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No. ICC-01/14-01/18

Date: 29 August 2023

TRIAL CHAMBER V

**Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public

**Decision on the Ngaïssona Defence Request for Reconsideration of the Further
Directions on the Conduct of the Proceedings**

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

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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(2) and 67 of the Rome Statute, issues this ‘Decision on the Ngaïssona Defence Request for Reconsideration of the Further Directions on the Conduct of the Proceedings’.

1. On 29 May 2023, the Chamber issued its Further Directions on the Conduct of the Proceedings (the ‘Further Directions’).¹ In these Further Directions, the Chamber set 17 November 2023 as time limit for the Defence teams (the ‘Defence’) to (i) file their final lists of witnesses and of evidence; (ii) provide witness statements or summaries of the anticipated testimony for all witnesses; (iii) file any applications pursuant to Rule 68(2) and (3) of the Rules of Procedure and Evidence (the ‘Rules’); and (iv) complete disclosure of all items it intends to use during its evidence presentation.² It further set 11 December 2023 as the date on which the Defence is to call its first witness.³
2. On 21 July 2023, the Ngaïssona Defence filed a request for reconsideration of the Further Directions in relation to the above-mentioned deadlines, asking that the time limit of 17 November 2023 be moved to 15 December 2023, and the date of 11 December 2023 to 22 January 2024 (the ‘Request’).⁴ The Ngaïssona Defence argues that (i) its preparation for the presentation of a Defence case requires considerable time and resources that it is currently compelled to allocate to other tasks; (ii) the extension requested will not unduly delay the proceedings and is without prejudice to the timely adjudication of the case; and (iii) the extension is

¹ Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence), ICC-01/14-01/18-1892.

² Further Directions, ICC-01/14-01/18-1892, para. 21.

³ Further Directions, ICC-01/14-01/18-1892, para. 23.

⁴ Defence Request for Reconsideration of the “Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)” (ICC-01/14-01/18-1892), 29 May 2023, ICC-01/14-01/18-1997-Conf-Exp, confidential *ex parte*, only available to the Ngaïssona Defence (confidential *ex parte*, redacted version, only available to the Ngaïssona Defence and the Prosecution, and confidential redacted version notified the same day, ICC-01/14-01/18-1997-Conf-Exp-Red and ICC-01/14-01/18-1997-Conf-Red).

warranted to mount an effective defence and thus appropriate to prevent an injustice.⁵

3. On 27 July 2023, the Office of the Prosecutor (the ‘Prosecution’) responded, deferring to the discretion of the Chamber, but arguing that it would need at least five weeks between the mentioned deadlines to have sufficient time to prepare adequately for the testimonies of the first Defence witnesses.⁶
4. The Chamber recalls that reconsideration of a decision is exceptional and should be done only if a clear error of reasoning has been demonstrated or if it is necessary to prevent an injustice.⁷
5. The Chamber takes due note of the arguments presented by the Ngaiissona Defence as to how its resources are currently occupied. However, for the reasons below, the Chamber is of the view that postponing the deadline and date as requested by the Ngaiissona Defence is not ‘necessary to prevent an injustice’.⁸
6. First, the Prosecution presentation of evidence is in fact ending with the end of hearing block 24, at the end of August 2023. No further preparation for the testimony of any Prosecution witnesses is therefore required from the Defence.

⁵ Request, ICC-01/14-01/18-1997-Conf-Red, para. 3.

⁶ Prosecution’s Response to the Ngaiissona Defence’s Request for reconsideration of the “Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)” (ICC-01/14-01/18-1892), ICC-01/14-01/18-2008-Conf, paras 1-2.

⁷ Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on Defence request for reconsideration of Decision on requests related to the submission into evidence of Mr Al Hassan’s statements, 23 November 2022, ICC-01/12-01/18-2414, para. 7; Trial Chamber I, *The Prosecutor v. Ali Muhammad Ali Abd-al-Rahman (‘Ali Kushayb’)*, Decision on Defence request for reconsideration of “Decision on Defence submissions on cooperation with Sudan”, 29 March 2022, ICC-02/05-01/20-650-Conf (public redacted version notified the same day), para. 10; Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on Defence request for reconsideration and, in the alternative, leave to appeal the ‘Decision on witness preparation and familiarisation’, 9 April 2020, ICC-01/12-01/18-734, para. 11; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Decision on Defence request seeking partial reconsideration of the ‘Decision on Defence request for admission of evidence from the bar table’, 22 February 2018, ICC-01/04-02/06-2241, para. 4; Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Request for Reconsideration of the Order to Disclose Requests for Assistance, 15 June 2016, ICC-02/04-01/15-468, para. 4; Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on Defence Request for Reconsideration of or Leave to Appeal ‘Decision on “Defence Request for Disclosure and Judicial Assistance”’, 22 September 2015, ICC-01/05-01/13-1282, para. 8; Trial Chamber V(A), *The Prosecutor v. William Samoei Ruto & Joshua Arap Sang*, Decision on the Sang Defence’s Request for Reconsideration of Page and Time Limits, 10 February 2015, ICC-01/09-01/11-1813, para. 19; Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on the defence request to reconsider the “Order on numbering of evidence” of 12 May 2010, 30 March 2011, ICC-01/04-01/06-2705, para. 18.

⁸ See Request, ICC-01/14-01/18-1997-Conf-Red, para. 30.

At the same time, the preparation required by the Ngaïssona Defence for the questioning of the three witnesses to be called by the common legal representatives of participating victims in September is likely to be limited, as two of these witnesses concern a count with which Mr Ngaïssona is not charged. The Chamber is equally not convinced that preparations for the questioning of the Chamber witness will occupy Defence resources to an extent that it could justify postponing the current deadlines.

7. Second, the Ngaïssona Defence has by now responded to the pending applications under Rule 68(2)(c) and (d) of the Rules. Consequently, its resources can be deployed for other matters.
8. Third, the Chamber has granted the Defence various extensions of time to respond to the pending applications to submit evidence ‘from the bar table’ presented by the Prosecution.⁹ When granting these extensions, the Chamber had already taken into account the arguments as to the workload of the Defence at this stage, with a view to ensuring that the Defence can use their resources also to prepare for the presentation of any evidence by the Defence.
9. Fourth, and finally, the arguments presented by the Ngaïssona Defence as regards the need to finalise its investigations and conduct final field missions do not outline how these activities impact on its ability to prepare for the deadlines as set by the Further Directions. While the schedule is dense, hearings during this period are and have been limited, and the specific deadlines have been known to the Defence for three months now. Moreover, the fact that the Defence would be faced with having to meet certain deadlines in preparation of its presentation of evidence could not have come as a surprise after more than two years of presentation of evidence by the Prosecution.
10. In light of the above, the Request is rejected.

⁹ See, for example, Decision on the Defence Requests for Extension of Time to Respond to Bar Table Applications, 4 July 2023, ICC-01/14-01/18-1960; email from the Chamber, 10 July 2023, at 12:42; email from the Chamber, 11 August 2023, at 18:15; email from the Chamber, 24 August 2023, at 17:23.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request; and

ORDERS the Ngaïssona Defence and the Prosecution to file public redacted versions of the Request, ICC-01/14-01/18-1997-Conf-Exp, and the Response, ICC-01/14-01/18-2008-Conf, respectively, within one week of notification of the present decision.

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



Judge Bertram Schmitt

Presiding Judge



Judge Péter Kovács



Judge Chang-ho Chung

Dated 29 August 2023

At The Hague, The Netherlands