

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **20 May 2019**

PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Confidential

**Prosecution's Response to Alfred YEKATOM's Request for leave to appeal
Decision on the Request for Reconsideration of the Order on Reclassification**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Mr Stéphane Bourgon

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants

(Participation/Reparation)

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations

Section

Other

I. INTRODUCTION

1. YEKATOM's request seeking leave to appeal¹ the "Decision on the Request for Reconsideration of the Order on Reclassification" ("Decision")² should be rejected.

2. The First Issue, while an appealable issue,³ comprises only an abstract question of law. Because the underlying facts would not justify reconsideration, the Decision in no way affects the fair and expeditious conduct of the proceedings or their outcome. The Second Issue identifies no appealable issue⁴ whatsoever, and misreads the Decision.⁵ It also merely disagrees with the Chamber's reasoned assessment of the underlying circumstances.⁶ Neither of the two issues raised satisfies the cumulative requirements of article 82(1)(d).

II. CONFIDENTIALITY

3. This response is filed as CONFIDENTIAL pursuant to regulation 23bis(2) of the Regulations of the Court as it responds to a filing with the same classification.⁷

III. SUBMISSIONS

A. **The First Issue does not merit immediate appellate intervention on the facts of this case**

4. The First Issue is framed as follows: "Whether the Chamber erred in finding that the review of judicial decisions can only be requested on the basis of the mechanism specified in the Statute and the Rules of Procedure and Evidence."⁸

¹ ICC-01/14-01/18-196-Conf. ("Request").

² ICC-01/14-01/18-190-Conf.

³ Request, para. 3.

⁴ Request, para. 4.

⁵ See ICC-01/04-01/10-487, paras. 32-33; ICC-01/05-01/13-1278, para. 9.

⁶ See ICC-01/04-168 OA3, para. 9; ICC-01/12-01/18-130-tENG, para. 31.

⁷ ICC-01/14-01/18-196-Conf.

⁸ Request, para. 3.

5. The First Issue identifies a question of law unresolved at the appellate level.⁹ However, on the particular facts of the case, the First Issue is purely abstract because it is not the sole basis on which the Decision was made. Even if the Chamber were to grant leave to appeal, this would not affect the fair and expeditious conduct of the proceedings or the outcome of trial. Thus, the issue does not warrant immediate appellate intervention to advance the proceedings.¹⁰

6. The Request ignores¹¹ that the Chamber took into account the Defence's failure to present facts justifying this relief in the first instance,¹² in addition to determining whether it had the power to reconsider its own decisions.¹³ No unfairness, delay in the proceedings, or impact on their outcome *as a result of the Decision*, can be shown here. Appellate intervention would not serve any immediate purpose.

B. The Second Issue does not identify an appealable issue, or satisfy the last two requirements of article 82(1)(d)

7. The Second Issue is framed as follows: "Whether the Chamber erred in refusing to order the disclosure to the Defence of the Prosecution's application for a warrant of arrest by considering that the evidence and Document Containing the Charges suffice to inform pursuant to Article 67(1)(a) of the Statute."¹⁴

⁹ See e.g., ICC-01/09-01/11-993-Red OA5, para. 7 (The Appeals Chamber acknowledging that it has never addressed whether and under what circumstances it may reconsider its prior decisions, but declining to do so in that case).

¹⁰ ICC-01/05-01/08-75, para. 11.

¹¹ Request, paras. 3, 17-20; 27-30 (focusing entirely on the abstract question).

¹² Decision, para. 12.

¹³ Decision, paras. 11, 12.

¹⁴ Request, para. 4.

a. *No appealable issue*

8. The Second Issue identifies no appealable issue. It is predicated on a misreading of the Decision and the original Order for Reclassification.¹⁵ It also merely disagrees with the Chamber's reasoned assessment.¹⁶

9. *First*, the Request wrongly suggests that the Chamber's refusal to order the disclosure of the Prosecution's application for a warrant of arrest is irrevocable and/or applies to all stages of the proceedings.¹⁷ To the contrary, the Chamber reached the decision only with respect to the "arrest stage" of the proceedings.¹⁸

10. *Second*, the Request wrongly suggests that in denying disclosure of the Prosecutor's application for a warrant of arrest, the Decision merely considered the Document Containing the Charges sufficient to inform YEKATOM per article 67(1)(a).¹⁹ In fact, the Decision holistically considered this and other sources of information available to YEKATOM, including "detailed information in the warrant of arrest."²⁰ The Request simply ignores the Chamber's reasoned assessment that over the course of the pre-trial stage, the information in the warrant of arrest as supplemented by evidence disclosed and the Document Containing the Charges ensures that YEKATOM is adequately notified of the contents of the charges to prepare for the confirmation hearing.²¹

¹⁵ ICC-01/14-01/18-31-Conf.

¹⁶ ICC-01/04-168 OA3, para. 9; ICC-01/12-01/18-130-tENG, para. 31; ICC-01/04-01/10-487, paras. 32-33; ICC-01/05-01/13-1278, para. 9.

¹⁷ *See e.g.*, Request, para. 16 (referring to the Decision and the right to be informed in article 67(1)(a) without citing the stage in relation to which the Decision was made).

¹⁸ Decision, para. 13.

¹⁹ Request, para. 16.

²⁰ Decision, para. 13; ICC-01/14-01/18-31-Conf, para. 6.

²¹ Decision, para. 13.

11. *Third*, and relatedly, the Defence's misreading of the Decision merely ignores or disagrees with the Chamber's holistic assessment of the information necessary for YEKATOM to litigate issues in the case.²²

b. Does not meet article 82(1)(d)'s remaining requirements

12. Even assuming *arguendo* that the Second Issue is an appealable issue, the Request fails to demonstrate that it significantly affects the outcome or fairness of the proceedings, or that its immediate resolution would materially advance them.²³

13. The Decision fails by ignoring or misreading the Chamber's holistic assessment of the sufficiency of the information notifying YEKATOM of the charges under article 67(1)(a), at the *arrest* stage.

14. Even if the Request were meant to challenge notification of charges beyond the *arrest* stage, the Request misreads the Decision or is at best speculative. The Decision specifically considered that *over the course of the pre-trial phase*, the information in the warrant of arrest would be gradually supplemented, especially by the disclosure of evidence and the Document Containing the Charges.²⁴

15. Evidence has been disclosed to YEKATOM since his arrest. Additional evidence would continue to be disclosed before the confirmation hearing or the trial, as appropriate. The Prosecution will also provide YEKATOM with the Document Containing the Charges at the appropriate time. Until then, YEKATOM can only speculate as to the sufficiency of the information that will be contained in that document and all the evidence that will be disclosed to him at the confirmation and trial stages. Therefore, YEKATOM cannot presently show a violation of article 67(1)(a) even beyond the *arrest* stage. As such, his Request cannot demonstrate that

²² Decision, para. 13; *contra* Request, para. 32.

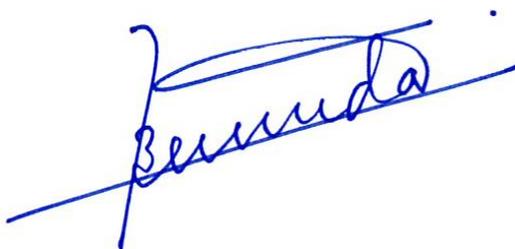
²³ *Contra* Request, paras. 22-26; 31-33.

²⁴ Decision, para. 13.

the fair or expeditious conduct of the proceedings, or their outcome, has been affected. Appellate intervention would merely delay rather than advance the proceedings.

IV. RELIEF SOUGHT

16. For the reasons set out above, YEKATOM's Request should be rejected.



Fatou Bensouda, Prosecutor

Dated this 20th day of May 2019
At The Hague, The Netherlands