

Pursuant to Trial Chamber V's instruction dated 14 July 2025, this document is reclassified as Public

**Cour
Pénale
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**International
Criminal
Court**

Original: English

No. ICC-01/14-01/18

Date: 23 August 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***

Confidential

**Decision on the Prosecution Request for Partial Reconsideration of the ‘Decision
on the Prosecution Request for Formal Submission of Prior Recorded
Testimonies pursuant to Rule 68(2)(c) of the Rules concerning Witnesses P-0460,
P-0732, P-1779, P-1864 and P-1871’**

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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 Articles 64, 67(1) and 69 of the Rome Statute (the ‘Statute’), and Rule 68(1) and (2)(c) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Prosecution Request for Partial Reconsideration of the “Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(c) of the Rules concerning Witnesses P-0460, P-0732, P-1779, P-1864 and P-1871”’.

I. Procedural history and submissions

1. On 23 July 2024, the Chamber rejected the Prosecution’s request¹ to introduce into evidence the prior recorded testimony of P-1864 pursuant to Rule 68(2)(c) of the Rules (the ‘P-1864 Decision’).² Therein, the Chamber found that measures under Article 56 of the Statute could have been anticipated for this witness, notably ‘in light of the apparent vulnerability of the witness and the strong physical and emotional distress caused by discussions surrounding her evidence’.³
2. On 2 August 2024, the Prosecution filed a request for reconsideration of the P-1864 Decision (the ‘Request’).⁴ The Prosecution argues that reconsideration is warranted to prevent an injustice and that the P-1864 Decision ‘demonstrates a clear error of reasoning which led to the preclusion of significant and admissible evidence’. It notably submits that the P-1864 Decision does not assess whether and which measures under Article 56 of the Statute could have been viably implemented without harming the witness’s well-being. In this context, it argues,

¹ Prosecution’s Request for a Variation of Time Limit pursuant to Regulation 35 to seek the Submission of the Prior Recorded Testimonies of P-0460, P-0732, P-1779, P-1864, and P-1871 pursuant to Rule 68(2)(c), 22 December 2023, ICC-01/14-01/18-2285-Conf (the ‘Rule 68(2)(c) Request’), paras 1, 81 (with one confidential annex, ICC-01/14-01/18-2285-Conf-Anx) (public redacted version notified on 30 July 2024, ICC-01/14-01/18-2285-Red).

² Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(c) of the Rules concerning Witnesses P-0460, P-0732, P-1779, P-1864 and P-1871, ICC-01/14-01/18-2605-Conf, paras 45-46, p. 20.

³ P-1864 Decision, ICC-01/14-01/18-2605-Conf, para. 45.

⁴ Prosecution’s Request for Partial Reconsideration of the “Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(c) of the Rules concerning Witnesses P-0460, P-0732, P-1779, P-1864 and P-1871”, (ICC-01/14-01/18-2605), ICC-01/14-01/18-2613-Conf.

inter alia, that ‘even if the application of article 56 measures could have been anticipated in the abstract, their *necessity* could not have been’.⁵

3. On 14 August 2024, the Yekatom Defence opposed the Request (the ‘Response’), submitting *inter alia* that it fails to demonstrate any error in the reasoning of the P-1864 Decision and any resulting injustice, and thus does not meet the threshold for reconsideration.⁶
4. On the same date, the Ngaïssona Defence informed the Chamber that it ‘fully joins and supports’ the Response.⁷

II. Analysis

5. The Chamber recalls the applicable law as previously set out regarding Rule 68(2)(c) of the Rules.⁸
6. The Chamber further recalls that reconsideration of a decision is exceptional and should be done only if a clear error of reasoning has been demonstrated or if it is necessary to prevent an injustice. New facts and arguments arising since the decision was rendered may be relevant to this assessment.⁹
7. At the outset, the Chamber notes that the Prosecution has not presented any new facts or arguments. The Prosecution’s arguments in the Request consist of a substantial change from its earlier position that it ‘had no information within its possession that would prompt consideration’ of measures under Article 56 of the Statute for P-1864, referring to its discussions with the witness in November 2017, and in September 2022 and August 2023.¹⁰ In the Chamber’s view, such a

⁵ Request, ICC-01/14-01/18-2613-Conf, paras 1-3, 5-10.

⁶ Yekatom Defence Response to ‘Prosecution’s Request for Partial Reconsideration of the “Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(c) of the Rules concerning Witnesses P-0460, P-0732, P-1779, P-1864 and P-1871”, (ICC-01/14-01/18-2605)’, 2 August 2024, ICC-01/14-01/18-2613-Conf, ICC-01/14-01/18-2626-Conf.

⁷ Email from the Ngaïssona Defence, 14 August 2024, at 12:27.

⁸ See P-1864 Decision, ICC-01/14-01/18-2605-Conf, paras 13-16, *referring notably to* First Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(c) of the Rules, 12 July 2023, ICC-01/14-01/18-1975-Conf (the ‘First Rule 68(2)(c) Decision’), paras 29-31 (confidential version notified on the same date, ICC-01/14-01/18-1975-Red).

⁹ See *for example* Decision on the Ngaïssona Defence Request for Reconsideration of the Further Directions on the Conduct of the Proceedings, 29 August 2023, ICC-01/14-01/18-2068, para. 4 *with further references*.

¹⁰ See Rule 68(2)(c) Request, ICC-01/14-01/18-2285-Conf, paras 52, 60.

change of position does not constitute a new fact or argument arising since the decision was rendered.

8. Further, the Chamber considers that the Prosecution failed to demonstrate any clear error of reasoning which would warrant reconsideration of the P-1864 Decision. The Chamber duly considered all factors available, including P-1864's vulnerability and personal circumstances, when it assessed whether the Prosecution had demonstrated that the necessity of (viable) measures under Article 56 of the Statute could not have been anticipated, as required under Rule 68(2)(c) of the Rules.¹¹
9. Finally, the Chamber finds that the Prosecution has not demonstrated that the exceptional avenue of reconsideration is necessary to prevent an injustice.
10. In light of the above, the Chamber finds that reconsideration of the P-1864 Decision is not warranted. Accordingly, the Request is rejected.

¹¹ See P-1864 Decision, ICC-01/14-01/18-2605-Conf, para. 45. See also P-1864 Decision, ICC-01/14-01/18-2605-Conf, para. 13, *referring notably to* First Rule 68(2)(c) Decision, ICC-01/14-01/18-1975-Red, paras 29-31.

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FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request; and

ORDERS the Prosecution and the Yekatom Defence to file public redacted versions of the Request, ICC-01/14-01/18-2613-Conf, and the Response, ICC-01/14-01/18-2626-Conf, respectively, within one week of notification of the present decision.

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



Judge Péter Kovács



Judge Bertram Schmitt

Presiding Judge



Judge Chang-ho Chung

Dated 23 August 2024

At The Hague, The Netherlands