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No. ICC-01/14-01/18

Date: 23 March 2023

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 Leave to Appeal the Decision on
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:

The Office of the Prosecutor

Karim A. A. Khan
Mame Mandiaye Niang
Kweku Vanderpuye

Counsel for Alfred Yekatom

Mylène Dimitri
Thomas Hannis
Anta Guissé

Counsel for Patrice-Edouard Ngaïssona

Geert-Jan Alexander Knoops
Richard Omissé-Namkeamaï
Marie-Hélène Proulx

Legal Representatives of Victims

Abdou Dangabo Moussa
Elisabeth Rabesandratana
Yaré Fall
Marie-Edith Douzima-Lawson
Paolina Massidda
Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Pieter Vanaverbeke

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Article 82(1)(d) of the Rome Statute (the ‘Statute’), issues this ‘Decision on the Joint Defence Request for Leave to Appeal the Decision on the Registrar’s 24 November 2022 Decision on Salary Adjustment’.

I. Procedural history

1. On 21 December 2022, the Chamber issued its ‘Decision on the Joint Defence Request for Review of the Registrar’s 24 November 2022 Decision on Salary Adjustment’ (the ‘Initial Request’,¹ the ‘Registrar’s Decision’² and the ‘Impugned Decision’, respectively). It recalls the procedural history set out therein.³
2. On 16 January 2023, the Yekatom Defence and the Ngaïssona Defence (jointly, the ‘Defence’) requested leave to appeal the Impugned Decision pursuant to Article 82(1)(d) of the Statute (the ‘Request’). Specifically, they request leave to appeal three issues, namely:⁴
 - (i) ‘Whether a complaint needs to be individualized and concrete in order to trigger the judicial review mechanism under Regulation 83(4) of the RoC and Regulation 135(2) of the RoR, and if so, does a complaint containing specific calculation of fees with a resulting figure, sent and signed by team members in their individual capacity meet these criteria’ (the ‘**First Issue**’).
 - (ii) ‘Whether the [‘Registry’s single policy document on the Court’s legal aid system’ (the ‘LAP’)] or some of its terms as adopted by the [Assembly of States Parties (the ‘ASP’)] are binding on the Registrar and the Chamber in light of the hierarchy of norms codified at article 21 of the Statute. This further raises the sub-issues of whether the Registrar through regulation 133 RoR has the power to delegate and/or assign responsibility to the ASP for exercising the regulatory powers and undertaking the duties assigned to the

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, 5 December 2022, ICC-01/14-01/18-1688 (with confidential Annexes A and B).

² See Annex B to the Initial Request, ICC-01/14-01/18-1688-Conf-AnxB, including the Registrar’s Decision.

³ Impugned Decision, ICC-01/14-01/18-1711, paras 1-2.

⁴ Joint Defence Request for Leave to Appeal the “Decision on the Joint Defence Request for Review of the Registrar’s 24 November 2022 Decision on Salary Adjustment,” 21 December 2022, ICC-01/14-01/18-1711, ICC-01/14-01/18-1724, paras 1-2, 54.

Registry by the Statute and the RPE, including regulating the management of the resources allocated to the Defence’ (the ‘**Second Issue**’).

- (iii) ‘Whether when assessing the sufficiency of the resources allocated to the Defence, it is reasonable for a Chamber to limit its finding to whether there has been a violation of the rights of the accused instead of also considering any latent or imminent risks of the rights of the accused which the Chamber can yet safeguard’ (the ‘**Third Issue**’).

II. Analysis

3. The Chamber recalls the applicable law governing requests for leave to appeal under Article 82(1)(d) of the Statute, as previously set out by the Chamber.⁵

A. The Second Issue

4. At the outset, the Chamber notes that Defence team members initially requested the Registry to adjust their monthly salaries, arguing that the LAP establishes that defence team members are paid in equivalent to the gross salary of the corresponding category within the Office of the Prosecutor (the ‘Prosecution’), and in particular that they were no longer paid an amount equivalent to their Prosecution counterpart (the ‘Complaints’).⁶
5. The Chamber recalls that the LAP of 2013, as adopted by the ASP, introduced a revised remuneration regime for defence team members based on a net fee scheme according to which net base salaries are applicable to defence team members depending on their professional categories.⁷ The LAP does not provide for mechanisms to adjust or update these net base salaries.
6. By asking the Registrar to ‘adjust [their] monthly salary’ above the maximum amount of net salary established in the LAP, the Defence essentially sought an amendment of the remuneration regime provided for in the LAP as approved by the ASP. The Impugned Decision concluded that the Complaints amounted to a *de facto* request to change the terms of the LAP, a domain which falls within the

⁵ Decision on the Ngaïssona Defence Request for Leave to Appeal the Decision on Restrictions on Contacts and Communications, 22 May 2020, ICC-01/14-01/18-525, paras 15-21.

⁶ See e.g. Annex A to the Initial Request, ICC-01/14-01/18-1688-Conf-AnxA, pp. 2-4.

⁷ Impugned Decision, ICC-01/14-01/18-1711, para. 3; LAP, ICC-ASP/12/3, paras 82-85.

purview of the ASP.⁸ The Chamber therefore considers the Defence's argument that it had not suggested a change of the terms of the LAP 'but merely its application with the correct interpretation'⁹ to be a mere disagreement with the Chamber's findings in the Impugned Decision.

7. Similarly, the Defence's suggestion that the Registrar contravened his responsibilities under the Court's legal framework by refusing to implement their salary demands¹⁰ is also a mere disagreement with the conclusions in the Impugned Decision concerning the applicability of Regulation 133 of the Regulations of the Registry.
8. Accordingly, considering the Defence's submissions to amount to no more than a mere disagreement with its findings, the Chamber does not consider the Second Issue to be an appealable issue.

B. The First Issue

9. The Chamber recalls that in the Impugned Decision, it found that the Registrar's Decision did not concern a dispute on the scope of legal assistance as defined in Regulation 83 of the Regulations of the Court nor on the calculation and payment of fees or the reimbursement of expenses under Regulation 135 of the Regulations of the Registry. Rather, it found that the Defence had challenged the remuneration regime provided for in the LAP as approved by the ASP.¹¹
10. The Chamber thus considers that by arguing that the Initial Request (and the underlying Complaints) did indeed constitute a dispute within the meaning of the abovementioned provisions, the Defence merely disagrees with the Chamber's conclusions in the Impugned Decision. Accordingly, the Chamber does not consider the First Issue to be an appealable issue.

C. The Third Issue

⁸ Impugned Decision, ICC-01/14-01/18-1711, para. 4.

⁹ Request, ICC-01/14-01/18-1724, para. 25.

¹⁰ Request, ICC-01/14-01/18-1724, para. 26.



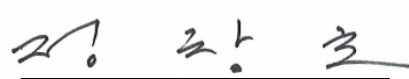
¹¹ Impugned Decision, ICC-01/14-01/18-1711, para. 5.

11. The Chamber notes that in taking the Impugned Decision, it considered its overarching obligations to ensure that the trial is fair and that the rights of the accused are respected pursuant to Articles 64(2) and 67 of the Statute throughout the proceedings before it,¹² irrespective of whether an alleged violation would have taken place in a particular instance or whether there would be ‘latent or imminent risks of the rights of the accused’.¹³
12. Therefore, considering that the Defence merely disagrees with the Chamber and did not articulate a discrete issue for the Appeals Chamber’s resolution, the Chamber rejects the Request with regard to the Third Issue.
13. Having found that none of the issues constitute appealable issues, the Chamber will not address the remaining requirements of Article 82(1)(d) of the Statute.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request.

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

 <hr style="width: 80%; margin: 0 auto;"/> <p>Judge Péter Kovács</p>	 <hr style="width: 80%; margin: 0 auto;"/> <p>Judge Bertram Schmitt Presiding Judge</p>	 <hr style="width: 80%; margin: 0 auto;"/> <p>Judge Chang-ho Chung</p>
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Dated 23 March 2023

At The Hague, The Netherlands

¹² Impugned Decision, ICC-01/14-01/18-1711, para. 7.

¹³ Request, ICC-01/14-01/18-1724, para. 30.