

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 25 February 2025

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 ROMBHOT YEKATOM
& PATRICE-EDOUARD NGAÏSSONA***

Public redacted version of “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)” submitted by the Registry, 2 August 2024 (ICC-01/14-01/18-2615-Conf-Exp)

Source: Registry

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☐ States' Representatives

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REGISTRY

Registrar

M. Zavala Giler, Osvaldo

☒ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

I. INTRODUCTION

1. Pursuant to Trial Chamber V's ("Chamber") order communicated on 23 July 2024 by way of email,¹ the Registry hereby submits its observations in relation 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) ("Counsel's Request").

II. LEVEL OF CLASSIFICATION

2. In accordance with regulation 23*bis* (2) of the Regulations of the Court ("RoC"), the present observations are classified as confidential, *ex parte*, as they refer to a submission which has the same classification.

III. PROCEDURAL BACKGROUND

3. On 19 December 2023, after the Assembly of States Parties ("ASP") had agreed to adopt the "Legal Aid Policy of the International Criminal Court" (ICC-ASP/22/9),² ("Reformed LAP"), Counsel for Yekatom ("Counsel") requested the continuance of a [REDACTED].³
4. On 21 December 2023, the Counsel Support Section ("CSS") informed Counsel that in accordance with the provisions of the Reformed LAP, in relation to Counsel's travel and accommodation expenses while in The Hague: (1) the resources under programme 3 are only available if Counsel is not residing in The Hague; (2) to receive resources under programme 3, Counsel needs to provide reasoned justifications in the Mission Request, indicating the dates of the stay in The Hague, the costs of travel to The Hague and the

¹ Email from Trial Chamber V Communications dated 23 July 2024 at 9:50.

² ICC-ASP/22/Res.3, Section K.

³ Email from Counsel to CSS, dated 19 December 2023 at 16:03.

accommodation cost; (3) resources are only provided for the actual travel during the month of travel; and (4) programme 3 foresees a ceiling of € 1,200 if the costs for transportation exceed € 400.⁴

5. As of January 2024, Counsel continued to send a “Formulaire de Mission” on a monthly basis to get the reimbursement of her accommodation expenses.
6. On 24 May 2024, the Registry responded to Counsel that based on the Reformed LAP, her requested reimbursement of accommodation costs while living in The Hague could no further be approved.⁵
7. On 3 June 2024, Counsel submitted to the Registrar a “Request for Reconsideration of Counsel Support Section Decision of 24 May 2024”.⁶
8. On 9 July 2024, the Registrar dismissed Counsel’s “Request for Reconsideration of Counsel Support Section Decision of 24 May 2024”⁷ (“Registrar’s Decision”) on the grounds that no clear error had been made in the CSS’ decision and that no new facts or arguments arose from the Request requiring a re-assessment of Counsel’s situation.
9. On 18 July 2024, Counsel filed a Request for Review of the Registrar’s Decision, in which she claims to have been negatively impacted by the Reformed LAP.⁸ Specifically, Counsel submits that:

- The Registrar’s Decision constitutes a decision on the scope of legal

⁴ Email from CSS to Counsel, dated 21 December 2023 at 16:42.

⁵ Email from CSS to Counsel, dated 24 May 2024 at 15:17.

⁶ Request for reconsideration of Counsel Support Section Decision of 24 May 2024, dated 3 June 2024, Annex I.

⁷ Registrar Decision on “Request for Reconsideration of Counsel Support Section Decision of 24 May 2024” submitted by Counsel for Mr Yekatom, dated 9 July 2024, Annex J.

⁸ “Request for reconsideration of Counsel Support Section Decision of 24 May 2024”, ICC-01/14-01/18-2599-Conf-Exp-AnxI.

assistance and is reviewable by this Chamber⁹;

- The Registrar erred in fact and law in concluding that Counsel is resident in The Hague and therefore not eligible to receive reimbursement for her costs of staying there under the Reformed LAP¹⁰; and
- The Registrar erred in fact and law in concluding that Counsel was not put at a disadvantage by the Reformed LAP¹¹

10. For the reasons set out below, the Registry submits that the Registrar did not make a material error of law or fact and did not abuse his discretion. The Registrar's Decision was taken in accordance with the applicable provisions of the Reformed LAP.

IV. APPLICABLE LAW

11. According to resolution ICC-ASP/22/Res.3 issued by the ASP, the Reformed LAP entered into force on 1 January 2024, thereby superseding the Registry's single policy document on the Court's legal aid system (ICC-ASP/12/3) ("Former LAP"), and any interim measures taken to that date.¹²

12. In accordance with paragraph 15 of the Reformed LAP, for teams already operating in a case before the Court, 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.¹³

⁹ Counsel's Request, para. 26.

¹⁰ Counsel's Request, para. 46.

¹¹ Counsel's Request, para. 29.

¹² ICC-ASP/22/Res. 3, para. 89.

¹³ ICC-ASP/22/9, para. 15.

13. Pursuant to Regulation 83(4) of the RoC, “decisions by the Registrar on the scope of legal assistance paid by the Court as defined in this regulation may be reviewed by the relevant Chamber on application by the person receiving assistance.”
14. Pursuant to Regulation 135(1) of the Regulations of the Registry (“RoR”) (“Disputes relating to fees”), “the Registrar shall take a decision on any dispute concerning the calculation and payment of fees or the reimbursement of expenses at the earliest possible juncture and notify counsel accordingly”.
15. According to paragraph 103 of the Reformed LAP, “the standard of judicial review of the Registrar’s decisions concerns the propriety of the outcome of the decision and of the procedure by which it was reached. Without prejudice to the decision making of the Chamber, the judicial review procedure shall take into account the scope of the resources allocated under the Court’s Legal Aid Policy. The review involves an assessment of (a) whether the Registrar has acted without jurisdiction; (b) whether the Registrar’s decision is affected by a material error of law or fact; (c) whether the Registrar abused his or her discretion, for example, by failing to act with procedural fairness, acting in a disproportionate manner, making a decision based on irrelevant factors or failing to take into account relevant factors; or (d) whether the Registrar’s decision is manifestly unreasonable by reaching a conclusion which no reasonable person who has properly applied the legal basis and circumstances of the case to the issue could have reached”.

V. OBSERVATIONS

A. Counsel's Request for Review of the Registrar Decision is not receivable

16. On the basis of Regulation 83(4) of the RoC, Counsel submits that the Registrar's Decision relates to "the scope of legal assistance" and is therefore reviewable by the Trial Chamber under Regulation 83(4) of the RoC.¹⁴

17. Pursuant to Regulation 83(1), the scope of legal assistance paid by the Court shall cover all costs reasonably necessary as determined by the Registrar for an effective and efficient defence, including: "the remuneration of counsel, his or her assistants as referred to in regulation 68 and staff, expenditure in relation to the gathering of evidence, administrative costs, translation and interpretation costs, *travel costs and daily subsistence allowances*" [Emphasis added].

18. Counsel submits that the Registry proposed to "waive their right to claim transportation costs and DSA [REDACTED]¹⁵, which is identified in the Request as an "[REDACTED]"¹⁶

19. At the outset, the Registry wishes to clarify that Counsel retained and used her right to claim transportation costs and DSA for missions conducted in the context of the relevant case before the Court. The mention of "travel costs and daily subsistence allowances" in Regulation 83(1) is only intended as a reference, to the travel costs incurred due to missions conducted in the context of the case.

¹⁴ Counsel's Request, paras. 26-28.

¹⁵ Counsel's Request, para. 8.

¹⁶ Counsel's Request, para. 6.

20. Furthermore, the Registry considers that what is identified by Counsel as an “[REDACTED]”, in essence, refers to a general practice which has been applied uniformly by the Registry, based on an extensive interpretation of the Former LAP. On the basis of such practice, all counsel and associate counsel could request the reimbursement [REDACTED].
21. In light of the above, the Registry submits that the matter at hand does not fall within the ‘scope of the legal assistance’ foreseen in Regulation 83(1), which relates to the “costs reasonably necessary as determined by the Registrar *for an effective and efficient defence*” [Emphasis added].
22. Moreover, the Registrar respectfully submits that the matter at hand does not concern the “reimbursement of expenses” pursuant to Regulation 135(1) of the RoR, but a request for the continuing application of the Former LAP expenses provision (“Expenses Budget”)¹⁷ which does not exist anymore under the Reformed LAP.
23. Under the Reformed LAP, the reimbursement of expenses concerns: Programme 2 (“Experts, Language and Miscellaneous Expenses”)¹⁸ and Programme 3 (“Transportation and Accommodation Expenses, and Compensation for Moving Costs”).¹⁹ It is noted that the reimbursement of accommodation expenses for counsel and associate counsel residing in The Hague does not fall within any of these two categories.
24. For these reasons, the Registry considers that the Request does not constitute a reviewable decision within the scope of Regulation 83(4) of the RoC; and it is, therefore, not receivable.

¹⁷ According to paragraph 142 of the Former LAP (ICC-ASP/12/3): “Costs of accommodation and other expenses related to the stay of counsel and associate counsel in The Hague on official business and deemed reasonably necessary by the Registrar will be covered up to the maximum monthly ceiling of €3,000, upon provision of proof that such costs have actually been incurred”.

¹⁸ ICC-ASP/22/9, paras. 89-91.

¹⁹ ICC-ASP/22/9, paras. 92-94.

25. In any event, without prejudice to the arguments on receivability, should the Chamber consider that the Request is admissible, the Registry makes the following observations on the merits of the Request.

B. The Registrar did not err in fact and law in concluding that Counsel is resident in The Hague for the purpose of the application of the Reformed LAP Programme 3

26. The Request relates to the continuation of what is identified as an “[REDACTED]” between the CSS and Counsel, under the conditions of the Former LAP.

27. The Former LAP provided for the possibility to request, under an Expenses Budget,²⁰ resources for miscellaneous costs on the one hand, and reimbursement for transportation and accommodation costs for Counsel and Associate Counsel on the other hand with a total monthly ceiling of € 3,000.²¹

28. According to the Former LAP, “costs of accommodation and other expenses related to the stay of counsel and associate counsel in The Hague” were provided on an “official business” basis and when deemed reasonably necessary by the Registrar.²²

29. With the entering into force of the Reformed LAP on 1 January 2024, the Expenses Budget of the Former LAP now falls under “Programme 3: Transportation and Accommodation Expenses, and Compensation for Moving Costs” of the Reformed LAP.²³

30. Accordingly, this program:

²⁰ ICC-ASP/12/3, paras. 139-145.

²¹ ICC-ASP/12/3, para. 142.

²² ICC-ASP/12/3, para. 142.

²³ ICC-ASP/22/9.

[...] covers the reimbursement of travel expenses incurred by counsel and associate counsel to and from The Hague or an area within commuting distance from the Court's premises in The Hague. The reimbursement is strictly limited to those costs incurred by counsel and/or associate counsel for accommodation in The Hague on official business and deemed reasonably necessary by the Registry [...].²⁴

31. Moreover, the relevant provision of the Reformed LAP explicitly states that "counsel and associate counsel *are not* reimbursed for the costs of their stay in The Hague if residing in The Hague or an area within commuting distance from the Court's premises in The Hague [...]"²⁵ It is further specified that the term 'commuting distance' "means a distance between the location of the team member's residence and the Court's premises in The Hague that allows the team member to be physically present at the Court to perform the work [...]"²⁶
32. Further to extensive discussions with States Parties in the course of the three years process of building the Reformed LAP, and in light of the necessity to act with extreme caution regarding the use of public funds, the Registry has adopted, under this updated provision, a restrictive interpretation of the "accommodation" related expenses which may be reimbursed to counsel and associate counsel by the Court.
33. Whilst the term "residing" is not defined in the Reformed LAP itself, at paragraph 94, it is however specified that "the onus rests on counsel or associate counsel to inform the Registry on a possession of a residence in The Hague". This means that if counsel or associate counsel lives in The Hague and does not come to The Hague on an "official business" basis only, their accommodation is not reimbursed under Programme 3, as defined in paragraph 94 of the Reformed LAP.

²⁴ ICC-ASP/22/9, para. 92.

²⁵ ICC-ASP/22/9, para. 94. Emphasis added.

²⁶ ICC-ASP/22/9, para. 92, footnote 3.

34. [REDACTED]²⁷.

35. [REDACTED]

36. In this regard, the Registry wishes to make the following observations:

(i) [REDACTED]. On 11 October 2022, CSS requested further clarification as to this part of [REDACTED].²⁸ On the same day, Counsel replied, stating that “the excerpt below is written in the context Dutch law [REDACTED].

(ii) [REDACTED]

(iii) [REDACTED]

37. [REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

²⁷ Counsel’s Request, para. 10.

²⁸ Email from CSS to Counsel on 11 October 2022 at 15:11.

38. Based on the above, it is the Registry's understanding that the reimbursement requests have been based on [REDACTED].

39. The Registry submits that, by receiving reimbursement for her monthly accommodation during five years, Counsel benefited from an extensive interpretation of the Former LAP, [REDACTED].

40. [REDACTED]. Therefore, these circumstances exclude Counsel from the reimbursement of *travel costs* under Programme 3 of the Reformed LAP.

41. For all the reasons set out above, the Registrar submits that the Registry did not err in fact and law in concluding that Counsel is resident in The Hague for the purpose of the application of the Reformed LAP Programme 3.

42. In light of the apparent confusion that transpires from the different documentation that has been submitted by Counsel throughout the years, in relation to her accommodation in the Hague, the Registry reserves its right to look into this matter further, by seeking the necessary verifications of the accuracy of the information provided by Counsel, through appropriate channels.

C. The Registrar did not err in fact and law in concluding that Counsel was not put at a disadvantage by the Reformed LAP

43. As a preliminary matter, the Registry wishes to recall that the defendant in this case, Mr Yekatom, has been put at an advantage by the Reformed LAP. This is undisputed. Under the Reformed LAP, the defence team benefits from a larger team, a higher remuneration and compensation scheme for leave, a unique system in the international criminal jurisdictions. Under the Reformed LAP, the Yekatom defence team is now funded under an amount of [REDACTED] per

month, when under the Former LAP, the team received an average total amount of [REDACTED] per month.

44. The Registry also recalls that the Reformed LAP envisages the possibility to adopt transitional measures, 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.²⁹

45. On this basis, the Registry recalls that “transitional measures” are, by definition, transitional, and therefore, temporary. Counsel for Mr Yekatom is not asking for the application of transitional measures but for the continuation of the Expenses Budget which falls under the Former LAP which is not anymore applicable.

46. In her Request, Counsel submits that the Registrar made three mixed errors of fact and law in his assessment, as follows:

i) On the first error: the starting point of the comparison between the Former LAP and the Reformed LAP included the “interim measures”

47. Counsel submits that the first error is that the Registrar took as a starting point for the comparison between the Former LAP and the Reformed LAP, the remuneration under the Former LAP without the interim measures applied in 2023, which had increased the remuneration by 10%. As a consequence, Counsel submits that “the correct starting point for a comparison must be the remuneration figures post-2023 including the interim measures”.³⁰

48. As a matter of fact, it is noted that the “interim measures” were not part of the Former LAP, and furthermore, were not accorded automatically under the Reformed LAP. When the Registrar informed on 27 January 2023 members of

²⁹ ICC-ASP/22/9, para. 15.

³⁰ Counsel’s Request, para. 33.

all defence and victims' teams practicing before the Court in ongoing cases that interim measures were taken pursuant to a resolution by the ASP,³¹ these interim measures were taken *pending* the entering into force of the Reformed LAP, and became definite only then, as per the discussions held with the States parties.

49. Therefore, the only reasonable starting point for a comparison between the Former LAP and the Reformed LAP excluded interim measures.

ii) On the second error: the Registrar did not take into account [REDACTED] in the restructuring of the resources allocated under the Reformed LAP with reason

50. Counsel submits that "the Registrar failed to take into account that the restructuring of the legal fees in the Reformed LAP [REDACTED]".³²

51. Counsel recognizes that "the monthly remuneration for Counsel on paper has increased from €[REDACTED]". On this basis, Counsel submits that "this has pushed [her] [REDACTED]", without providing any proof of the later.³³ Counsel concedes however that "while it is understood that the Court cannot take into account each Counsel's different income tax liabilities", "the Registrar had an obligation vis-à-vis Lead Counsel for Mr Yekatom to ensure she was not 'overall' disadvantaged in her unique and specific situation".³⁴ For Counsel, this included "[REDACTED]".³⁵

52. On the argument that Counsel has now fallen under a [REDACTED], the Registrar respectfully submits that this is a private matter which is nor related nor the responsibility of the Court. The Reformed LAP cannot reasonably

³¹ ICC-ASP/21/Res. 2, para. 92.

³² Counsel's Request, para. 34.

³³ Counsel's Request, para. 34.

³⁴ Counsel's Request, para. 36.

³⁵ Counsel's Request, para. 36.

capture all the specific circumstances of all the counsel and associate counsel practicing before the ICC in accordance with all the national tax rules of the 124 States Parties.

53. Nevertheless, the Registry wishes to recall the ongoing discussions held by the States Parties on the tax obligations of defence and victims' team members and the adoption of Resolution ICC-ASP/22/Res.3, whereby the Bureau was requested to address the question of whether the existing legal framework provides a legal basis for tax exemptions, to be granted to defence and victims' counsel and persons assisting counsel who are subject to the Reformed LAP.³⁶

iii) On the third error: on the fact that Counsel earns more on an overall monthly basis under the Reformed LAP

54. Counsel submits that the third error comes from the fact that "Lead Counsel appears to earn more on an overall monthly basis under the Reformed LAP".³⁷ According to Counsel, the "'boost' in income comes from the monthly remuneration [sic] provided to counsel under the Reformed LAP".³⁸ As such, Counsel submits that "the Registrar is effectively making Lead Counsel pay for expenses, which she was previously entitled to on a separate budget, out of her monthly remuneration [sic] and thereby denying her a reasonable income".³⁹

55. The Registrar hereby recalls the monthly remuneration for counsel and associate counsel step 4 and the total monthly Lum-sum:

³⁶ Resolution ICC-ASP/22/Res.3, para. 92.

³⁷ Counsel's Request, para. 38.

³⁸ Counsel's Request, para. 38.

³⁹ Counsel's Request, para. 39.

Table 8

Position and Step	Column 1 Monthly Remuneration in € for providing services full- time	Column 2 Monthly Living Cost Lump-sum amounting to 20% of the Remuneration in €	Column 3 Total Monthly Lump-sum in € for full-time services	Column 4 Total Monthly Lump-sum in € incl. 10 % compensation for taxes for full-time services
Counsel/Legal Representative Step 1	9,543	1,908.60	11,451.60	12,405.90
Counsel/Legal Representative Step 2	9,843	1,968.60	11,811.60	12,795.90
Counsel/Legal Representative Step 3	10,193	2,038.60	12,231.60	13,250.90
Counsel/Legal Representative Step 4	10,543	2, 108.60	12,651.60	13,705.90

56. To compensate for the loss of the Expenses Budget for accommodation purposes, some counsel and associate counsel had benefited in the past under the Former LAP, the Registry created a “Monthly Living Cost Lump-sum”, which is now granted to all team members, and which shall be separate from the remuneration for their services provided as part of a defence or victims’ team practicing before the Court.⁴⁰ The purpose of the “Monthly Living Cost Lump-sum” is to assist team members with the payment of costs incurred for the expenses resulting from the exercise of their activities, as part of a defence or victims’ team practicing before the Court.⁴¹

57. In this regard, the Reformed LAP provides a non-exhaustive list of such costs which may relate to: insurances mandatory for the appointment in a defence or victims’ team practicing before the Court, including health and liability insurances; professional training other than that provided by the Court; professional charges for the costs of maintaining a membership in a bar association; or increased living and *accommodation costs* at the location where services are provided (such as increased renting costs, electricity/gas, water, food, internet).⁴²

⁴⁰ ICC-ASP/22/9, para. 133.

⁴¹ ICC-ASP/22/9, para. 134.

⁴² ICC-ASP/22/9, p. 23, footnote 5.

58. The Reformed LAP also provides certain benefits for Counsel and team members by increasing, *inter alia*, the monthly remuneration and providing for a step-level system, with a prerequisite that the practicing teams shall not to be negatively impacted by the Reformed LAP.

59. The Registry therefore submits that it is incorrect to argue that a separate budget for expenses hasn't been created under the Reformed LAP.

60. Furthermore, it is incorrect to state that under the Reformed LAP, Counsel cannot claim mandatory pension payments, health insurance, bar fees⁴³, which now forms part of the automatic monthly compensation Lump-Sum which has been put in place precisely for the purpose of the expenses incurred by team members for their activities at the Court.

D. Conclusion

61. Without prejudice to the decision making of the Chamber, the Registry wishes to recall that the judicial review procedure shall take into account the scope of the resources allocated under the Court's Legal Aid Policy, according to paragraph 103 of the Reformed LAP.

62. In light of the above, the Registry submits that:

- It has adopted an extensive interpretation of the Former LAP and a high flexibility in reimbursement for accommodation costs of Counsel in the past;
- Accommodation costs for counsel and associate counsel residing in The Hague is no longer applicable; and

⁴³ Request, para. 42.

- Counsel has been put on reasonable notice prior to the adoption of the Reformed LAP

63. The Registry respectfully submits that there was no abuse of discretion by the Registrar and that the Registrar's decision is not affected by a material error of law or fact.

64. For the reasons set out above, the Registry respectfully requests Trial Chamber V to:

FIND that Counsel's Request is not receivable pursuant to Regulation 83(4) of the RoC and Regulation 135(1) of the RoR; or, in the alternative:

REJECT Counsel's Request;

FIND that the Former LAP Expenses Budget provision is not applicable anymore under the Reformed LAP;

FIND that Counsel for Mr Yekatom does not fall under the reimbursement of expenses provided under Programme 3 of the Reformed LAP.



Marc Dubuisson, Director of Judicial Services

On Behalf of Osvaldo Zavala Giler, Registrar

Dated this 25 February 2025

At The Hague, the Netherlands