



Original: English

No. ICC-01/14-01/18
Date of original: 5 May 2020
Date: 16 February 2021

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF
THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA

Public redacted version of

**Decision on the Yekatom Defence's Request to Modify the Active Monitoring
Restriction**

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

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Judge Bertram Schmitt, acting as Single Judge on behalf of 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 and 68(1) of the Rome Statute (the ‘Statute’), Regulation 101 of the Regulations of the Court (the ‘Regulations’) and Regulations 173 and 175 of the Regulations of the Registry, issues this ‘Decision on the Yekatom Defence’s Request to Modify the Active Monitoring Restriction’.

1. Upon Mr Yekatom’s surrender to the Court on 17 November 2018, Pre-Trial Chamber II (the ‘PTC II’) issued several decisions pursuant to Regulation 101 of the Regulations restricting his contacts and communications during pre-trial detention (the ‘Pre-Trial Restrictions’). In particular, on 6 March 2020, PTC II decided to provide Mr Yekatom with ‘one 90 minute period of call time, two days per week, subject to random active monitoring’ (the ‘6 March 2020 Decision’).¹
2. On 24 March 2020, following an inquiry by the Prosecution,² the Chamber clarified that Pre-Trial Restrictions remain in place until the Chamber has issued its decision on restrictions.³
3. On 17 April 2020, pursuant to the reporting procedure put in place by PTC II,⁴ the Registry filed its twelfth report on the implementation of the restrictions on Mr Yekatom’s contacts and communications (the ‘Twelfth Registry Report’).⁵
4. On 18 March 2020, the Yekatom Defence (the ‘Defence’) requested certain modifications to the restrictions in place, in particular, to eliminate random active

¹ Decision Pursuant to Regulation 101 of the Regulations of the Court, ICC-01/14-01/18-441-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence and the Registry (confidential redacted version, only available to the Yekatom Defence, the Prosecution and the Registry, notified the same day), p. 7; *see also* para. 20.

² Email from the Prosecution to the Chamber and the Yekatom Defence, 24 March 2020, at 18:06.

³ Email from the Chamber to the Prosecution and the Yekatom Defence, 24 March 2020, at 19:46.

⁴ Decision Pursuant to Regulation 101 of the Regulations of the Court, 15 April 2019, ICC-01/14-01/18-176-Conf-Exp, confidential *ex parte*, only available to the Prosecution and the Registry (confidential redacted version notified the same day, ICC-01/14-01/18-176-Conf-Red), para. 32.

⁵ Twelfth Registry Report on the Implementation of the Restrictions on Contact of Mr Alfred Yekatom Ordered by Pre-Trial Chamber II, ICC-01/14-01/18-481-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence, the Prosecution and the Registry.

monitoring of his telephone contacts and communications during the Coronavirus disease (COVID-19) pandemic (the ‘Coronavirus Pandemic’).⁶

5. On 17 April 2020, after receiving submissions from the Registry⁷ and the Prosecution,⁸ the Chamber issued its decision on this request maintaining the restrictions on Mr Yekatom’s contacts and communications (the ‘Current Restrictions’).⁹
6. According to the Current Restrictions, Mr Yekatom has 90 minute periods of non-privileged telephone calls, on two days per week, which are subject to random active monitoring.¹⁰ In particular, the Chamber decided to maintain the limit of 180 minutes per week for these calls on account of ‘[REDACTED] challenges in increasing the amount of call time in the current situation and the Chamber’s obligation to ensure continuing effective administration of the trial’.¹¹
7. On 28 April 2020, the Defence, in its observations on the Twelfth Registry Report, requested to modify the Current Restrictions to allow ‘telephone calls three days per week for 60 minutes each day, [...] when the ICC building is

⁶ Yekatom Defence Request to Modify the Restrictions on Contacts and Communications to Eliminate Random Active Monitoring during Coronavirus pandemic, 18 March 2020, ICC-01/14-01/18-458-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry (with confidential *ex parte* Annex A, only available to the Prosecution, the Yekatom Defence and the Registry).

⁷ The Chamber directed the Detention Centre to make submissions on the Request. See email from the Chamber to the Detention Section, the Prosecution and the Yekatom Defence, 19 March 2020, at 17:21. Registry Observations on ‘Yekatom Defence Request to Modify the Restrictions on Contacts and Communications to Eliminate Random Active Monitoring during Coronavirus pandemic’, (ICC-01/14-01/18-458-Conf-Exp) and Report on Active Monitoring, ICC-01/14-01/18-467-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry (with confidential *ex parte* Annex I, only available to the Yekatom Defence and the Registry; and confidential *ex parte* Annex II, only available to the Prosecution, the Yekatom Defence and the Registry) (the ‘Registry Observations on Mr Yekatom’s Restrictions’).

⁸ Réponse de l’Accusation à la requête de la Défense ‘to Modify the Restrictions on Contacts and Communications to Eliminate Random Active Monitoring during Coronavirus pandemic’ (ICC-01/14-01/18-458-Conf-Exp), 27 March 2020, ICC-01/14-01/18-465-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry.

⁹ Decision on Mr Yekatom’s Restrictions on Contacts and Communications in Detention, 17 April 2020, ICC-01/14-01/18-485-Conf-Exp, confidential *ex parte* only available to the Yekatom Defence, the Prosecution and the Registry (the ‘17 April 2020 Decision’), p. 16.

¹⁰ 17 April 2020 Decision, ICC-01/14-01/18-485-Conf-Exp, paras 13, 30.

¹¹ 17 April 2020 Decision, ICC-01/14-01/18-485-Conf-Exp, para. 30.

reopened’ (the ‘Request’).¹² The Defence submits that Mr Yekatom continues to have troubles reaching someone during the time that he has to make the telephone calls and then may only try until three or four days later during the next window.¹³ The Defence adds that, as a result, Mr Yekatom is feeling ‘frustrated and helpless’ and has been ‘forced to burden his counsel for daily updates’ on a personal matter.¹⁴ It further submits that while PTC II considered these arguments in extending the time allotted to him for telephone calls from 60 to 90 minutes, ‘it did not solve the problem of gaps between the days that Mr Yekatom is allowed to call home’.¹⁵

8. The Defence argues that since the 6 March 2020 Decision until now, there is a changed circumstance in that ‘[REDACTED]’.¹⁶ The Defence submits that, for this reason, [REDACTED].¹⁷ The Defence argues that this regime ‘mitigates the harm to [Mr Yekatom] while causing no increased risk to witnesses’.¹⁸
9. In respect of active monitoring during the Coronavirus Pandemic, the Single Judge recalls that the Registry was not ‘in favour of extending active monitoring to more than two days a week, as that would be an increase in staff resources during a challenging time’.¹⁹ The Single Judge notes [REDACTED] the Registry team charged with implementing active monitoring orders,²⁰ and particularly the fact that [REDACTED].²¹
10. At the outset, the Single Judge notes Mr Yekatom’s apology for the breach of restrictions and grievances concerning telephone connectivity²² and is

¹² Yekatom Defence Observations on Twelfth Registry Report on the Implementation of the Restrictions on Contacts by Mr. Alfred Yekatom Ordered by Pre-Trial Chamber II, ICC-01/14-01/18-494-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence, the Prosecution and the Registry, para. 10.

¹³ Request, ICC-01/14-01/18-494-Conf-Exp, para. 6.

¹⁴ Request, ICC-01/14-01/18-494-Conf-Exp, para. 7.

¹⁵ Request, ICC-01/14-01/18-494-Conf-Exp, para. 8.

¹⁶ Request, ICC-01/14-01/18-494-Conf-Exp, para. 9.

¹⁷ Request, ICC-01/14-01/18-494-Conf-Exp, paras 9-10.

¹⁸ Request, ICC-01/14-01/18-494-Conf-Exp, para. 11.

¹⁹ Registry Observations on Mr Yekatom’s Restrictions, ICC-01/14-01/18-467-Conf-Exp, para. 20.

²⁰ Registry Observations on Mr Yekatom’s Restrictions, ICC-01/14-01/18-467-Conf-Exp, para. 17.

²¹ Registry Observations on Mr Yekatom’s Restrictions, ICC-01/14-01/18-467-Conf-Exp, para. 17.

²² Request, ICC-01/14-01/18-494-Conf-Exp, paras 2-3, 6-7.

appreciative of them. However, in light of the recent developments,²³ the Single Judge is not persuaded by Mr Yekatom's argument that '[REDACTED]'.²⁴

11. The Single Judge is of the view that, irrespective of whether there will be an opening of the Court's main building, the requested three days of monitoring are not feasible at this point in time. First, even if the building is open, this does not mean that all staff will automatically return. [REDACTED]. Second, the Single Judge notes that [REDACTED]. [REDACTED] the Registry would possibly not be able to ensure active monitoring at all. This could potentially limit Mr Yekatom from communicating via telephone calls. Therefore, the Single Judge considers that the maintenance of the Current Restrictions is also necessary in order to ensure that Mr Yekatom can exercise the right to contact his family and other persons. Accordingly, the Request is rejected.
12. The Single Judge stresses that the Chamber remains cognisant of Mr Yekatom's right to communicate with his family and other persons and acknowledges its obligation to regularly review all restrictions in place and will do so where circumstances change. In order to enable the Chamber to make a reassessment, if necessary, the Single Judge instructs the Detention Section to inform the Chamber about any substantial changes in temporary measures concerning the functioning of the Detention Centre presently in place in response to the state of public health in the host State.

FOR THESE REASONS, SINGLE JUDGE HEREBY

REJECTS the Request; and

ORDERS the Detention Section to inform the Chamber about any changes in the temporary measures made in response to the state of public health in the host State, which are currently in place in the detention centre.

²³ Email from the Crisis Management Team to ICC Staff, 1 May 2020, at 13:07.

²⁴ See Request, ICC-01/14-01/18-494-Conf-Exp, para. 10.

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

A handwritten signature in black ink, appearing to read 'Bertram Schmitt', is written over a horizontal line.

Judge Bertram Schmitt

Single Judge

Dated 16 February 2021

At The Hague, The Netherlands