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

Date: **30 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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

Prosecution's Response to the "Defence request for leave to appeal the 'Decision on the Yekatom Defence Request for Partial Reconsideration of the 'Decision on the Sentencing Procedure and Amended Directions on the Conduct of the Proceeding' (ICC-01/14-01/18-2645)'"

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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I. INTRODUCTION

1. Trial Chamber V (“Chamber”) should reject the YEKATOM Defence’s request for leave to appeal¹ the ‘Decision on the Yekatom Defence Request for Partial Reconsideration of the ‘Decision on the Sentencing Procedure and Amended Directions on the Conduct of the Proceeding’ (“Impugned Decision”).² The Issue for which certification is sought – whether the Chamber erred in law in its interpretation of article 76 - does not emanate from the Impugned Decision but rather from the Chamber’s previous decision to consolidate the conviction and sentencing procedure (“Sentencing Decision”)³ - which the YEKATOM Defence failed to seek leave to appeal. As such, there is no appealable Issue for the Chamber to certify the leave regarding the Impugned Decision.

II. SUBMISSIONS

A. The Issue arises from the Sentencing Decision

2. Contrary to what is asserted by the Defence,⁴ the Issue for which the Defence now seeks leave to appeal arises at its origin from the Chamber’s Sentencing Decision -which the Defence failed to seek leave to appeal – preferring instead to seek a partial reconsideration of the latter.⁵ In sum, the Issue does not emanate from the Impugned Decision as the Defence claims and it is now too late to seek leave to appeal the Chamber’s Sentencing Decision.

3. The Defence seeks leave to appeal the Impugned Decision on the following Issue:

¹ ICC-01/14-01/18-2655 (“Request”).

² ICC-01/14-01/18-2645 (“Impugned Decision”).

³ ICC-01/14-01/18-2600 (“Sentencing Decision”).

⁴ ICC-01/14-01/18-2655, paras. 4-5.

⁵ ICC-01/14-01/18-2614 (“Request for Partial Reconsideration”).

- i) Whether the Chamber “erred in law in finding that no further article 76(2) hearing would be held after the article 74 judgment and even when the Defence seeks such a hearing to present additional evidence relevant to sentencing in the event of a conviction”.⁶

4. The Defence’s contention that this Issue emanates from the Impugned Decision is unavailing and misleading.⁷ The Issue clearly arises from the Chamber’s Sentencing Decision – and not the Impugned Decision - insofar as it necessarily calls into question the procedural calendar adopted by the Chamber⁸ and more particularly the legality of its decision to issue simultaneous decisions under articles 74 and 76 of the Statute in the event of a conviction – without allowing for additional submissions / evidence by the parties pursuant to article 76 (after the 8-10 January 2025 hearing).⁹

5. In fact, the Defence’s Request is nothing more than a second kick at the can regarding the same Issue. Instead of seeking leave to Appeal the Chamber’s Sentencing Decision, the Defence first opted – likely for strategic reasons – to seek its partial reconsideration, arguing that article 76 entitled YEKATOM to present additional evidence for sentencing in the event of his conviction.¹⁰ On this basis it requested that the Chamber amend its Sentencing Decision to allow for the submission of additional evidence no later than (10) working days following the issuance of the judgment under article 74 of the Statute”.¹¹

6. In rejecting the Defence’s Request for partial reconsideration, the Chamber critically noted that by asking it to submit additional evidence after the issuance of the judgment pursuant to article 74, the Defence was basically asking it to “reconsider the

⁶ ICC-01/14-01/18-2655, para. 2.

⁷ ICC-01/14-01/18-2655, para. 5.

⁸ ICC-01/14-01/18-2600, paras. 8, 9 and 10.

⁹ ICC-01/14-01/18-2600, paras. 10.

¹⁰ ICC-01/14-01/18-2614, para. 25.

¹¹ ICC-01/14-01/18-2614, para. 28.

core of its Decision – namely the issuance of simultaneous decisions under articles 74 and 76 of the Statute, in the event of a conviction.”¹²

B. The delay for seeking leave to appeal the Sentencing Decision has expired

7. In sum, the Defence cannot now seek to appeal an important component of the procedural calendar adopted by the Chamber in its Sentencing Decision by claiming that it arises from the Impugned Decision when this is clearly not the case. Given that the delay for seeking leave to appeal the Sentencing Decision has already expired¹³ the Defence cannot now ask the Chamber to certify any Issue allegedly arising from it.

III. CONCLUSION

8. For the reasons above, the Prosecution requests that the Chamber reject the Request.



Karim A. A. Khan KC, Prosecutor

Dated this 30th day of August 2024
At The Hague, The Netherlands

¹² ICC-01/14-01/18-2645, para. 11.

¹³ Rule 155 (1) of the Rules of Procedure and Evidence