

ANNEX 34

PUBLIC

From: Trial Chamber V Communications
Sent: 13 January 2022 16:20
To: [REDACTED] Trial Chamber V Communications
Cc: Office of the Director DJSS; [REDACTED] Dimitri, Mylene; D29 Yekatom Defence Team; Chamber Decisions Communication; Associate Legal Officer-Court Officer
Subject: Chamber's order in relation to the Yekatom Defence's urgent request to access to meet Mr. Yekatom at the Detention Center

Dear colleagues from the Registry,

The Single Judge takes note of the below Yekatom Defence communication and instructs Registry to provide its observations thereto by 17:30 today.

Kind regards, TC V

From: [REDACTED]
Sent: 13 January 2022 15:24
To: Trial Chamber V Communications [REDACTED] >
Cc: Office of the Director DJSS [REDACTED] >; [REDACTED]
 Dimitri, Mylene [REDACTED] >
Subject: Urgent request to access to meet Mr. Yekatom at the Detention Center

Dear Trial Chamber V,

It is with the regretful sense of losing precious time that should be dedicated to Mr YEKATOM's defence work, that I am obligated to seize the Chamber of a difficulty with the Detention facility which has an impact on the fundamental right of Mr. YEKATOM to speak freely with his lawyers ahead of the next block of witnesses. The regret is even deeper because it's the first time I'm addressing officially the Chamber, and quite frankly I wish it would be on an issue more in line with the substance of the case.

For the preparation of the hearings to come, several sessions of work have been scheduled for every morning of the week of 10th-14th January 2022 between M. YEKATOM and myself accompanied by the linguistic assistant, [REDACTED]. These work sessions are in direct link with the testimony of the witnesses scheduled to start testifying next Monday. Unfortunately, access to the detention facility has been denied to me today.

I am aware that usually issues on detention facility matters should be addressed at the administrative level. However, I took into consideration the jurisprudence of the Chamber when it comes to the statutory rights of the Accused, as is his right to consult freely with his lawyer. On 7 December 2021, Mr YEKATOM's lead Counsel addressed difficulties meeting with her client and the President of the Chamber has considered that issue that affects the time and facilities statutory right of an accused is an issue that is "quite important" and "urgent". (ICC-01/14-01/18-T-085-CONF-ENG ET 07-12-2021 55/94 SZ T, p. 54.)

The Defence is currently facing a similar difficulty. The reason argued to deny my access by the ICC detention staff on the motive is that the "metal detector activated" 3 days in a row. It must be said, and again it's a pity that we have to address such prosaic issues in submissions, that the only reason that the detector activates is not because there was any security breach of security from my part but because I happen to wear [REDACTED].

Since the beginning of the week, I have explained the issue and complied with the protocol which is to submit myself to the body search by a female staff of the detention facility at the entrance on the main building. The body search allowed the security officers to confirm that no breach of security had been done on my side, and that the source of the metal activation was indeed that specific item of clothing. I must say that I've been a lawyer for more than 20 years now, and I've never been denied access to any detention facility in the world for that reason, nor has it prevented me to take a plane or enter a Court building.

To access the ICC detention center, there is a [REDACTED] security check guarded by the Dutch detention administration at the entrance of the main building, [REDACTED]. It means there is no way that any dangerous or threatening object could be hidden by me [REDACTED]. Monday, Tuesday and Wednesday, after the body search, I could access the ICC detention facility without any problem. Not today.

To be complete I have to add that when I asked specifically who opposed my access, the Dutch woman staff [REDACTED] who body searched me the day before told me that it was the ICC staff. The national security check point [REDACTED] who asked them specifically to deny me the access without even body searching me. She was quite sorry because she was apparently ready to do the body search and said that I should file a complaint because it was quite intimidating to face this kind of situation.

In the past, female members of defence teams have faced similar difficulties after the change of the detector machine which is apparently not adapted to deal with the growth of female staff in the defence teams. The way it has been addressed so far is neither consistent with the non-discrimination rules that should apply in a UN environment neither properly balanced with the superior right of the Accused to have access to his lawyers in accordance with article 67 (1) (b) of the Statute.

A body search is not nice but it's a proper remedy balancing the need for security and the rights of the Accused to be visited by the lawyers of their choice as long as there are not wearing any dangerous item, which was definitely not the case.

I submit that, if this rule indeed exists – meaning the denial of access to a lawyer who has activated the metal detectors but complies with body search and hand metal detector that shows that there is no breach of security – it is in conflict with the more important right of the Accused to be able to prepare his case with his legal team.

Again, I am very sorry to approach the Chamber for the first time for such an issue but tomorrow is the last possible day to go visit our client in detention and it appears that our attempt to solve the matter directly had failed and won't be solved in the near future when another meeting is scheduled tomorrow morning with Mr YEKATOM.

In a summary of the Detention Center Rules and Procedures for Members of Defence teams circulated in October 2014 by the then Chief Custody officer, it is stated :

In accordance with regulation 181 of the Regulations of the Registry, "all persons entering the Detention Centre shall be subject to security checks". [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].”

(Summary of detention Center rules and procedures for Defence teams, 2 October 2014.)

Nobody refused to comply with the security checks, and the hand metal detector which was used with the body search did not reveal anything suspect or dangerous. In accordance to that summary - the only one available to the Defence - there is no reason why the access was denied at such a critical time of the preparation of Mr YEKATOM's defence work.

For these reasons, we respectfully seek the help of the Chamber to order the ICC detention facility center to give access to his lawyers who submit themselves to the security checks provided.

Kind regards,

[REDACTED]

This message contains information that may be privileged or confidential and is the property of the International Criminal Court. It is intended only for the person to whom it is addressed. If you are not the intended recipient, you are not authorized by the owner of the information to read, print, retain copy, disseminate, distribute, or use this message or any part hereof. If you receive this message in error, please notify the sender immediately and delete this message and all copies hereof.

Les informations contenues dans ce message peuvent être confidentielles ou soumises au secret professionnel et elles sont la propriété de la Cour pénale internationale. Ce message n'est destiné qu'à la personne à laquelle il est adressé. Si vous n'êtes pas le destinataire voulu, le propriétaire des informations ne vous autorise pas à lire, imprimer, copier, diffuser, distribuer ou utiliser ce message, pas même en partie. Si vous avez reçu ce message par erreur, veuillez prévenir l'expéditeur immédiatement et effacer ce message et toutes les copies qui en auraient été faites.