

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/14-01/18

Date: 26 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 *ex parte*, only available to the Yekatom Defence and the Registry

**Decision on the Yekatom Defence Request for Review of the Registrar's 9 July
2024 Decision**

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

The Office of the Prosecutor	Counsel for Alfred Yekatom Mylène Dimitri Thomas Hannis Anta Guissé Sarah Bafadhel Counsel for Patrice-Edouard Ngaïssona
Legal Representatives of Victims	Legal Representatives of Applicants
Unrepresented Victims	Unrepresented Applicants for Participation/Reparations
The Office of Public Counsel for Victims	The Office of Public Counsel for the Defence
States Representatives	<i>Amicus Curiae</i>

REGISTRY	
Registrar Osvaldo Zavala Giler	Counsel Support Section
Victims and Witnesses Unit	Detention Section
Victims Participation and Reparations Section	Other

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 67 of the Rome Statute, Regulation 83 of the Regulations of the Court (the 'Regulations'), and Regulations 133 and 135 of the Regulations of the Registry (the 'Registry Regulations'), issues this 'Decision on the Yekatom Defence Request for Review of the Registrar's 9 July 2024 Decision'.

1. On 9 July 2024, the Registrar issued a decision (the 'Impugned Decision'),¹ in which he, *inter alia*, rejected lead Counsel for Mr Yekatom's (hereinafter 'Counsel') request for reconsideration of the Counsel Support Section's (the 'CSS') decision of 24 May 2024,² in which the CSS had denied Counsel's request for the reimbursement of accommodation costs in The Hague. In the Impugned Decision, the Registrar noted that Counsel's request 'relates to the continuation of an agreement between the CSS and Counsel concluded under the conditions of the former legal aid system', regulated by the 'Registry's single policy document on the Court's legal aid system'³ (the 'Agreement' and the 'Former LAP').⁴
2. On 18 July 2024, Counsel requested that the Chamber (i) reverse the Impugned Decision; and (ii) instruct the Registrar to uphold the Agreement, continuing to reimburse monthly travel and accommodation claims to Counsel (the 'Request').⁵ Further and/or in the alternative, Counsel requested that the Chamber instruct the Registrar to determine that Counsel is not a resident in The Hague and reimburse

¹ Annex J to the Request for Review of the 'Registrar Decision on "Request for Reconsideration of Counsel Support Section Decision of 24 May 2024" submitted by Counsel for Mr Yekatom', ICC-01/14-01/18-2599-Conf-Exp-AnxJ, confidential *ex parte*, only available to the Yekatom Defence and the Registry.

² Annex A to the Request for Review of the 'Registrar Decision on "Request for Reconsideration of Counsel Support Section Decision of 24 May 2024" submitted by Counsel for Mr Yekatom', ICC-01/14-01/18-2599-Conf-Exp-AnxA, confidential *ex parte*, only available to the Yekatom Defence and the Registry.

³ ICC-ASP/12/3.

⁴ Impugned Decision, ICC-01/14-01/18-2599-Conf-Exp-AnxJ, para. 2.

⁵ Request for Review of the 'Registrar Decision on "Request for Reconsideration of Counsel Support Section Decision of 24 May 2024" submitted by Counsel for Mr Yekatom', ICC-01/14-01/18-2599-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence and the Registry, paras 1, 3, 29-45, 60.

her accommodation expenses according to Programme 3 of the legal aid policy⁶ (the 'Current LAP' and the 'Alternate Request', respectively).⁷

3. On 2 August 2024,⁸ the Registry filed its observations on the Request (the 'Registry Observations').⁹
4. Regulation 83(4) of the Regulations provides that decisions by the Registrar on the scope of legal assistance may be reviewed by the relevant Chamber. Regulation 133 of the Registry Regulations further provides that '[r]emuneration of persons acting within the scheme of legal assistance paid by the Court shall accord with the relevant documents adopted or approved by the Assembly of States Parties'.
5. The Registrar, who is vested with the primary responsibility of managing the legal aid scheme, enjoys discretion in deciding on legal aid matters. In reviewing decisions of the Registrar on legal aid pursuant to Regulation 83(4) of the Regulations, the Chamber is limited to assessing whether: (i) the Registrar abused his discretion; (ii) the Registrar's decision is affected by a material error of law or fact; or (iii) the Registrar's decision is manifestly unreasonable.¹⁰
6. The Chamber notes that, at the core of her Request, Counsel seeks the review of the Registry's decision to terminate the Agreement, which provided for the payment of a monthly sum to Counsel for her transportation and accommodation

⁶ ICC-ASP/22/9.

⁷ Request, ICC-01/14-01/18-2599-Conf-Exp, paras 4, 46-58, 60.

⁸ The Single Judge invited the Registry to submit observations on the Request, if any, by 2 August 2024 (email from the Chamber, 23 July 2023, at 09:50).

⁹ Registry's Observations on the "Request for Review of the 'Registrar Decision on 'Request for Reconsideration of Counsel Support Section Decision of 24 May 2024' submitted by Counsel for Mr Yekatom'" (ICC-01/14-01/18-2599-Conf-Exp), ICC-01/14-01/18-2615-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence and the Registry.

¹⁰ See Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on the Defence's urgent request for judicial review of the Registrar's decision on funding during the reduced activity phase, 5 June 2023, ICC-01/12-01/18-2516, paras 16-17; Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on Bemba Defence Request for Provisional Legal Assistance, 30 August 2016, ICC-01/05-01/13-1977, para. 8; Decision on the Defence applications for judicial review of the decision of the Registrar on the allocation of resources during the trial phase, 21 May 2015, ICC-01/05-01/13-955, paras 32-33; Pre-Trial Chamber I, *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Decision on "Request for Review of Registrar's Decision" by the Defence of Saif Al-Islam Gaddafi, 30 July 2013, ICC-01/11-01/11-390-Red, paras 30-31. See Current LAP, ICC-ASP/22/9, para. 103.

costs on the basis of an 'expenses budget', under the terms of the Former LAP.¹¹

The Chamber notes that the Current LAP does not provide for the allocation of resources in the same manner as the Former LAP.¹² In light of this, the Chamber sees no material error in the Registry's decision.

7. The Chamber notes that Counsel's request thus mainly relates to the application of transitional measures. In this respect, it notes Counsel's allegations that the Registrar's failure to apply transitional measures 'to ensure that [...] Counsel suffered no overall disadvantage by the new policy' amounts to an abuse of discretion and that 'the appropriate transitional measure is to restore the [...] Agreement [...]'.¹³
8. In this context, the Chamber observes that the Current LAP provides that 'transitional measures may be taken at the discretion of the Registrar to ensure stability of operating teams and to prevent any negative impact of the transition to the new legal aid system on ongoing judicial proceedings, as well as to take into account any pending reimbursement or compensation for taxes or professional charges for previous years as applicable under the previous legal aid system (ICC-ASP/12/3)'.¹⁴
9. The Chamber notes that the Request does not concern one of the scenarios for which the Current LAP foresees potential transitional measures. In any event, the adoption of such measures is at the discretion of the Registrar. In this context, the Chamber finds that Counsel's arguments do not demonstrate an abuse of discretion, but Counsel merely claims that the Registrar should have exercised his discretion differently. The Chamber therefore considers that there was no abuse of discretion by the Registrar.
10. Finally, in relation to the Alternate Request, the Chamber cannot identify any material error of law or fact in the Registrar's interpretation of the requirements

¹¹ See Request, ICC-01/14-01/18-2599-Conf-Exp, para. 2; Registry Observations, ICC-01/14-01/18-2615-Conf-Exp, paras 26-28; Impugned Decision, ICC-01/14-01/18-2599-Conf-Exp-AnxJ, paras 2-3, *referring to* ICC-ASP/12/3, para. 140.

¹² See Impugned Decision, ICC-01/14-01/18-2599-Conf-Exp-AnxJ, para. 4; Registry Observations, ICC-01/14-01/18-2615-Conf-Exp, paras 22-23, 27-30.

¹³ See Request, ICC-01/14-01/18-2599-Conf-Exp, paras 3, 44.

¹⁴ Current LAP, ICC-ASP/22/9, para. 15.

under Programme 3 of the Current LAP¹⁵ or in its assessment of Counsel's personal situation in this regard.

11. In light of the above, the Chamber finds that the Impugned Decision is not affected by a material error of law or fact, and that there was no abuse of discretion by the Registrar. For the same reasons, the Chamber finds that the Impugned Decision is not manifestly unreasonable. Accordingly, it rejects the Request and the Alternate Request.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request and the Alternate Request.

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



Judge Péter Kovács



Judge Bertram Schmitt

Presiding Judge



Judge Chang-ho Chung

Dated 26 August 2024

At The Hague, The Netherlands

¹⁵ See Current LAP, ICC-ASP/22/9, paras 92-94.