

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **7 November 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
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

Public Redacted Version of the “Defence Response to the “Prosecution’s Observations on the ‘Ninth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Trial Chamber V’”, ICC-01/14-01/18-2154-Conf”, (ICC-01/14-01/18-2169-Conf), filed on 30 October 2023

Source: Defence of Patrice-Edouard Ngaïssona

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

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I. INTRODUCTION

1. On 20 October 2020, the Prosecution filed the “Prosecution’s Observations on the Ninth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Trial Chamber V”(‘Prosecution Observations’).¹ On the basis of the events described in the Ninth Registry Report, which were limited to a single conversation between Mr Ngaïssona and where no case related discussions could be discerned, the Prosecution submits that Trial Chamber V (‘the Chamber’) should reinstate the restrictions which were ordered by the Chamber in its 17 April 2020 Decision.² The Prosecution additionally requests access to the identity of the third party with whom Mr Ngaïssona spoke, the relevant transcripts of their conversation, and the telephone number used.
2. While the Defence recognizes that the Chamber ordered both the Defence and the Prosecution to file its observations on the Ninth Registry Report at the same time, the Defence provides its response pursuant to Regulation 24(1) of the Regulations of the Court, which allows the Defence to respond to the Prosecution Observations. The Defence submits its observations within five days of receiving the Prosecution’s observations, which mirrors the reporting procedure the Chamber put in place for monitoring the restrictions on Mr Ngaïssona’s contacts.³
3. The Chamber should disregard the Prosecution’s request to reinstate the April 2020 Decision on contact restrictions and should similarly deny the Prosecution’s request for access to the information that the Registry submitted *ex parte* to the Defence. The Prosecution has advanced no reasonable argument to reinstate the restrictions and has provided no plausible substantiation to its submissions. Entertaining the Prosecution’s submissions on the matter is not necessary to the aim pursued by the contact restrictions regime and is completely disproportionate

¹ ICC-01/14-01/18-2154-Conf.

² Ibid *citing* the 17 April 2020 Decision, ICC-01/14-01/18-484-Red2.

³ ICC-01/14-01/18-484-Red2, para. 2, 29.

given both the stage of the proceedings and lack of any relationship between the events described in the Ninth Registry Report and the case.

II. CONFIDENTIALITY

4. The present response is filed confidentially since it responds to observations by the Prosecution with the same classification. A public redacted version shall be filed in due course.

III. SUBMISSIONS

5. The Prosecution's arguments to reinstate the April 2020 Decision on contact restrictions lack any proper substantiation as they constitute a complete misrepresentation of Mr Ngaïssona's conduct and ignore the current stage of the proceedings.
6. First, the Prosecution argues that the alleged breach of the contact restrictions is "the latest in a long line of violations."⁴ To demonstrate this supposed "long line of violations", the Prosecution cites only two decisions, both of which refer to Mr Ngaïssona's conduct during the pre-trial phase of the case. Indeed, one decision dates from over five years ago, and was not even made by this Chamber.⁵ While the second decision from which the Prosecution specifically quotes dates from 2021, this quote refers to Mr Ngaïssona's conduct while the case was before Pre-Trial Chamber II.⁶ Indeed, in that same decision, the Chamber noted that no violations were reported since Mr Ngaïssona was not making any calls during that reporting period.⁷ The Prosecution's recourse to violations spanning from five years ago cannot plausibly constitute a "long line of violations" and show that the

⁴ Prosecution Observations, para. 2.

⁵ Prosecution Observations, para. 2 *citing* ICC-01/14-01/18-357-Red2.

⁶ Prosecution Observations, para. 2 *citing* ICC-01/14-01/18-474, para. 22 (specifically referring to Mr Ngaïssona's conduct during the pre-trial phase).

⁷ ICC-01/14-01/18-474, para. 24 ("the Chamber notes that Mr Ngaïssona has not made any calls [REDACTED] and no violations have therefore been reported....").

Prosecution is unable to identify any breach by Mr Ngaïssona in the trial phase of the proceedings.

7. The Prosecution additionally relies on the “Sixth Registry Report on the Implementation of Restrictions on Contact of Mr Ngaïssona Ordered by Trial Chamber V”,⁸ but completely ignores that the Chamber ruled on the events described in that report. In particular, the Chamber found that Mr Ngaïssona was not in breach of the restrictions regime.⁹ The Prosecution can make no showing that Mr Ngaïssona is in regular breach of the contact restrictions imposed on him. Rather, his conduct shows his compliance with them, and this Ninth Registry Report demonstrates a misunderstanding on behalf of the ACCO.
8. Secondly, the Prosecution submits that Mr Ngaïssona has an [REDACTED].¹⁰ However, the Prosecution has not substantiated who are the [REDACTED], and what impact, if any, this [REDACTED] the safety and security of the Prosecution witnesses, all of which it should be noted, have testified.
9. Third, contrary to the Prosecution’s submissions, the fact that it has closed its case is a critical factor in the Chamber’s assessment of the contact restrictions in place.¹¹ Indeed, the Chamber recently observed that circumstances had changed since it issued its last decision on Mr Yekatom’s restrictions because it [REDACTED].¹² It further considered “[REDACTED]”¹³ Therefore, the Chamber found that it was no longer necessary and proportionate to maintain the current restrictions on Mr Yekatom’s calls and visits. This recent finding of the Chamber demonstrates the error of the Prosecution’s reasoning that “the proceedings are far from complete”

⁸ Prosecution Observations, para. 2 *citing* ICC-01/14-01/18-1536.

⁹ ICC-01/14-01/18-1575-Conf, para. 25.

¹⁰ Prosecution Observations, para. 7.

¹¹ Prosecution Observations, para. 8.

¹² ICC-01/14-01/18-2165-Conf, para. 13.

¹³ *Ibid.*, para. 14.

and that reinstating the restrictions of the April 2020 Decision could be considered proportionate and necessary at this stage of the proceedings.

10. It would particularly be egregious to even consider reinstating the restrictions from the April 2020 Decision because of the Ninth Registry Report. As the Defence submitted in its observations, the call Mr Ngaïssona had with [REDACTED] was about a discrete and very private family matter that in no way could be construed to have any link with the present proceedings. Therefore, the Prosecution's request to obtain the identity of the [REDACTED] with whom Mr Ngaïssona spoke, in addition to their number, and the corresponding transcript of their conversation, should be denied. The conversation in question related to a [REDACTED] in Mr Ngaïssona's [REDACTED], and it would be a breach of Mr Ngaïssona's private life to grant the Prosecution access to the requested information.

IV.CONCLUSION

11. The Defence submits that the Prosecution has failed to substantiate its request to reinstate the April 2020 Decision on contact restrictions and that its request to access certain information related to Mr Ngaïssona's private and family life should be rejected.

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 7 November 2023

At The Hague, the Netherlands.