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**No. ICC-01/14-01/18
Date: 24 August 2022**

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 Prosecution Request for Reconsideration regarding
In-Court Protective Measures for P-1077**

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(2), 6(e) and (7), 67(1) and 68(1), (2) and (4) of the Rome Statute (the ‘Statute’), and Rule 87 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Prosecution Request for Reconsideration regarding In-Court Protective Measures for P-1077’.

I. Procedural history

1. On 9 March 2021, the Single Judge rejected the Office of the Prosecutor’s (the ‘Prosecution’) request for in-court protective measures for P-1077 (the ‘Initial Decision’).¹
2. On 17 June 2022, the Prosecution sought reconsideration of the Initial Decision, requesting the Chamber to grant in-court protective measures in the form of voice and facial distortion, and the use of a pseudonym, for P-1077 (the ‘Request’).²
3. On 4 July 2022, the Ngaïssona Defence (the ‘Defence’) opposed the Request, arguing that the Prosecution failed to demonstrate new facts and circumstances that warrant reconsideration of the Initial Decision (the ‘Response’).³

¹ Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses, ICC-01/14-01/18-906-Conf-Exp, confidential *ex parte*, only available to the Prosecution and the Registry (confidential redacted version notified the same day, ICC-01/14-01/18-906-Conf-Red; public redacted version notified on 19 April 2021, ICC-01/14-01/18-906-Red2), paras 41, 46-47, p. 46.

² Request for Reconsideration regarding In-Court Protective Measures for Prosecution Witness P-1077, ICC-01/14-01/18-1469-Conf-Exp, confidential *ex parte*, only available to the Prosecution and the Registry (confidential redacted version notified the same day, ICC-01/14-01/18-1469-Conf-Red), paras 1, 22.

³ Defence Response to ‘Confidential Redacted Version of “Request for Reconsideration regarding In-Court Protective Measures for Prosecution Witness P-1077”’ (ICC-01/14-01/18-1469-Conf-Red), ICC-01/14-01/18-1496-Conf, paras 2, 13.

4. On 22 August 2022,⁴ the Victims and Witnesses Unit (the ‘VWU’) provided its observations, in which it did not recommend any in-court protective measures (the ‘Report’).⁵

II. Analysis

5. The Single Judge recalls the applicable law for protective measures, as set out in the Initial Decision.⁶ In particular, he recalls that any rejection of a request for protective measures in an initial ruling ‘is without prejudice to the Chamber reconsidering, upon request or *proprio motu*, the need for an order under Rule 87 of the Rules, should new or additional information be made available to it at a later stage’.⁷
6. The Single Judge further recalls that he previously rejected the in-court protective measures requested by the Prosecution for P-1077 because, on the basis of the information available at the time,⁸ it had not been established that the witness would face an objectively justifiable risk in case he were to testify without them.⁹
7. In its Request, the Prosecution submits that reconsideration of the Initial Decision is necessary because of newly arisen facts, notably (i) the deteriorating security situation in the Central African Republic (the ‘CAR’); and (ii) additional details regarding the witness’s security concerns. The Single Judge takes note of all

⁴ In light of P-1077’s scheduled appearance on 20 July 2022, the Chamber directed the VWU to file its observations on the Request by 14 July 2022, jointly with its observations on the then-pending request for in-court protective measures for P-2556. In case this was not possible, the VWU was instructed to submit the observations regarding P-1077 as soon as possible and at the latest by 18 July 2022 (*see* email from the Chamber, 29 June 2022, at 10:21). The witness’s appearance was subsequently rescheduled (*see* email from the Prosecution, 10 July 2022, at 20:15). On 11 August 2022, the VWU informed the Chamber by phone that it would provide its assessment by 24 August 2022.

⁵ Victims and Witnesses Unit’s Observations on the Prosecution’s “Request for Reconsideration regarding In-Court Protective Measures for Prosecution Witness P-1077” (ICC-01/14-01/18-1469-Conf-Exp), ICC-01/14-01/18-1548-Conf-Exp, confidential *ex parte*, only available to the Prosecution and the Registry (confidential redacted version notified the same day, ICC-01/14-01/18-1548-Conf-Red), para. 10.

⁶ Initial Decision, ICC-01/14-01/18-906-Red2, paras 14-21.

⁷ Initial Decision, ICC-01/14-01/18-906-Red2, para. 21.

⁸ *See* Initial Decision, ICC-01/14-01/18-906-Red2, paras 46-47 with reference to the annex to the Prosecution’s Request for in-court protective measures, 7 December 2020, ICC-01/14-01/18-757-Conf-Exp-Anx, confidential *ex parte*, only available to the Prosecution and the Registry (confidential redacted version of the annex notified on 18 December 2020).

⁹ Initial Decision, ICC-01/14-01/18-906-Red2, paras 41, 48.

submissions in this regard, in particular that the witness allegedly [REDACTED] due to security concerns of [REDACTED].¹⁰

8. However, the Single Judge notes that the VWU does not recommend any in-court protective measures¹¹ and that the witness himself indicated that he is ready to testify regardless of whether any protective measures are granted.¹² According to the Report, no security-related incidents have been reported¹³ and the witness informed the VWU that he had no concerns about the possible impact of his testimony on his or his family's safety, even if given in public.¹⁴
9. While mindful of the deteriorating security situation in the CAR and the nature of the witness's anticipated testimony, which will touch upon the acts and conduct of the accused as well as of a suspect in another case,¹⁵ the Single Judge considers the information provided in the Report determinative.
10. Considering all of the above, the Single Judge is therefore of the view that there exists no objectively justifiable risk to the witness's legitimate interests protected under Article 68 of the Statute. Accordingly, the Request is rejected.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Request; and

ORDERS the Prosecution, the Defence and the VWU to file public redacted versions of the Request, the Response and the Report within one week of notification of this decision.

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

¹⁰ Request, ICC-01/14-01/18-1469-Conf-Red, paras 2, 7; ICC-01/14-01/18-1469-Conf-Exp, paras 15-17.

¹¹ Report, ICC-01/14-01/18-1548-Conf-Red, para. 10.

¹² Report, ICC-01/14-01/18-1548-Conf-Exp, para. 5.

¹³ Report, ICC-01/14-01/18-1548-Conf-Red, paras 4, 7.

¹⁴ Report, ICC-01/14-01/18-1548-Conf-Exp, paras 5-7.

¹⁵ In this regard, the Single Judge notes that the witness is expected to testify about the coordination meetings held by Mr Ngaïssona, the Nairobi peace talks with Mr Maxime Mokom and the witness's participation at the Brazzaville Summit on behalf of the Anti-Balaka.



Judge Bertram Schmitt

Single Judge

Dated 24 August 2022

At The Hague, The Netherlands