

**Cour
Pénale
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**International
Criminal
Court**

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No.: **ICC-01/14-01/18**

Date: **22 April 2024**

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 ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Confidential

**Public Redacted Version of the “Yekatom Defence Observations on the
“Ninth Registry Report on the Implementation of the Restrictions on
Contact for Mr Alfred Yekatom Ordered by Trial Chamber V”, 28 February
2024, ICC-01/14-01/18-2383-Conf-Exp”, 11 March 2024, ICC-01/14-01/18-2401-
Conf-Exp**

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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INTRODUCTION

1. The Defence for Mr Alfred Rombhot Yekatom (“Defence”) hereby provides its observations to the “Ninth Registry Report on the Implementation of the Restrictions on Contact for Mr Alfred Yekatom Ordered by Trial Chamber V” (“Ninth Report”).¹
2. The Defence submits that the telephone calls reported by the Registry between Mr Yekatom and [REDACTED] dated 8 February 2024 have no connection with the present proceedings and are exclusively related to private matters and the current social and political situation in the Central African Republic (“CAR”). Under the circumstances, the reinstatement of random active monitoring of Mr Yekatom’s non-privileged contacts is unwarranted.

PROCEDURAL HISTORY

3. On 25 October 2023, in its “Ninth Decision on Mr Yekatom’s Restrictions on Contacts and Communications in Detention” (“Ninth Decision”),² Trial Chamber V (“Chamber”) amended Mr Yekatom’s contact restrictions, deeming it was no longer necessary or proportionate to maintain random active monitoring of his non-privileged telephone calls and visits and that passive monitoring was sufficient and appropriate.³
4. On 28 February 2024, the Registry filed its Ninth Report raising a matter of potential concern regarding telephone calls dated 8 February 2024 (“Calls”) between Mr Yekatom and [REDACTED] (“Interlocutor”). Following the conversation, the Acting Chief Custody Officer (“ACCO”) decided to remove the Interlocutor from Mr Yekatom’s non-privileged telephone contact and

¹ ICC-01/14-01/18-2383-Conf-Exp. A confidential redacted version was filed simultaneously: ICC-01/14-01/18-2383-Conf-Red.

² ICC-01/14-01/18-2165-Conf.

³ ICC-01/14-01/18-2165-Conf, para. 17.

visitors lists.⁴ The transcripts of the Calls were provided to the Defence in a confidential *ex parte* Annex.⁵

5. On 6 March 2024, the Prosecution provided its observations on the Ninth Report and requested that the Chamber direct the Registry to provide the transcripts of the Calls and the identity of the Interlocutor to their Office. The Prosecution also requested the Chamber to immediately reinstate the random active monitoring of Mr Yekatom's non-privileged telephone calls and visits until the content of the Calls could be assessed to ensure the protection of witnesses and victims and to safeguard the integrity of the proceedings pursuant to Regulation 101(2)(b), (c) and (f) of the Regulations of the Court ("RoC").⁶

SUBMISSIONS

A. Mr Yekatom did not violate his non-privileged contact restrictions

6. The Defence submits that Mr Yekatom's discussions with his Interlocutor solely concerned private matters and the current social and political developments in CAR. The subject of their conversation did not relate to matters that tend to compromise witness security or the integrity of the proceedings and as such, does not constitute a breach of Mr Yekatom's current contact restrictions.
7. As reflected by the transcripts, the discussion between Mr Yekatom and his Interlocutor revolved around [REDACTED] about the social and political situation in CAR.⁷ In the context of the Interlocutor's [REDACTED], the conversation then focused on an individual ("Individual") [REDACTED].⁸ The Interlocutor explained to Mr Yekatom that she confused the Individual with another woman, therefore [REDACTED].⁹ Mr Yekatom then gave his

⁴ ICC-01/14-01/18-2383-Conf-Exp, paras. 8 and 10.

⁵ ICC-01/14-01/18-2383-Conf-Exp-Anx.

⁶ ICC-01/14-01/18-2397-Conf, paras. 3, 5, 6 and 7.

⁷ ICC-01/14-01/18-2383-Conf-Exp-Anx, p. 1, line 10 onwards.

⁸ ICC-01/14-01/18-2383-Conf-Exp-Anx, p. 3, line 52 onwards.

⁹ ICC-01/14-01/18-2383-Conf-Exp-Anx, p. 3, line 67.

Interlocutor some information about the Individual's current living location referring to the fact that she had [REDACTED] where his Interlocutor is living, [REDACTED], [REDACTED].¹⁰ His Interlocutor mentioned having forgotten the Individual's name¹¹ to which Mr Yekatom responded by saying he would open his computer to check.¹² Mr Yekatom then called his Interlocutor back, informed her that the Individual's name is [REDACTED], and gave a further description of the Individual to his Interlocutor to identify her i.e. that she [REDACTED].¹³ The conversation ended soon after that.

8. In light of the above context, the conversations were limited to matters of private nature and to the current social and political situation in CAR and in no way related to the current proceedings. The Defence highlights that Mr Yekatom's Interlocutor is a Central African national, [REDACTED].¹⁴ She meets regularly with [REDACTED] to discuss the political and social situation in CAR in which she is actively involved as [REDACTED].¹⁵ She frequently [REDACTED] discussing current political developments.¹⁶ During their telephone calls, Mr Yekatom and his Interlocutor discuss the social and political situation in CAR which, as recently noted by the Registry, is marked by "[REDACTED]."¹⁷ It is within this context that their conversation focused on the Individual since the Interlocutor wanted to share with [REDACTED] the situation of another CAR national [REDACTED] similarly to herself. Having both forgotten the Individual's name, Mr Yekatom opened his computer for the sole purpose of providing it to his Interlocutor.

¹⁰ ICC-01/14-01/18-2383-Conf-Exp-Anx, p. 3, lines 82-84. See also more generally ICC-01/14-01/18-2383-Conf-Exp-Anx, p. 3, lines 72-88. In this regard, the Defence notes that Mr Yekatom spoke using the present tense and used the word "*actuellement*" four times during the conversation.

¹¹ ICC-01/14-01/18-2383-Conf-Exp-Anx, p. 4, line 97.

¹² ICC-01/14-01/18-2383-Conf-Exp-Anx, p. 4, line 98.

¹³ ICC-01/14-01/18-2383-Conf-Exp-Anx, p. 5, lines 11-15.

¹⁴ ICC-01/14-01/18-2383-Conf-Exp-Anx, p. 2, line 36.

¹⁵ [REDACTED].

¹⁶ ICC-01/14-01/18-2052-Conf-Exp-AnxB.

¹⁷ [REDACTED].

9. The conversation related to the Individual's identity and *current* living situation and was completely disconnected from the events at the heart of these proceedings. Her whereabouts or role in the 2013-2014 events were not discussed. Moreover, Mr Yekatom was not made privy to the Individual's current whereabouts through these proceedings. The information is unrelated and does not form part of the case record. Mr Yekatom is not restricted from discussing news and the current political and security situation affecting the stability of his country. Consequently, no violation of Mr Yekatom's contact restrictions can be alleged.
10. Although the Individual in question is [REDACTED], the fact that Mr Yekatom solely opened his computer to provide a name to his Interlocutor does not constitute interference with the administration of justice, has no impact on the outcome of the proceedings nor the investigations therein, and does not raise any security implications whatsoever for victims, witnesses or other individuals. At no point during the conversation did Mr Yekatom [REDACTED] nor speak about her involvement in the 2013-2014 events.
11. While the Defence deems that the Prosecution's concerns about security implications and the integrity of the proceedings are unfounded and speculative, the Defence does not oppose its request for provision of the transcripts of the Calls and the identity of the Interlocutor¹⁸ and defers to the Chamber's discretion in this regard.

B. The reinstatement of random active monitoring of Mr Yekatom's non-privileged contacts is unwarranted

12. In light of the foregoing, the immediate reinstatement of random active monitoring of Mr Yekatom non-privileged telephone calls and visits is unwarranted.

¹⁸ ICC-01/14-01/18-2397-Conf, para. 5.

13. As recognized by the Chamber,¹⁹ Mr Yekatom is cognizant of his contact restrictions and has demonstrated a proactive attitude in complying with them. Indeed, during the first telephone call, Mr Yekatom stated “*ici on nous dit de ne pas parler de nos dossiers*”.²⁰ In this regard, the Defence notes that Mr Yekatom has previously issued reminders to his contacts about the necessity and importance of the restrictions in place.²¹ Further, as frequently recalled by the Chamber, while Mr Yekatom breached his contact restrictions in the past, his last breach occurred nearly two and a half years ago and the Chamber concluded it did not appear to relate to matters that tend to compromise witness security or the integrity of the proceedings.²²
14. The Defence recalls the Chamber’s observations set out in its Ninth Decision in which it gave regard to the current stage of the trial and the fact that all witnesses called by the Prosecution have been heard, stating that “the risk of interference with the Prosecution witnesses and, consequently, the risk to their safety is now significantly reduced”.²³
15. Further, the current restrictions which uphold passive monitoring pursuant to Regulation 174 of the Regulations of the Registry (“RoR”) are sufficient to ensure the integrity of the proceedings. In any event, the ACCO may monitor telephone calls at random pursuant to Regulation 175 RoR.
16. It therefore follows from the above that the reinstatement of active monitoring of Mr Yekatom’s non-privileged contacts is not necessary nor proportionate, and therefore unwarranted.

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¹⁹ ICC-01/14-01/18-1830-Conf-Exp, paras. 8 and 10.

²⁰ ICC-01/14-01/18-2383-Conf-Exp-Anx, p. 2, line 48.

²¹ ICC-01/14-01/18-1750-Conf-Exp-Anx, lines 31, 33, and 55; ICC-01/14-01/18-592-Conf-Exp-Anx, para. 9.

²² ICC-01/14-01/18-2165-Conf, para. 15. See also ICC-01/14-01/18-1830-Conf-Exp, para. 11 and ICC-01/14-01/18-1148-Conf, paras. 9-10.

²³ ICC-01/14-01/18-2165-Conf, para. 13-14.

17. These Observations are filed on a confidential *ex parte* basis corresponding to the classification of the Ninth Report. A confidential redacted version will be filed forthwith.

RELIEF SOUGHT

18. In light of the above, the Defence respectfully requests Trial Chamber V to take into consideration the present observations and find that there was no violation of Mr Yekatom's restrictions during the telephone calls of 8 February 2024.

RESPECTFULLY SUBMITTED ON THIS 22nd DAY OF APRIL 2024



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