

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-RoC46(3)-01/14

Date: 22 September 2014

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Cuno Tarfusser
Judge Christine Van den Wyngaert

REGULATION 46(3) OF THE REGULATIONS OF THE COURT

Public

Decision on a Request for Reconsideration or Leave to Appeal the "Decision on the 'Request for review of the Prosecutor's decision of 23 April 2014 not to open a Preliminary Examination concerning alleged crimes committed in the Arab Republic of Egypt, and the Registrar's Decision of 25 April 2014'"

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

The Office of the Prosecutor
Fatou Bensouda, Prosecutor

Counsel for Applicant
Mr Ken Macdonald
Mr John Dugard
Mr Rodney Dixon

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

Other

REGISTRY

Registrar
Herman von Hebel, Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court” or the “ICC”) is seized of a request to reconsider or grant leave to appeal the “Decision on the ‘Request for review of the Prosecutor’s decision of 23 April 2014 not to open a Preliminary Examination concerning alleged crimes committed in the Arab Republic of Egypt, and the Registrar’s Decision of 25 April 2014’” (collectively the “Request”).¹ The Request was presented on behalf of “President Mohamed Morsi and the Freedom and Justice Party of Egypt” (the “Applicant”).²

1. On 12 September 2014, the Chamber issued the “Decision on the ‘Request for review of the Prosecutor’s decision of 23 April 2014 not to open a Preliminary Examination concerning alleged crimes committed in the Arab Republic of Egypt, and the Registrar’s Decision of 25 April 2014’”,³ in which it dismissed *in limine* the Applicant’s request in its entirety (the “12 September 2014 Decision”).⁴

2. On 18 September 2014, the Chamber received the Request, in which the Applicant sought reconsideration of the 12 September 2014 Decision or, in the alternative, leave to appeal said decision.⁵

3. The Chamber notes articles 21(1)(a), (2) and (3), and 82(1)(d) of the Rome Statute (the “Statute”), rule 155 of the Rules of Procedures and Evidence (the “Rules”) and regulation 65 of the Regulations of the Court.

4. In the first part of the Request, the Applicant seeks reconsideration of the 12 September 2014 Decision. Referring to two decisions issued by Trial Chamber V in the context of the cases arising from the Situation in the Republic of Kenya, the Applicant argues that the Chamber “can rely on this case law”, which permits reconsideration of past decisions in order to review the 12 September 2014 Decision.⁶

¹ ICC-RoC46(3)-01/14-4.

² ICC-RoC46(3)-01/14-4, para. 1.

³ Pre-Trial Chamber II, ICC-RoC46(3)-01/14-3.

⁴ Pre-Trial Chamber II, ICC-RoC46(3)-01/14-3, p. 7.

⁵ ICC-RoC46(3)-01/14-4, pp. 3, 15-16.

⁶ ICC-RoC46(3)-01/14-4, pp. 5-6.

In developing the arguments regarding the possibility of reconsidering the 12 September 2014 Decision, the Applicant claims further that the Chamber possesses “inherent” and “implied” powers which enable it to review this decision.⁷

5. The Chamber cannot adhere to the position advanced by the Applicant. In its decision of 28 October 2005, this Chamber, albeit in a different composition, explicitly stated that the “instruments governing the Court’s procedure make no provision for such a broad remedy as an unqualified ‘motion for reconsideration’”.⁸ Instead, the Court’s statutory documents make clear that review of the Court’s decisions are permitted only in limited circumstances specified in the Statute and the Rules.⁹ One of the available remedies for a review of the Chamber’s decisions is an interlocutory appeal under article 82(1)(d) of the Statute, which the Applicant, in any event, relies upon as an alternative relief. Beyond that, the Chamber does not envisage such a remedy, and the Pre-Trial Chambers have constantly denied subsequent requests for reconsideration as having no statutory support.¹⁰

6. This conclusion stands despite the Applicant’s argument that Trial Chamber V has previously left some room for the possibility of reconsideration. According to article 21(2) of the Statute the Chamber is not bound by the interpretation or rulings

⁷ ICC-RoC46(3)-01/14-4, pp. 6-9.

⁸ Pre-Trial Chamber II, “Decision on the Prosecutor’s Position on the decision of Pre-Trial Chamber II to redact factual descriptions of crimes from the warrants of arrest, motion for reconsideration, and motion for clarification”, 28 October 2005, ICC-02/04-01/05-60, para. 18. In this context, the Chamber notes that the notion of reconsideration entails revisiting the Chamber’s previous ruling on the basis of the same arguments and circumstances. This practice is discouraged in order to guarantee judicial certainty.

⁹ Pre-Trial Chamber II, “Decision on the Prosecutor’s Position on the decision of Pre-Trial Chamber II to redact factual descriptions of crimes from the warrants of arrest, motion for reconsideration, and motion for clarification”, 28 October 2005, ICC-02/04-01/05-60, para. 18.

¹⁰ Pre-Trial Chamber II, “Decision on the Defence Request for Leave to Appeal”, 13 January 2014, ICC-01/04-02/06-207, para. 39; “Decision on the ‘Defence Request for Leave to Appeal the Urgent Decision on the Urgent Defence Application for Postponement of the Confirmation Hearing and Extension of Time to Disclose and List Evidence (ICC-01/09-01/11-260)’”, 29 August 2011, ICC-01/09-01/11-301, para. 18; “Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute”, 30 May 2011, ICC-01/09-01/11-101, para. 42; “Decision on the ‘Prosecution’s Application for Extension of Time Limit for Disclosure’”, 10 May 2011, ICC-01/09-01/11-82, para. 11; Pre-Trial Chamber I, “Decision on the Prosecution Motion for Reconsideration”, 23 May 2006, ICC-01/04-01/06-123, p. 3; “Decision on the Prosecution Motion for Reconsideration and, in the alternative, Leave to Appeal”, 23 June 2006, ICC-01/04-01/06-166, paras 10-12.

of other Chambers, which might be driven by the particularities and the circumstances of a given case. In the context of the Request *sub judice*, the Chamber does not see a compelling reason to depart from its settled jurisprudence on the matter, and accordingly, the first part of the Request must be dismissed *in limine*. For the above reasons, the Chamber will not reconsider the 12 September 2014 Decision, and therefore, does not find it necessary to entertain the follow-up argument of the applicant regarding the principle of “inherent” or “implied” powers.

7. Turning to the second part of the Request concerning the possibility of granting the Applicant leave to appeal the 12 September 2014 Decision, the Chamber recalls article 82(1)(d) of the Statute, which reads in relevant part:

1. *Either party* may appeal any of the following decisions in accordance with the Rules of Procedure and Evidence:

[...]

(d) A decision that involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings (emphasis added).

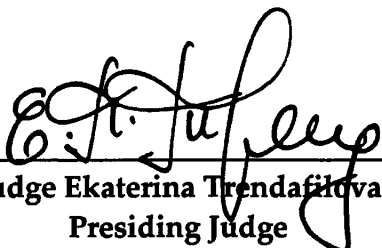
8. In this regard, the Chamber highlights that the right to lodge an interlocutory appeal under article 82(1)(d) of the Statute is confined to parties to the relevant proceedings. In paragraph 11 of the 12 September 2014 Decision, the Chamber indicated that the Applicant lacked *locus standi*, and thus, in light of the Request *sub judice*, the Applicant cannot be considered as a party to the present proceedings within the meaning of article 82(1)(d) of the Statute. It follows that the second part of the Request must also be dismissed *in limine*.

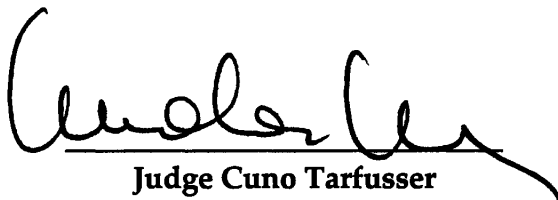
9. The Chamber wishes to point out that although the Applicant’s lack of procedural standing was sufficient for dismissing the Request in its entirety from the outset, the Chamber deemed it necessary to proceed with an examination of the two limbs of the Request for the sake of clarity and procedural fairness.

FOR THESE REASONS, THE CHAMBER HEREBY

dismisses *in limine* the Request in its entirety.

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


Judge Ekaterina Trendafilova
Presiding Judge


Judge Cuno Tarfusser
Judge


Judge Christine Van den Wyngaert
Judge

Dated this Monday, 22 September 2014

At The Hague, The Netherlands