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

Date: **8 September 2023**

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***

Public

Prosecution's Response to the "Defence Request for Leave to Appeal the 'Decision on the Ngaïssona Defence Request for Reconsideration of the Further Directions on the Conduct of the Proceedings', ICC-01/14-01/18-2068", (ICC-01/14-01/18-2075)

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I. INTRODUCTION

1. Trial Chamber V (“Chamber”) should reject the NGAISSONA Defence’s request¹ for leave to appeal the “Decision on the Ngaissona Defence Request for Reconsideration of the Further Directions on the Conduct of the Proceedings.”² The Request fails to meet the criteria for certification under article 82(1)(d).

2. The proposed issue does not arise from the Impugned Decision as such, but resides in the “Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)”,³ for which appeal was not sought by the Defence within the relevant timeframe. Even if it may be considered as arising from the Impugned Decision, the proposed issue is premised on a mere disagreement and does not constitute an appealable issue within the meaning of article 82(1)(d).

II. SUBMISSIONS

3. The Request seeks leave to appeal the Impugned Decision in relation to the issue of whether “the Chamber erred in reaching the Impugned Decision as it did not take into consideration key relevant factors relating to the Defence’s preparation of its case and its pending investigations”.⁴ It further argues that “the Chamber significantly underestimated both the time needed for the finalisation of the Defence’s preparations prior to the presentation of its case before it and the impact the testimony of the Chamber’s witness will have on the defence case, its final list of witnesses and evidence”.⁵

4. *First*, the Issue does not arise from the Impugned Decision as such, but resides in the Further Directions, which set out the relevant deadlines for the presentation of

¹ ICC-01/14-01/18-2075 (“Request”).

² ICC-01/14-01/18-2068 (“Impugned Decision”).

³ ICC-01/14-01/18-1892 (“Further Directions”).

⁴ See ICC-01/14-01/18-2075, para. 10 (“Issue”).

⁵ See ICC-01/14-01/18-2075, para. 12.

the Defence case, including those that are not being challenged by the Defence.⁶ That decision is final, as the Defence did not seek leave to appeal it within the relevant timeframe. The Request should be rejected on this basis alone.

5. *Second*, even if, *arguendo*, the Issue was considered to arise from the Impugned Decision, it is not ‘appealable’ within the meaning of article 82(1)(d). The Appeals Chamber has held that, “[t]here may be disagreement or conflict of views on the law applicable for the resolution of a matter arising for determination in the judicial process. This conflict of opinion does not define an appealable issue.”⁷ The Request advances nothing more and merely disagrees with the Chamber’s exercise of its broad discretion to give directions on the conduct of proceedings under the established law.

6. The Defence claims that the Chamber “did not take into consideration key relevant factors relating to the Defence’s preparation of its case and its pending investigations”,⁸ and that it “significantly underestimated (...) the time needed for the finalisation of the Defence’s preparations prior to the presentation of its case”⁹ are unfounded or, at best, speculative. Nothing in the Impugned Decision suggests that the Chamber failed to adequately consider the time needed for the finalisation of the Defence’s preparations. To the contrary, the Impugned Decision makes specific mention of this, noting that:

“the arguments presented by the Ngaïssona Defence as regards the need to finalise its investigations and conduct final field missions do not outline how these activities impact on its ability to prepare for the deadlines as set by the Further Directions. While the schedule is dense, hearings during this period are and have been limited, and the specific deadlines have been known to the Defence for three months now”.¹⁰

⁶ ICC-01/14-01/18-1892, paras. 21 and 23.

⁷ Appeals Chamber, *Situation in the DRC*, Judgment on Extraordinary Review, ICC-01/04-168 OA3, 13 July 2006, para. 9.

⁸ See ICC-01/14-01/18-2075, para. 10 (“Issue”).

⁹ See ICC-01/14-01/18-2075, para. 12.

¹⁰ ICC-01/14-01/18-2068, para. 9.

7. Thus, the assertion that the Chamber “did not take into consideration”, or “significantly underestimated”, the time needed by the Defence to finalise its preparations merely disagrees with the Chamber’s exercise of its discretion and, as such, is not an appealable issue.

8. Likewise, the Defence claim that “the Chamber significantly underestimated (...) the impact the testimony of the Chamber’s witness will have on the defence case, its final list of witnesses and evidence”¹¹ also purely disagrees with the Impugned Decision. This factor has also been expressly addressed by the Chamber, which states that it “is equally not convinced that preparations for the questioning of the Chamber witness will occupy Defence resources to an extent that it could justify postponing the current deadlines”.¹² Thus, this Defence assertion is also a disagreement with the Impugned Decision and does not constitute an appealable issue.

III. CONCLUSION

9. For the reasons above, the Chamber should reject the Request.



Karim A. A. Khan KC, Prosecutor

Dated this 8th day of September 2023
At The Hague, The Netherlands

¹¹ See ICC-01/14-01/18-2075, para. 12.

¹² ICC-01/14-01/18-2068, para. 6.