in respect of the notice of appeal and only granted it in respect of his document in support of the appeal, the Appeals Chamber will treat the Prosecutor's request as a request for an extension of the time limit for the filing of her potential document in support of the appeal against the Conviction Decision.

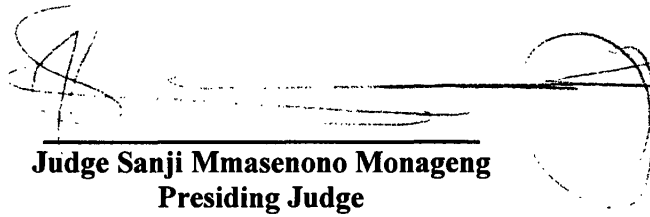
21. The Appeals Chamber considers that "good cause" within the meaning of regulation 35 (2) of the Regulations of the Court has been established for an extension of the time limit for the Prosecutor's potential document in support of the appeal against the Conviction Decision. This is because if the time limit for the submission of the Prosecutor's potential document in support of the appeal remained unchanged, the time limit for Mr Katanga's response to the Prosecutor's document in support of the appeal would commence at a time when Mr Katanga has not yet submitted his own document in support of the appeal. Therefore, even though Mr Katanga's and the Prosecutor's potential appeals against the Conviction Decision are legally distinct proceedings, having a different briefing schedule could negatively impact on procedural economy, as well as on the interests of Mr Katanga.

³² Response, para. 1.

³³ Response, para. 4.

22. Accordingly, the time limit for the filing of the Prosecutor's potential document in support of the appeal is extended to 8 September 2014.

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



Judge Sanji Mmasenono Monageng
Presiding Judge

Dated this 4th day of April 2014

At The Hague, The Netherlands