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No. **ICC-01/14-01/18**
Date: **21 December 2022**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Decision on the Joint Defence Request for Review of the Registrar's
24 November 2022 Decision on Salary Adjustment**

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

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TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaissona*, having regard to Articles 43(1), 64(2) and 67 of the Rome Statute, Rule 20 of the Rules of Procedure and Evidence, Regulation 83 of the Regulations of the Court (the ‘Regulations’), and Regulations 133 and 135 of the Regulations of the Registry (the ‘Registry Regulations’), issues this ‘Decision on the Joint Defence Request for Review of the Registrar’s 24 November 2022 Decision on Salary Adjustment’.

1. On 5 December 2022, the Yekatom Defence and the Ngaissona Defence (jointly, the ‘Defence’) requested that the Chamber (i) set aside the Registrar’s decision on salary adjustment of 24 November 2022 (the ‘Impugned Decision’); (ii) order the Registry ‘to urgently review its calculations of the [Defence members]’ remuneration’; and (iii) order the Registry ‘to use the contingency fund in order to provide the adequate resources to the [Defence members] as necessary’ (the ‘Request’).¹
2. On 16 December 2022,² the Registry responded to the Request. It argues that there is no legal basis for the judicial review of the Impugned Decision by the Chamber, and that the Request should thus ‘be considered inadmissible and rejected in its entirety’.³
3. At the outset, the Chamber notes that the remuneration regime for the defence is regulated by the ‘Registry’s single policy document on the Court’s legal aid system’ (the ‘LAP’).⁴ Importantly, the Chamber notes that the LAP was adopted by the Assembly of States Parties (the ‘ASP’) on 4 June 2013.⁵ Further, it notes that pursuant to Regulation 133 of the Registry Regulations, remuneration under

¹ Request for review of the Registrar’s 24 November 2022 Decision titled “Registrar’s reply to the request for ‘Salary adjustment’” pursuant to regulation 83(4) of the Regulations of the Court and regulation 135(2) of the Regulations of the Registry, ICC-01/14-01/18-1688 (with confidential Annexes A and B, the latter including the Impugned Decision), paras 1, 69.

² The Single Judge invited the Registry ‘to submit observations [to the Request], if any, by the response deadline applicable to the participants’ (email from the Chamber, 6 December 2022, at 17:05).

³ Registry’s Observations on “Request for review of the Registrar’s 24 November 2022 Decision titled ‘Registrar’s reply to the request for Salary adjustment’ pursuant to regulation 83(4) of the Regulations of the Court and regulation 135(2) of the Regulations of the Registry” (ICC-01/14-01/18-1688), ICC-01/14-01/18-1703 (the ‘Registry Observations’) (with one public annex), para. 21.

⁴ LAP, ICC-ASP/12/3, paras 77-128.

⁵ LAP, ICC-ASP/12/3.

the scheme of legal assistance paid by the Court ‘shall accord with the relevant documents adopted or approved by the Assembly of States Parties’.

4. In light of the above, the Chamber notes that any amendments to the terms of the LAP, including the remuneration regime, fall within the purview of the ASP. Accordingly, the Chamber is of the view that the Registry indeed ‘remains bound by the provisions of the current [LAP]’⁶ and thus sees no error in the Impugned Decision.
5. Moreover, the Chamber notes that the Impugned Decision does not concern an individualised and concrete dispute on the scope of legal assistance as defined in Regulation 83 of the Regulations, the calculation and payment of fees or the reimbursement of expenses within the remuneration regime established in the LAP.⁷ Rather, it responds to the defence’s general requests to amend the terms of the LAP. As such, the Chamber does not consider that the Impugned Decision is subject to its review pursuant to Regulation 83(4) of the Regulations or Regulation 135(2) of the Registry Regulations.⁸
6. In any event, the Chamber notes the Registry’s submissions that ‘the Request has already been addressed, with some success, in the adequate political forum’

⁶ Annex B to the Request, ICC-01/14-01/18-1688-Conf-AnxB, p. 2. *See also* Registry Observations, ICC-01/14-01/18-1703, para. 9.

⁷ *See e.g.* Trial Chamber VII, *The Prosecutor v. Bemba et al.*, Decision on Bemba Defence Request for Provisional Legal Assistance, 30 August 2016, ICC-01/05-01/13-1977, para. 10, in which the Single Judge indicated that, in the same way he considered a Registry decision ‘reducing a defence team’s legal assistance to a mere pittance’ to be ‘clearly [...] a decision on the “scope of legal assistance paid” and reviewable under Regulation 83(4)’, he also considered a Registry decision ‘reducing said assistance to zero’ to fall within his competence under Regulation 83(4) of the Regulations. *See further* Pre-Trial Chamber I, *The Prosecutor v. Saif Al-Islam Gaddafi*, Decision on the Defence Request for Review of the Registrar’s Decision on Legal Aid, 24 August 2015, ICC-01/11-01/11-613 concerning the calculation method of payments for legal research employed by the Registrar and the absence of monthly breakdown of payments in relation to language and legal assistance; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Reasons for Review of Registrar’s Decision on Defence resources, Reasons for Review of Registrar’s Decision on Defence resources, 29 October 2014, ICC-01/04-02/06-389 concerning the need for funds for a second legal assistant during the trial phase; Appeals Chamber, *The Prosecutor vs. Mathieu Ngudjolo Chui*, Decision on Mr Ngudjolo’s request for review of the Registrar’s decision regarding the level of remuneration during the appeal phase and reimbursement of fees, 11 February 2014, ICC-01/04-02/12-159 concerning, *inter alia*, the reimbursement of overpaid fees.

⁸ *See also* Registry Observations, ICC-01/14-01/18-1703, paras 12-18. *See further* Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on the Defence’s urgent request for judicial review, 15 December 2022, ICC-01/12-01/18-2443, para. 4.


following defence team members' requests for adjustment of remuneration pursued before the ASP in December 2022.⁹

7. Lastly, and contrary to the Defence's submissions,¹⁰ the Chamber has no reason to believe that the accused's rights have been affected by the current remuneration regime of defence team members under the LAP.


FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request.


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



Judge Péter Kovács



Judge Bertram Schmitt
Presiding Judge



Judge Chang-ho Chung

Dated 21 December 2022

At The Hague, The Netherlands

⁹ See Registry Observations, ICC-01/14-01/18-1703, paras 19-20. See further, in this regard, Decision on the Urgent Joint Defence Motion for an Adjournment and a Suspension of Deadlines, 2 December 2022, ICC-01/14-01/18-1684, para. 5.

¹⁰ See e.g. Request, ICC-01/14-01/18-1688, paras 24-25