

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/06

Date: 14 July 2006

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

Registrar: Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
vs. THOMAS LUBANGA DYILO**

Public

Prosecution's Response to Defence's "Requête aux fins de faire courir tous les délais à compter de la date de réception de la version française des documents"

The Office of the Prosecutor
Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Ekkehard Withopf, Senior Trial Lawyer

Counsel for the Defence
Mr Jean Flamme

Background

1. During the status conference held on 23 June 2006, Defence argued that Thomas LUBANGA DYILO be provided a French translation of any motion or decision before the deadline to respond to such filings expires. Defence further submitted that all deadlines must be set from the time the translations into French of motions and decisions are issued.¹
2. On 3 July 2006, in support of its oral argument, the Defence filed the “Requête aux fins de faire courir tous les délais à compter de la date de réception de la version française des documents”² (Request) in which it asserted that the Defence is not able to fully grasp the content of a decision or a motion because neither counsel nor his legal assistant sufficiently master English legal terminology.³ It further argues that, because Thomas LUBANGA DYILO does not speak or read English, such translation by the Defence would be time-consuming and lead to misunderstandings and imprecision.⁴
3. On 4 July 2006, the Single Judge issued the “Decision Establishing a Deadline for the Response of the Prosecution”⁵ (Decision), in which she ordered the Prosecution to respond to the Request by 14 July 2006.⁶

¹ See (English) Transcript of the 23 June 2006 Court hearing, at p. 35, lines 6-25 and at p. 36, lines 1-6.

² Requête aux fins de faire courir tous les délais à compter de la date de réception de la version française des documents, Public, 3 July 2006.

³ Request, para. 5.

⁴ Request, para. 6.

⁵ Decision Establishing a Deadline for the Response of the Prosecution, public, 4 July 2006.

⁶ The Single Judge considered that the Request may have an overall impact on the proceedings of the present case; *see* Decision, page 2.

Arguments of the Defence

4. The Defence submits that translations into French of such filings are often issued two weeks after the English originals have been filed.⁷ According to the Defence, it is left with two options: either work on documents that are drafted in a language it does not fully master and that Thomas LUBANGA DYILO does not understand, or assume the risk of missing deadlines by waiting for the translations into French to be issued. Neither option, the Defence asserts, is compatible with the rights it is accorded pursuant to Article 67 of the Rome Statute (Statute).⁸ For these reasons, the Defence requests that the Pre-Trial Chamber order that all filing deadlines begin to run from the date of receipt by the Defence of the translation into French of these documents.⁹
5. The Defence argues that there is no obligation pursuant to the Statute or the Rules that either Defence Counsel or his legal assistants be bilingual.¹⁰
6. The Defence contends that Article 67 of the Statute grants the Defence the right to be assisted by an interpreter if the language used during proceedings or in any document submitted to the Court, is not in a language which the accused fully understands and speaks.¹¹ The Defence further asserts that, in order for the Defence to fully participate in the proceedings, all decisions and filings must be translated into French and deadlines extended until receipt of the French

⁷ Request, para. 7.

⁸ Request, para. 8.

⁹ Request, para. 15.

¹⁰ Request, para. 9.

¹¹ Request, para. 10.

translation of such documents. According to the Defence, this approach is supported by the jurisprudence of the *ad hoc* Tribunals.¹²

Discussion

7. The Request is not supported by the facts as submitted by the Defence. In addition, it lacks legal basis.

Defence fully understands English

8. The Prosecution disputes the Defence's assertion that it does not have a sufficient command of English to respond to filings drafted in English or to communicate the content of such filings to its client. The Prosecution notes that the Defence has, on two occasions, filed lengthy and substantive motions in English.¹³
9. The Prosecution is sympathetic to difficulties imposed by language barriers and it shares a similar burden when filings from the Defence or from the Pre-Trial Chamber are in French, which is not the working language of most members of the Prosecution Division of the Office of the Prosecutor. Nonetheless, the Prosecution is of the view that this is no basis upon which to request such broad relief.

¹² Request, paras 13 and 14.

¹³ See Defence Motion Regarding Ex Parte Hearing of 2 May 2006, filed on 4 May 2006 and Observations of the Defence relating to the system of disclosure in view of the Confirmation Hearing, filed on 2 May 2006.

Thomas LUBANGA DYILO has no right to receive all Court filings in French

10. Neither the Statute nor the Rules provide for an express right for a person arrested pursuant to an arrest warrant to receive translations of all court filings¹⁴ in a language that he or she speaks.

Case-by-case approach

11. The Prosecution objects to a blanket approach to extend deadlines and submits that the Defence has no legal basis to make a request of such breadth.
12. Regulation 35 of the Regulations of the Court (Regulations) provides for a practical approach to the extent that applications for extensions of a time limit will be granted “if good cause is shown”, and thus on a case-by-case basis. This approach conforms to the practice adopted by the *ad hoc* Tribunals due to limited translation resources.¹⁵

¹⁴ The Prosecution notes that pursuant to Regulation 40 it is the Registry which has to provide for the translation of filings. The Registry has acknowledged that it is the organ of the Court to provide for translations; see (English) Transcript of the 23 June 2006 Court hearing, at p. 41, lines 1-6.

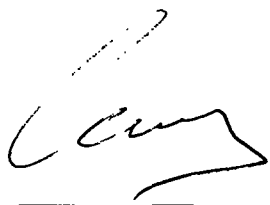
¹⁵ See, for example, *The Prosecutor v. Paško Ljubičić*, Case no. IT-00-41-PT, TC, Decision on the Defence Counsel’s Request for Translation of All Documents, 20 November 2002, p. 4; *The Prosecutor v. Simo Zarić*, Case no. IT-95-9, Decision on Defence Application for Leave to use the Native Language of the Assigned Counsel in the Proceedings, 21 May 1998, para. 7.; *The Prosecutor v. Dario Kordić & Mario Čerkez*, Case no. IT-95-14-A, AC, Decision on Motions to Extend Time for Filing Appellant’s Briefs, 11 May 2001, paras 17-20; *The Prosecutor v. Stanislav Galić*, Case no. IT-9829-A, Decision on the Prosecution’s Request for Extension of Time and for an Order Requiring Official Translations of Documents attached to the Defence Third Motion for Additional Evidence, 7 February 2005; *The Prosecutor v. Aloys Simba*, Case no. ICTR 01-76-I, Decision on Defence Request for Leave to Appeal “Decision on Defence Motion for Extension of Time” and Oral Decision, 25 June 2004, paras 6-8; *The Prosecutor v. Casimir Bizimungu*, Case No. ICTR 99-50-I, Decision on Extremely Urgent Motion to Compel the Production of all of the Supporting Material in English and to Suspend the beginning of the time within which preliminary motions are to be filed until all the English translations are produced, 11 May 2000.

Undue delay

13. Granting the Request would delay proceedings unduly, thereby paralyzing the judicial process. The timelines imposed by the Regulations were established to ensure fair and expeditious process. These provisions should not be disturbed lightly.

Request

14. For the foregoing reasons, the Prosecution requests that the Single Judge deny the Defence's Request for a blanket extension of deadlines.



Luis Moreno-Ocampo
Prosecutor

Dated this 14th day of July 2006
At The Hague, The Netherlands

List of authorities

JURISPRUDENCE

a) ICTY

The Prosecutor v. Paško Ljubičić, Case no. IT-00-41-PT, TC, Decision on the Defence Counsel's Request for Translation of All Documents, 20 November 2002

The Prosecutor v. Simo Zarić, Case no. IT-95-9, TC, Decision on Defence Application for Leave to use the Native Language of the Assigned Counsel in the Proceedings, 21 May 1998

<http://www.un.org/icty/simic/trialc3/decision-c/80521MS113404.htm>

The Prosecutor v. Dario Kordić & Mario Čerkez, Case no. IT-95-14-A, AC, Decision on Motions to Extend Time for Filing Appellant's Briefs, 11 May 2001

<http://www.un.org/icty/kordic/appeal/decision-e/10511EX315605.htm>

The Prosecutor v. Stanislav Galić, Case no. IT-9829-A, Decision on the Prosecution's Request for Extension of Time and for an Order Requiring Official Translations of Documents attached to the Defence Third Motion for Additional Evidence, 7 February 2005

<http://www.un.org/icty/galic/appeal/decision-c/050207.htm>

b) ICTR

The Prosecutor v. Aloys Simba, Case no. ICTR 01-76-I, Decision on Defence Request for Leave to Appeal "Decision on Defence Motion for Extension of Time" and Oral Decision, 25 June 2004

<http://69.94.11.53/ENGLISH/cases/Simba/decisions/040625.htm>

The Prosecutor v. Casimir Bizimungu, Case No. ICTR 99-50-I, Decision on Extremely Urgent Motion to Compel the Production of all of the Supporting Material in English and to Suspend the beginning of the time within which preliminary motions are to be filed until all the English translations are produced, 11 May 2000

UNITED NATIONS



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of the
Former Yugoslavia since 1991

Case No.: IT-00-41-PT
Date: 20th November 2002
Original: English

BEFORE TRIAL CHAMBER I

Before: Judge Liu Daqun, Presiding
Judge Amin El Mahdi
Judge Alphons Orie

Registrar: Mr. Hans Holthuis

Decision of: 20th November 2002

PROSECUTOR

v.

PAŠKO LJUBIČIĆ

DECISION ON THE DEFENCE COUNSEL'S REQUEST FOR TRANSLATION OF ALL DOCUMENTS

The Office of the Prosecutor:

Mr. Mark Harmon
Ms. Magda Karagiannakis

Counsel for the Accused:

Mr. Tomislav Jonjić

TRIAL CHAMBER I, (“the Chamber”), of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“the Tribunal”);

BEING SEIZED OF the Defence Motion Concerning the Translation of Documents of 19 September 2002 (“the Motion”), whereby the Defence requests that: (1) all documents, especially disclosure material and evidence, be submitted to the Defence in the Bosnian, Croatian or Serb language (“BCS”); (2) any time-limit related to submission of documents be counted from the date of submission to the Defence in the Croatian language; and (3) that the Prosecution be obliged to submit to the Defence, within a reasonable term, the translations in BCS of all those documents and disclosure material which have already and only been submitted in the official languages of the Tribunal;

NOTING the Prosecution’s response of 3 October 2002 to Defence Motion Concerning the Translation of Documents (“the Response”) whereby the Prosecution submits, *inter alia*, that: (1) an order to oblige the Prosecution to make all disclosure available in Bosnian/Croatian/Serb (“BCS”) would run contrary to the efficient administration of Justice as it would delay the progress of the case; (2) its duty to disclose items in the Accused’s own language is limited to items listed in Rule 66(A) of the Rules of Procedure and Evidence (the “Rules”); (3) it has already complied with its duties to disclose in BCS all items under Rule 66(A)(i) and that much of the material disclosed pursuant to Rule 66(A)(ii) has already been provided to the Defence in BCS; and (4) that the Prosecution will continue to comply with its duty to disclose in BCS items enumerated in Rule 66(A)(ii);

NOTING the Defence Counsel’s reply of 16 October 2002 (“the Reply”), in which the Defence further substantiates its Motion in asserting that the efficient administration of justice must not prevail over the right of the Accused to a fair trial, and in maintaining that all material under Rule 66(A)(ii) had still not been provided in BCS;

NOTING the earlier practice of this Tribunal as well as that of the International Criminal Tribunal for Rwanda (the ICTR) regarding the question of translation of documents into a language understood by the Accused;¹

¹ See, for example, *The Prosecutor v. Delalić et al.*, Decision on Defence Application for Forwarding the Documents in the Language of the Accused, 25 September 1996, Case IT-96-21-T (“the Celibići decision”); *The Prosecutor v. Milošević*, Decision on Prosecution Motion for Permission to Disclose Witness Statements in English, 19 September 2001, Case IT-99-37-PT; *The Prosecutor v. Naletilić & Martinović*, Decision on Defence’s Motion Concerning Translation of All Documents, 18 October 2001, Case IT-98-34-T; *The Prosecutor v. Muhimana*, Decision on Defence Motion to Have All Prosecution and Procedural Documents Translated into Kinyarwanda, the Language of the Accused, and into French, the Language of his Counsel, 6 November 2001, Case ICTR-95-1-B-I; and *The Prosecutor v. Kordić and* Case No.: IT-00-41-PT

NOTING that, pursuant to the Statute and the Rules, and based on the mainstream of the existing judicial practice as referred to above, the current general standard regarding translation of documents during the *pre-trial stage* of the proceedings requires that the following material be submitted to the Accused in a language he understands:

- a copy of the *indictment* according to Article 21, par. 1 and par. 4(a) of the Statute and Rule 53bis(B) in combination with Rule 47(G) of the Rules;
- a copy of the *supporting material* which accompanied the indictment against the accused and all prior *statements obtained by the Prosecutor from the Accused*, irrespective of whether these items will be offered at trial, in accordance with Rule 66(A)(i) of the Rules;
- *Statements of all witnesses* (either in hard copy or in audio format) whom the Prosecutor intends to call to testify at trial along with all *written statements* taken in accordance with Rule 92bis, and *statements of additional Prosecution witnesses* when a decision is made to call those witnesses, see Rule 66(A)(ii) of the Rules;
- *Discovery material* which appeared in a language understood by the Accused at the time it came under the Prosecution's custody or control, pursuant to Rule 66(B) of the Rules;
- *Exculpatory material* disclosed by the Prosecutor according to Article 68 of the Rules; and
- *Written decisions and orders* rendered by the Tribunal.

CONFIRMING that the effective date of filing of the material listed out above shall be the date of filing in one of the official languages of the Tribunal, but that all statutory time-limits for responses in relation to this material shall be the date of filing of the translation in the language understood by the Accused;²

NOTING, that during the *trial stage*, the incumbent Chamber may direct the Prosecutor to tender exhibits or the relevant parts of such exhibits (either in hard copy or in audio format) in a language understood by the Accused;

NOTING that, while the Tribunal is committed to ensuring the Accused's right to a fair and expeditious trial, translation in advance of each and every document into BCS beyond what is required under the Statute and the Rules, may seriously jeopardize the Accused's right to an expeditious trial because of the very substantial time and resources required for translation of all documents;

NOTING, furthermore, that at least one of the Defence counsels is presumed to be fluent in one of the official languages of the Tribunal and should be capable of fully participating in the proceedings;

Čerkez, Appeals Chamber's Order on Paško Ljubičić's Motion for Access to Confidential Supporting Material, Transcripts and Exhibits, 19 July 2002, Case IT-95-14/2-A.

² See the "Celibičić-decision", par. 11 at page 6.

NOTING that, during the Status Conference on 26 September 2002, the Prosecution confirmed its willingness to co-operate with the Defence and stated that not only had it complied with its obligations by submitting to the Defence in BCS all supporting material under Rule 66(A)(i) and almost all of the audio-tapes with witness statements in BCS under Rule 66(A)(ii) of the Rules, asserting that the few remaining tapes would be handed over to the Defence as soon as they were recovered from the Registry and had been redacted by the Prosecution, it had also disclosed to the Defence a number of other exhibits and documents in BCS beyond its obligations under the Statute and the Rules;³

NOTING that, while the Defence Counsel had confirmed during the Status Conference that all of the said material had indeed been received from the Prosecutor in BCS and that the Defence had not requested further submission in BCS of any *specific* trial material under Rule 66(A) (other than the few remaining tapes), the Defence Counsel had nevertheless declared that he wanted to have the issue of translation settled in principle as a *general* matter;⁴

FINDING that, apart from the few tapes which the Prosecution has already vowed to submit, the substance of the Motion has been exhausted by the Prosecutor's compliance with its obligations to provide evidence in BCS to the extent in which this is required under present state of law; and that, consequently, a ruling on this issue is not necessary for the purposes of an investigation or for the preparation or conduct of the trial;

PURSUANT to Rule 54 of the Rules;

FOR ALL OF THE ABOVE REASONS,

HEREBY DENIES the Motion.

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

Dated this twentieth day of November 2002,
At The Hague,
The Netherlands

Judge Liu Daqun
Presiding Judge

[Seal of the Tribunal]

³ See *Transcripts*, pages 58-61 and page 70; Status Conference held on 26 September 2002.

⁴ *Ibidem*, pages 61-63 and pages 67-69.

FOR EDUCATIONAL USE ONLY

2000 WL 33321797 (UN ICT (Trial)(Rwa))

International Criminal Tribunal for Rwanda
Trial Chamber IITHE PROSECUTOR
v.

CASIMIR BIZIMUNGU

ICTR-99-50-I

Decision of: 11 May 2000

Original: English

DECISION ON EXTREMELY URGENT MOTION TO COMPEL THE PRODUCTION OF ALL
OF THE
SUPPORTING MATERIAL IN ENGLISH AND TO SUSPEND THE BEGINNING OF THE TIME
WITHIN
WHICH PRELIMINARY MOTION ARE TO BE FILED UNTIL ALL OF THE ENGLISH
TRANSLATIONS
ARE PRODUCED

The Office of the Prosecutor: Carla Del Ponte, Kenneth Flemming

Defence Counsel for the Accused: Judith L. Bourne

Before: Judge William H. Sekule, Designated by the Trial Chamber pursuant to Rule
73 of the Rules of Procedure and Evidence

Registrar: Dr. Agwu U. Okali

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

SITTING in the person of Judge William H. Sekule, as designated by the Trial
Chamber II pursuant to Rule 73 of the Rules of Procedure and Evidence (the
"Rules");

CONSIDERING the indictment submitted by the Prosecutor against Casimir Bizimungu
and others on 12 May 1999, confirmed by Judge Navanethem Pillay on the same day,
for the crimes of genocide, conspiracy to commit genocide, complicity in genocide,
crimes against humanity and serious violations of Article 3 common to the 1949
Geneva Conventions and the 1977 Additional Protocol II thereto;

BEING SEIZED of a Defence motion, filed on 17 April 2000, entitled "Extremely Urgent
Motion of Accused Bizimungu to Compel the Production of All of the Supporting
Material in English, and to Suspend the Beginning of the Time Within which
Preliminary Motions Are to Be Filed Until All of the English Translations Are Produced"
(the "Motion");

CONSIDERING the Prosecutor's Response to the Motion filed on 3 May 2000;

CONSIDERING the provisions of the Statute of the Tribunal (the "Statute") and the
Rules;

RECALLING the oral decision of the Tribunal that the Defence should file any
preliminary motion within 45 days from 27 March 2000. See transcript of 27 March
2000, at 28.

AFTER HAVING DELIBERATED:

WHEREAS in support of this Motion, the Defence has submitted that two copies of the supporting material, one in English and one in French were provided to Defence Counsel on 25 March 2000. However, numerous passages in the English version have been found to be in French, a language the Defence Counsel is not able to work in. The unknown portion may impact on preparing preliminary motions and effective assistance to the Accused. The Defence argues that the date by which preliminary motions must be filed is established only by the complete disclosure of the supporting material. The Defence Counsel requests providing her with English translations of those passages of the supporting material on an extremely urgent basis; and the beginning of the time within which the preliminary motions must be filed be modified to reflect the date on which the English text of the passages are provided to Defence Counsel.

WHEREAS the Prosecutor, in her written submission, opposed the Defence's request on the ground that Rule 66 only requires the precise material to be hand over. Translation is an entirely different question. The Defence Counsel has not made any request to the Registrar for the translation. Both the Accused and the Defence has had the material pursuant to Rule 66 since prior to 27 March 2000. There would have been consultations between the Accused and Counsel.

WHEREAS it is not in dispute that the two copies of supporting materials envisaged in Rule 66 were delivered to Defence before 27 March 2000. Rule 3 stipulates the working languages of the Tribunal are English and French. The Tribunal considers, for effective assistance to the Accused, the documents provided to Defence Counsel shall be in the language the Counsel understands.

WHEREAS, however, from the illustration in the Motion, the passages in French of the supporting material appear not to be significant portion, the Tribunal is not convinced that the Defence Counsel does not understand the substantive content of the supporting material entirely and the Defence Counsel is completely impeded to start preparing the preliminary motions she wishes to file. Thus, the Chamber denies granting the Defence's request for suspension of the beginning of the time within which preliminary motions are to be filed.

CONSIDERING, however, the Defence is not able to work in French.

NOTING the COURT MANAGEMENT SECTION informed the Chamber that the translations of those passages in the supporting material were ready and had been transmitted to the Defence Counsel on 10 May 2000.

WHEREAS the period of forty-five day granted the Defence to file preliminary motions on 27 March 2000 comes to the end today.

RECALLING Rule 72(F) that the Trial Chamber may grant relief upon showing good cause, the Tribunal is of the opinion that, in the light of the situation the Defence is facing and for the interest of justice, it is appropriate to grant an extension of short period of time to the Defence.

FOR THESE REASONS THE TRIBUNAL DECIDES,

TO GRANT the Defence an extension of time up to 20 May 2000 to file preliminary motions.

Arusha, 11 May 2000.

William H. Sekule, Judge

Seal of the Tribunal

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