

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: **8 February 2021**

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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Confidential

**Prosecution's Response to the Yekatom Defence's Motion Seeking Leave of Rights
of Audience (ICC-01/14-01/18-867-Conf)**

Source: Office of the Prosecutor

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

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Other

I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) defers to Trial Chamber V (“Chamber”) regarding YEKATOM’s Motion Seeking Leave of Rights of Audience.¹ That said, the determination of the Motion raises certain concerns with respect to the conduct of the proceedings.

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(1) of the Regulations of the Court (“RoC”), this Response is filed as “*Confidential*”, as it concerns a filing of the same designation. A “Public Redacted” version will be filed as soon as practicable.

III. SUBMISSIONS

3. As noted, the Prosecution defers to the Chamber in the disposition of the Motion. However, the potential impact on YEKATOM’s article 67(1) rights at trial merits careful attention, set out below.

4. *First*, the right to representation under the Statute has a substantive component which is incumbent on the Chamber to safeguard and to preserve. Although the Motion details the basis for YEKATOM’s request, it does not assert that the persons for whom the right of audience is sought meet the criteria established in the statutory framework to ‘represent’ an accused. This is of particular importance given the nature of the proceedings.

5. *Second*, the extent of the Chamber’s authority to permit the representation of an accused at trial by persons who may not satisfy the requisite criteria under rule 22 of the Rules of Procedure and Evidence (“Rules”) and regulation 67 of the RoC is not

¹ ICC-01/14-01/18-867-Conf (“Request”).

clear. The Motion does not clarify the basis of such authority within the Court's jurisprudence, but refers instead to "prior ICC practice".² Nor, is it clear that rule 22(1)³ can be interpreted to supplant the regulatory criteria for the direct *representation* of an accused, as opposed to assisting in that purpose.⁴

6. Regulation 68 of the RoC provides that "[t]he criteria to be met by [persons who can assist counsel in the presentation of the case before a Chamber] shall be determined in the Regulations of the Registry".⁵ Regulation 124 of the Regulations of the Registry ("RoR") thus sets out the applicable requirements, including the length and nature of prior experience. The language of the provision is mandatory.⁶ Assuming *arguendo* that assistants to counsel may represent an accused before a Chamber — and this is not certain — it appears that of the three proposed candidates for a right to audience, only one is on the Registry's List of Assistants to Counsel.⁷

7. *Third*, to the extent that the Chamber may have the authority to override the mandatory criteria under regulation 124, in addition to interpreting the functions of assistants to counsel as encompassing the direct 'representation' of an accused, this should be approached with circumspection. The right to appropriately qualified counsel is an integral component of a fair trial. Even if upon satisfying itself of such authority, the Chamber must further consider how, if at all, this may appropriately be effected in these proceedings.

² ICC-01/14-01/18-867-Conf, para. 10.

³ Rule 22(1).

⁴ For instance, see ICC-RoR125-01/15-5-Red, para. 32-34 (noting the distinction between assistants of counsel and more senior members of a Defence team).

⁵ Regulation 68 of the RoC.

⁶ See regulation 124 of the RoR (providing that, "[p]ersons who assist counsel in the presentation of the case before a Chamber, as referred to in regulation 68 of the Regulations of the Court, *shall have* either five years of relevant experience in criminal proceedings or specific competence in international or criminal law and procedure") (emphasis added). See regulation 125 of the RoR and regulation 126(1)(a) (underscoring the mandatory nature of the required qualifications of assistants).

⁷ ICC-01/14-01/18-867-Conf, para. 12; *compare* paras. 15 and 18 (which do not substantially detail prior experience).

8. It is not clear that the matter can be resolved *via* the Accused's waiver. While an accused may represent themselves, where they do not, the Statute is silent as to whether a waiver may effectively dispense with the Court's regulatory requirements of certain competencies in respect of particular aspects of their legal representation. Thus, it appears the Court must also satisfy itself as to the modality applied. Should it reach this issue, the Prosecution considers that minimally obtaining an express written waiver would be advisable, given the potential impact on the Accused's right to qualified Counsel in the conduct of the trial proceedings.

IV. CONCLUSION

9. For the above reasons, the Prosecution respectfully defers to the Chamber's discretion in the disposition of the Motion.



James Stewart, Deputy Prosecutor

Dated this 8th day of February 2021
At The Hague, The Netherlands