



**Original: English**

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

**Date: 20 August 2024**

**TRIAL CHAMBER V**

**Before:** Judge Bertram Schmitt, Presiding Judge  
Judge Péter Kovács  
Judge Chang-ho Chung  
Judge Beti Hohler, Alternate 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 Yekatom Defence Request for Partial Reconsideration of the  
'Decision on the Sentencing Procedure and Amended Directions on the Conduct  
of the Proceeding'**

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 Ngaiisona*, having regard to Articles 64, 67, 74 and 76 of the Rome Statute (the ‘Statute’), issues this ‘Decision on the Yekatom Defence Request for Partial Reconsideration of the “Decision on the Sentencing Procedure and Amended Directions on the Conduct of the Proceeding”’.

## **I. Procedural history and submissions**

1. On 18 July 2024, the Chamber issued its ‘Decision on the Sentencing and Amended Directions on the Conduct of the Proceedings’ (the ‘Decision’). Therein, the Chamber decided to render any potential decision on sentencing pursuant to Article 76 of the Statute simultaneously with its judgment under Article 74 of the Statute. Consequently, it adopted a procedural calendar for the potential sentencing proceedings, *inter alia*, setting a deadline for requests to present additional evidence for potential sentencing, and scheduling the hearing pursuant to Article 76(2) of the Statute in advance of rendering its judgment.<sup>1</sup>
2. On 2 August 2024, the Yekatom Defence (the ‘Defence’) requested the Chamber to ‘partially reconsider its [Decision] and allow for the submission of additional evidence no later than ten (10) working days following the issuance of the judgment under Article 74 of the Statute’ (the ‘Request’).<sup>2</sup>
3. On 7 August 2024, the Office of the Prosecutor (the ‘Prosecution’) responded to the Request (the ‘Prosecution Response’). While deferring to the Chamber’s discretion regarding the Request as such, it submits that ‘the specific request that the Accused be permitted to submit additional evidence *after* the rendition of the consolidated articles 74 and 76 decision, should be rejected’.<sup>3</sup> Additionally, the Prosecution notes that the Chamber could consider issuing an ‘interim verdict’, ‘setting out the charges and/or counts on which the Chamber finds the Accused’s

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<sup>1</sup> Decision, ICC-01/14-01/18-2600.

<sup>2</sup> Yekatom Defence Request for Partial Reconsideration of ‘Decision on the Sentencing Procedure and Amended Directions on the Conduct of the Proceedings’ (ICC-01/14-01/18-2600), ICC-01/14-01/18-2614, para. 28.

<sup>3</sup> Prosecution’s Response to the ‘Yekatom Defence Request for Partial Reconsideration of ‘Decision on the Sentencing Procedure and Amended Directions on the Conduct of the Proceedings (ICC-01/14-01/18-2600)’ (ICC-01/14-01/18-2614), ICC-01/14-01/18-2618, paras 1, 18.

guilt has been established *before* receiving the Parties' and Participant's submissions and/or evidence relative to sentencing'.<sup>4</sup>

4. On the same day, the Ngaïssona Defence indicated that it does not intend to respond to the Request.<sup>5</sup>
5. On 8 August 2024, the Defence requested leave to reply to the Prosecution Response on the following two issues (the 'Request for Leave to Reply'):
  - a. The Prosecution's proposal for an interim verdict prior to the Article 74 judgment would defeat the purpose of providing targeted additional evidence relevant to sentencing as it would deprive parties of the factual and legal basis for any such conviction ([the] 'First Issue'); and
  - b. The Prosecution's misrepresentation of the Defence's Request for Partial Reconsideration nullifies the Prosecution's Response in that the Defence is seeking to provide additional evidence relevant to sentencing before the issuance of the Article 76 Decision and not after it ([the] 'Second Issue, collectively [the] 'Two Issues').<sup>6</sup>
6. On 12 August 2024, the Prosecution opposed the Request for Leave to Reply.<sup>7</sup>

## II. Analysis

### A. The Request for Leave to Reply

7. The Chamber acknowledges that the Defence could indeed not reasonably have anticipated the Two Issues.<sup>8</sup> However, the Chamber does not consider it necessary to receive further submissions on these issues in order to adjudicate the Request for the following reasons.
8. With regard to the First Issue, the Chamber considers that an 'interim verdict' is not foreseen by the Court's legal framework and that adopting such an additional

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<sup>4</sup> Prosecution Response, ICC-01/14-01/18-2618, paras 15-17.

<sup>5</sup> Email from the Ngaïssona Defence, 7 August 2024, at 17:28.

<sup>6</sup> Request for Leave to Reply to 'Prosecution's Response to the 'Yekatom Defence Request for Partial Reconsideration of 'Decision on the Sentencing Procedure and Amended Directions on the Conduct of the Proceedings (ICC-01/14-01/18-2600)' (ICC-01/14-01/18-2614)', ICC-01/14-01/18-2619, para. 3.

<sup>7</sup> Prosecution's Response to Request for Leave to Reply to "Prosecution's Response to the 'Yekatom Defence Request for Partial Reconsideration of 'Decision on the Sentencing Procedure and Amended Directions on the Conduct of the Proceedings (ICC-01/14-01/18-2600)' (ICC-01/14-01/18-2614)", ICC-01/14-01/18-2625 (the 'Prosecution Response to the Request for Leave to Reply').

<sup>8</sup> The Chamber recalls that according to Regulation 24(5) of the Regulations of the Court, 'a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated'.

procedural step would only delay the proceedings.<sup>9</sup> Therefore, it does not consider it appropriate to adopt this approach.<sup>10</sup> In view of this, and further noting that the Defence already stated its opposition on the record,<sup>11</sup> there is no need for a further reply on the matter.

9. As regards the Second Issue, the Chamber takes note of the fact that the Prosecution Response seems to have misinterpreted the Request and will consider the submissions therein accordingly. The Chamber sees no need to be provided with additional submissions in this respect.
10. In light of the above, the Request for Leave to Reply is rejected.

### **B. The Request**

11. The Defence submits that it seeks reconsideration of the Decision only in relation to the time limit for the submission of additional evidence for potential sentencing.<sup>12</sup> However, the Chamber notes that by virtue of requesting to submit such evidence *after* the issuance of the judgment pursuant to Article 74 of the Statute, the Defence is in fact asking the Chamber to reconsider the core of its Decision – namely the issuance of simultaneous decisions under Articles 74 and 76 of the Statute, in the event of a conviction.<sup>13</sup>
12. The Chamber recalls that reconsideration of a decision is exceptional and should only be done if a clear error of reasoning has been demonstrated or if it is necessary to prevent an injustice.<sup>14</sup>

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<sup>9</sup> *Contra* Prosecution Response, ICC-01/14-01/18-2618, para. 17, which argues that it ‘may advance the expedition of the proceedings’.

<sup>10</sup> The Chamber notes that the Prosecution ‘did not affirmatively seek such relief’, but ‘merely note[d] that it is an avenue open to the Chamber’, *see* Prosecution Response to the Request for Leave to Reply, ICC-01/14-01/18-2625, para. 4.

<sup>11</sup> *See* Request, ICC-01/14-01/18-2614, paras 3, 6.

<sup>12</sup> Request, ICC-01/14-01/18-2614, para. 28.

<sup>13</sup> In this respect, the Chamber notes the Defence’s submissions that ‘Mr Yekatom is entitled to select a bifurcated sentencing procedure’, that ‘it is only “in the event of a conviction”, that a further hearing to hear additional evidence relevant to sentence under Article 76(2) can take place’, and that ‘holding the [Article 76(2)] hearing before would infringe on the accused’s protection against self-incrimination’, *see* Request, ICC-01/14-01/18-2614, paras 8, 12, 17 (footnote omitted), 25.

<sup>14</sup> *See for example* Decision on the Ngaïssona Defence Request for Reconsideration of the Further Directions on the Conduct of the Proceedings, 29 August 2023, ICC-01/14-01/18-2068, para. 4 *with further references*.

13. In this instance, the Chamber considers that the Defence failed to demonstrate any such error. As previously stated<sup>15</sup> and acknowledged by the Defence itself,<sup>16</sup> the Court's legal framework provides for the option of rendering simultaneous decisions under Articles 74 and 76 of the Statute. Where this option is adopted, a chamber logically needs to advance the potential sentencing proceedings – including the hearing of any additional evidence and submissions on potential sentencing – in parallel to the proceedings under Article 74 of the Statute, and *before* rendering its judgment.
14. The Chamber is therefore not persuaded by the Defence's submissions that following this option 'hits a roadblock where either the Prosecution or Defence request to provide additional evidence or submissions relevant to the sentence in the event of a conviction' and that 'it is only "in the event of a conviction", that a further hearing to hear additional evidence relevant to sentence under Article 76(2) can take place'.<sup>17</sup> If that was the case, simultaneous decisions under Articles 74 and 76 of the Statute would essentially never be permitted. Such an interpretation runs counter to the Court's legal framework providing for both options of simultaneous decisions or bifurcated proceedings.
15. To the extent that the Defence seems to argue that the Chamber must hold two hearings,<sup>18</sup> the Chamber further clarifies that, barring exceptional circumstances, Article 76(2) of the Statute obliges chambers to hold only one hearing. Notably, the provision stipulates that a chamber '*may*' hold such hearing on its own discretionary motion and '*shall*' do so if it is seized of a request by the parties. In the Chamber's view, these triggers are to be understood as alternatives. Accordingly, and given that the Chamber already scheduled the hearing

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<sup>15</sup> Decision, ICC-01/14-01/18-2600, para. 2 *with further references*; Decision on the Ngaïssona Defence Request for Leave to Appeal the 'Decision on the Sentencing and Amended Directions on the Conduct of the Proceedings', 2 August 2024, ICC-01/14-01/18-2612 (the 'Leave to Appeal Decision'), para. 9.

<sup>16</sup> *See* Request, ICC-01/14-01/18-2614, paras 2, 12.

<sup>17</sup> Request, ICC-01/14-01/18-2614, para. 2, 17 (footnote omitted).

<sup>18</sup> *See* Request, ICC-01/14-01/18-2614, para. 14, in which the Defence argues that once seized of a request for a hearing under Article 76(2) of the Statute by the defence, a chamber must hold such a further hearing, in addition and irrespective of the one already scheduled on its own motion.

*proprio motu* for 8 to 10 January 2025,<sup>19</sup> there is no obligation to convene a further separate hearing after the issuance of its judgment.

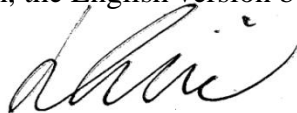
16. Further recalling that the procedural calendar for the potential sentencing proceedings was set without prejudice to the outcome of its decision pursuant to Article 74 of the Statute,<sup>20</sup> the Chamber can also not discern any injustice resulting from its Decision. Accordingly, it dismisses the Defence's arguments that holding the hearing pursuant to Article 76(2) of the Statute before rendering its judgment would infringe on the accused's protection against self-incrimination.<sup>21</sup>
17. Finally, the Chamber notes that the Defence has not shown any new circumstances which would militate in favour of reconsidering the Decision. All factors mentioned in the Request have been duly considered by the Chamber in its Decision.
18. In light of the above, the Chamber finds that the requested reconsideration of the Decision is not warranted. Accordingly, the Request is rejected.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**REJECTS** the Request for Leave to Reply; and

**REJECTS** the Request.

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



**Judge Bertram Schmitt**

**Presiding Judge**



**Judge Péter Kovács**



**Judge Chang-ho Chung**

Dated 20 August 2024

At The Hague, The Netherlands

<sup>19</sup> Decision, ICC-01/14-01/18-2600, para. 10.

<sup>20</sup> Decision, ICC-01/14-01/18-2600, para. 3; Leave to Appeal Decision, ICC-01/14-01/18-2612, para. 11.

<sup>21</sup> See Request, ICC-01/14-01/18-2614, paras 8, 25.