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No. ICC-01/14-01/18

Date: 29 August 2023

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public

**Decision on the Prosecution Request for Leave to Reply to the Ngaiissona Defence
Response to the Seventh Prosecution Submission Request from the Bar Table**

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

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Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Regulation 24(5) and 34(c) of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision on the Prosecution Request for Leave to Reply to the Ngaïssona Defence Response to the Seventh Prosecution Submission Request from the Bar Table’.

1. On 17 May 2023, the Office of the Prosecutor (the ‘Prosecution’) submitted the ‘Prosecution’s Seventh Application for Submission of Facebook Evidence from the Bar Table’ (the ‘Seventh Application’).¹
2. On 21 July 2023, the Ngaïssona Defence (the ‘Defence’) responded to the Seventh Application (the ‘Response’).²
3. On 26 July 2023, the Prosecution requested leave to reply to the Response, seeking to clarify the issue of authenticity of the Facebook evidence (the ‘Request for Leave to Reply’).³ It argues that ‘[t]he Defence’s arguments on the requirement that Facebook items be authenticated through user identification [...] could not have been anticipated by the Prosecution’. It further submits that ‘a limited and focused reply addressing the applicable law would assist the Chamber in its determination of the motion’.⁴
4. On 16 August 2023, the Defence submitted its response to the Request for Leave to Reply (the ‘Response to the Request for Leave to Reply’), seeking its

¹ ICC-01/14-01/18-1874-Conf (with one confidential annex) (public redacted version notified on 8 June 2023).

² Defence Response to the “Prosecution’s Seventh Application for the Submission of Evidence from the Bar Table” ICC-01/14-01/18-1874-Conf, 21 July 2023, ICC-01/14-01/18-1999-Conf (with two confidential annexes). The Chamber extended the deadline to respond to the Seventh Application until 21 July 2023 (*see* Decision on the Ngaïssona Defence Request to dismiss *in limine* ICC-01/14-01/18-1874 and for orders concerning the Prosecution’s prospective bar table applications, 25 May 2023, ICC-01/14-01/18-1884, p. 8).

³ Prosecution’s Request for Leave to Reply to the NGAÏSSONA Defence’s Response to the “Prosecution’s Seventh Application for the Submission of Evidence from the Bar Table”(ICC-01/14-01/18-1874-Conf), (ICC-01/14-01/18-1999-Conf), 26 July 2023, ICC-01/14-01/18-2007-Conf, paras 1-2, 5.

⁴ Request for Leave to Reply, ICC-01/14-01/18-2007-Conf, paras 2-3.

rejection.⁵ It argues that the authenticity of the Facebook evidence is ‘the nature and subject-matter of the Seventh Application itself’ and the issue ‘clearly could have been anticipated by the Prosecution’ as it was raised by the Defence ‘several times in the course of the proceedings, and as early as in the Defence’s opening submissions’.⁶ It further contends that ‘allowing further submissions on the issues would not assist the Chamber in its determination of the Seventh Application’.⁷

5. The Single Judge notes that according to Regulation 24(5) of the Regulations, ‘a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated’.
6. The Single Judge finds that, as argued by the Defence, the issue of authenticity of the Facebook evidence has indeed been raised several times and is not a new issue that the Prosecution could not reasonably have anticipated. The Single Judge therefore finds that the requirements arising from Regulation 24(5) of the Regulations have not been fulfilled. Furthermore, the Single Judge finds that the Chamber will not be assisted by the Prosecution’s additional submissions on this issue at this stage. Accordingly, the Single Judge rejects the Request for Leave to Reply.

⁵ Defence Response to the “Prosecution’s Request for Leave to Reply to the NGAISSONA Defence’s Response to the “Prosecution’s Seventh Application for the Submission of Evidence from the Bar Table” (ICC-01/14-01/18-1874-Conf), (ICC-01/14-01/18-1999-Conf)”, 16 August 2023, ICC-01/14-01/18-2030-Conf, para. 1.

⁶ Response to the Request for Leave to Reply, ICC-01/14-01/18-2030-Conf, paras 6-7, 10, n. 10; Response, ICC-01/14-01/18-1999-Conf, para. 15 *referring to* transcript of hearing, 18 February 2021, ICC-01/14-01/18-T-016-ENG, p. 23, line 9 – p. 25, line 3; 29 March 2021, ICC-01/14-01/18-T-023-CONF-ENG, p. 69, line 4 – p. 70, line 1.

⁷ Response to the Request for Leave to Reply, ICC-01/14-01/18-2030-Conf, para. 1.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Request for Leave to Reply; and

ORDERS the Prosecution and the Ngaiissona Defence to file public redacted versions or request reclassification to public of the Request for Leave to Reply, ICC-01/14-01/18-2007-Conf, and Response to the Request for Leave to Reply, ICC-01/14-01/18-2030-Conf, respectively, within one week of notification of this decision.

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



Judge Bertram Schmitt

Single Judge

Dated 29 August 2023

At The Hague, The Netherlands