



Original: English

**No. ICC-01/14-01/18
Date: 3 September 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 Leave to Appeal the Decision on
its Request for Partial Reconsideration of the Decision on the Sentencing
Procedure**

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 Ngaïssona*, having regard to Article 82(1)(d) of the Rome Statute (the ‘Statute’), issues this ‘Decision on the Yekatom Defence Request for Leave to Appeal the Decision on its Request for Partial Reconsideration of the Decision on the Sentencing Procedure’.

I. Procedural history

1. The Chamber recalls the procedural history set out in its ‘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”’ (the ‘Initial Decision’,¹ and the ‘Reconsideration Decision’,² respectively).
2. On 26 August 2024, the Yekatom Defence (the ‘Defence’) sought leave to appeal the Reconsideration Decision in relation to the following issue:

whether the Chamber erred in law in finding that no further Article 76(2) hearing would be held after the Article 74 judgment even when the Defence seeks such a hearing to present additional evidence relevant to sentencing in the event of a conviction (the ‘Issue’ and the ‘Request’).³
3. On 30 August 2024, the Office of the Prosecution (the ‘Prosecution’) opposed to the Request.⁴

II. Analysis

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

¹ Initial Decision, 18 July 2024, ICC-01/14-01/18-2600.

² Reconsideration Decision, 20 August 2024, ICC-01/14-01/18-2645, paras 1-6.

³ Request for leave to appeal the ‘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’ (ICC-01/14-01/18-2645)’, ICC-01/14-01/18-2655.

⁴ Prosecution’s Response to the “Defence request for leave to appeal the ‘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’ (ICC-01/14-01/18-2645)’”, ICC-01/14-01/18-2664 (the ‘Response’).

⁵ See 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.

5. The Defence argues, *inter alia*, that the Chamber's finding that it 'was not obliged to hold a further hearing for the purposes of sentencing after the issuance of the Article 74 judgment despite the Defence's trigger of Article 76(2)' is 'premised on a statutory misinterpretation of Article 76 and ignores fundamental canons of construction'.⁶ In the Defence's submission, the fact that the Chamber scheduled a hearing *proprio motu* between 8 and 10 January 2025 is 'immaterial where a party has triggered Article 76(2)'.⁷
6. The Chamber considers that the Issue does not arise from the Reconsideration Decision, but rather from the Initial Decision.⁸ In this respect, it recalls that in its Initial Decision, the Chamber already made clear that it would hold only one hearing, which it scheduled for 8 to 10 January 2025. Furthermore, it considered it appropriate and in line with Article 76(2) of the Statute to schedule this hearing *proprio motu*, without receiving submissions from the parties on the matter.⁹ Consequently, the right avenue for the Defence to challenge the Issue would have been to seek leave to appeal the Initial Decision.
7. Even assuming that the issue arises from the Reconsideration Decision, it is nothing more than a mere disagreement with the Chamber's interpretation of Article 76(2) of the Statute. The Chamber further disagrees with the Defence's contention that the Reconsideration Decision 'is an outlier' in the Court's jurisprudence.¹⁰ It cannot discern any contradiction between its interpretation of Article 76(2) of the Statute and the existing jurisprudence and finds the jurisprudence cited by the Defence in support of its submission¹¹ inapt in the present circumstances.¹²

⁶ Request, ICC-01/14-01/18-2655, paras 5-6.

⁷ Request, ICC-01/14-01/18-2655, para. 8.

⁸ See also Response, ICC-01/14-01/18-2664, para. 2.

⁹ Initial Decision, ICC-01/14-01/18-2600.

¹⁰ Request, ICC-01/14-01/18-2655, para. 13.

¹¹ Request, ICC-01/14-01/18-2655, para. 13, n. 19 referring to 'e.g. ICC-01/05-01/08-3071, ICC-01/04-01/06-2844 and ICC-01/04-01/07-3437'.



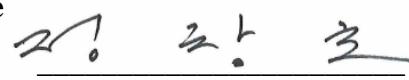
¹² In this regard, the Chamber notes that the decisions cited by the Defence were issued in circumstances significantly different to those of the present case. Specifically, the Chamber notes the following differences: (i) Trial Chamber II, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the timetable and on the sentencing procedure, 26 May 2014, ICC-01/05-01/08-3071: Before rendering this decision, Trial Chamber II had asked the parties for their views as to 'whether the Chamber should (a) take its decisions pursuant to Article 74 of the Statute and, in the event of a conviction, on the

8. Having found that the Issue does not constitute an appealable issue, it is not necessary to address the remainder of the cumulative criteria of Article 82(1)(d) of the Statute. Accordingly, the Chamber rejects the Request.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request.

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

 <hr style="width: 25%; margin: 0 auto;"/> <p>Judge Péter Kovács</p>	 <hr style="width: 25%; margin: 0 auto;"/> <p>Judge Bertram Schmitt Presiding Judge</p>	 <hr style="width: 25%; margin: 0 auto;"/> <p>Judge Chang-ho Chung</p>
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Dated 3 September 2024

At The Hague, The Netherlands

appropriate sentence to be imposed under Article 76 of the Statute separately, or (b) render a single decision pursuant to Article 74 and, in the event of a conviction, Article 76 of the Statute' (*see* Decision on closure of evidence and other procedural matters, 7 April 2014, ICC-01/05-01/08-3035). While the defence for Mr Bemba argued that a single decision would be preferable (*see* Defence Submissions pursuant to the "Decision on closure of evidence and other procedural matters, ICC-01/05-01/08-3035", 22 April 2014, ICC-01/05-01/08-3054-Conf-Red), the Prosecution requested bifurcated proceedings and a hearing pursuant to Article 76(2) of the Statute (*see* Prosecution's Response to "Defence Submissions pursuant to the "Decision on closure of evidence and other procedural matters, ICC-01/05-01/08-3035", 14 May 2014, ICC-01/05-01/08-3065). In light of the Prosecution's 'clear request pursuant to Article 76(2) of the Statute for a *further* sentencing hearing', Trial Chamber II decided to follow a bifurcated approach. (ii) Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Scheduling order concerning timetable for sentencing and reparations, 14 March 2012, ICC-01/04-01/06-2844: It is noted that this order was issued on the same day as the chamber's judgment pursuant to Article 74 of the Statute and indicates that the 'date for the separate sentencing hearing will be fixed in due course'. (iii) Trial Chamber II, *The Prosecutor v. Germain Katanga*, Ordonnance portant calendrier de la procédure relative à la fixation de la peine (article 76 du Statut), 7 March 2014, ICC-01/14-01/18-3437: It is noted that this order was issued on the same day as the chamber's judgment pursuant to Article 74 of the Statute.