

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 8 January 2008

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

Registrar: Mr. Bruno Cathala

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

Public

**Prosecution's Response to the Defence Application for Leave to Appeal the
Decision on the Defence Request Concerning Languages**

The Office of the Prosecutor

Mr. Luis Moreno-Ocampo, Prosecutor
Ms. Fatou Bensouda, Deputy Prosecutor
Mr. Fabricio Guariglia, Senior Appeals Counsel
Mr. Éric MacDonald, Trial Attorney
Ms. Florence Darques-Lane, Legal Adviser

Counsel for the Defence

Mr. David Hooper
Ms. Caroline Buisman

Introduction

1. On 21 December 2007, the Single Judge of Pre-Trial Chamber I issued the “Decision on the Defence Request Concerning Languages” (“Decision”).¹
2. On 21 December 2007, the Single Judge also issued the “Decision on the Starting date of the Timelimit provided for in Rule 155 of the Rules of Procedure in relation to the Decisions Issued on 21 December 2007”.²
3. On 27 December 2007, the Defence filed the “Defence Application for Leave to Appeal the Decision on the Defence Request Concerning Languages” (“Application”).³
4. Pursuant to Regulation 65(3) of the Court and the newly adopted Regulation 33 of the Court, the Prosecution hereby responds to the Application.⁴
5. The Prosecution considers that the Defence has met the requirements for leave to be granted under Article 82(1)(d). Consequently, the Prosecution does not oppose the Application.
6. The Prosecution takes this position on the basis of its independent examination of the issues raised in the Application in light of the requirements of Article 82(1)(d). These requirements do not involve consideration of, or in any way reflect the Prosecution’s position on, the merits of the Decision. If

¹ ICC-01/04-01/07-127.

² ICC-01/04-01/07-128. This Decision provided that, in relation to decisions issued on 21 December 2007, the five day time-limit provided for in Rule 155 began to run on 31 December 2007. According to the jurisprudence of this Chamber, neither the day of the issuance of the decision nor the day of the filing of the application for leave to appeal is counted as part of these five days. See ICC-01/04-01/06-466; see also ICC-01/04-135-tEN, paras. 8-9. This principle applies *mutatis mutandis* to the filing of a response to the application for leave to appeal. Furthermore, the recently adopted Regulation 33(1)(c) provides that: “[w]here the day of notification is a Friday, or the day before an official holiday of the Court, the time limit shall not begin to run until the next working day of the Court.” In addition, Regulation 33(1)(d) states that “[d]ocuments shall be filed with the Registry, at the latest, on the first working day of the Court following expiry of the time limit” (emphasis added).

³ ICC-01/04-01/07-130.

⁴ See footnote 2.

leave to appeal is granted, then the Prosecution will advance its position on the merits of the Decision before the Appeals Chamber.

Application for Variation of Time Limit

7. The Prosecution recognizes that the current document may be viewed as having been filed outside the applicable time time-limit provided for in Regulation 65(3) of the Regulations of the Court. The combined effect of a) the Decision of the Single Judge of 21 December 2007, stating that the five day time-limit provided for in Rule 155 begins to run on 31 December 2007; b) the recent entry into force of the new version of Regulation 33 of the Regulations of the Court, which amends the manner in which the due dates for filings are being calculated; c) the anticipated filing by the Defence of its Application; and d) the fact that the Application was filed during the recess period, led to an uncertainty in the Prosecution's calculation of the date on which the present filing is due.
8. Against this background, the Prosecution requests that, to the extent that this document is determined as being filed outside the applicable time-limit, the Single Judge, by virtue of her authority under Regulation 35(1) of the Regulations of the Court, extend the applicable time limit and accept the Prosecution's response to the Application as being filed within the time limit.

Discussion

a) General procedural considerations

Definition of an issue under Article 82(1)(d) and issue identified in the Application

9. Under Article 82(1)(d), leave to appeal may be granted if the decision "involves an issue which affects the fair and expeditious conduct of the

proceedings ... and for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.” The Appeals Chamber has confirmed that “[a]n issue is constituted by a subject the resolution of which is essential for the determination of matters arising in the judicial cause under examination.”⁵

10. In the Application, the Defence seeks leave to appeal based on the following issue: “The Pre-Trial Single Judge incorrectly found that Mr. Katanga’s competency in French meets the standards of articles 67(1)(a) and (f) of the Statute.”⁶

b) The issue meets the requirements of Article 82(1)(d) of the Statute

11. The Prosecution agrees with the Defence that this issue arises from the Decision.⁷ Although the Prosecution vigorously contests the merits of the Defence’s position on the underlying issue, it agrees that the issue meets the requirements of Article 82(1)(d), warranting examination by the Appeals Chamber.

12. The Prosecution concurs that this issue affects the fair conduct of the proceedings. In particular, the right of an accused to be informed of the charges against him in a language he fully understands and speaks⁸ is an essential part of a fair trial. Failure to communicate to an accused in a language he fully understands⁹ would significantly affect his rights under Article 67 of the Statute, and adversely impact the fair conduct of the proceedings.

⁵ *Situation in the DRC*, Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal, ICC-01/04-168, 13 July 2006, para. 9 (emphasis added).

⁶ Application, para. 10.

⁷ See Decision, paras. 2-6 and “Disposition”.

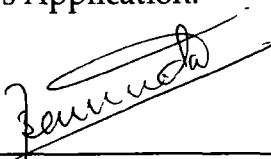
⁸ Application, paras. 12-14.

⁹ Application, para. 18.

13. The Prosecution further agrees that this issue affects the expeditious conduct of the proceedings. In particular, resolution of the issue will prevent unnecessary litigation concerning the level of Mr. Katanga's understanding of the proceedings during trial.¹⁰
14. The Prosecution also agrees that immediate resolution by the Appeals Chamber will materially advance the proceedings by preventing potentially time- and resource-intensive litigation concerning language and interpretation issues.

Conclusion

For the reasons referred to above, the Prosecution respectfully submits no opposition to the Defence's Application.



Luis Moreno-Ocampo
Prosecutor

Dated this 8th day of January 2008
At The Hague, The Netherlands

¹⁰ Application, para. 23.