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**No. ICC-01/14-01/18
Date: 7 September 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 to Vary the Time Limit and Request for In-Court Protective Measures for Dual Status Witness P-2353

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’), Rule 87 of the Rules of Procedure and Evidence (the ‘Rules’), and Regulation 35(2) of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision on the Prosecution Request to Vary the Time Limit and Request for In-Court Protective Measures for Dual Status Witness P-2353’.

I. Procedural history

1. On 26 August 2020, the Chamber issued the ‘Initial Directions on the Conduct of Proceedings’ which, *inter alia*, set the date of 7 December 2020 as the deadline for the submission of requests for in-court protective measures (the ‘Initial Directions’).¹
2. On 7 December 2020, the Office of the Prosecutor (the ‘Prosecution’) requested in-court protective measures for 72 witnesses, without referring to dual status witness P-2353.²
3. On 13 July 2022, the Prosecution sought a variation of the time limit of the Initial Directions to submit a request for in-court protective measures for P-2353, in the form of facial distortion and the use of a pseudonym (respectively, the ‘Requested Measures’, the ‘Request for Variation of Time’ and the ‘Request for Protective Measures’; collectively, the ‘Request’).³

¹ Initial Directions on the Conduct of Proceedings, ICC-01/14-01/18-631, para. 70.

² See Prosecution’s Request for in-court protective measures, ICC-01/14-01/18-757-Conf-Exp, confidential *ex parte*, only available to the Prosecution and the Registry (with one confidential *ex parte* annex, only available to the Prosecution and the Registry, ICC-01/14-01/18-757-Conf-Exp-Anx) (confidential redacted version notified on 18 December 2020, ICC-01/14-01/18-757-Conf-Red) (with one confidential redacted annex, ICC-01/14-01/18-757-Conf-Anx-Red) (public redacted version notified on 18 January 2021, ICC-01/14-01/18-757-Red2).

³ Prosecution’s submission pursuant to regulation 35 to vary the time limit and request for in-court protective measures for Prosecution Witness P-2353, ICC-01/14-01/18-1512-Conf (public redacted version notified on 18 July 2022, ICC-01/14-01/18-1512-Red), paras 1, 19.

4. On 15 and 18 July 2022,⁴ respectively, the Ngaïssona Defence and Yekatom Defence (the ‘Defence’) informed the Chamber that they do not intend to file a response to the Request.⁵
5. On 18 July 2022, the Common Legal Representative of Victims of Other Crimes (the ‘CLRV2’) responded to the Request, submitting that it should be granted.⁶
6. On 6 September 2022,⁷ the Victims and Witnesses Unit (the ‘VWU’) provided its observations on the Requested Measures. It recommends ‘granting in-court protective measures such as face distortion, voice distortion, use of a pseudonym and redaction of any identifying information from any records that may be disseminated to the public’ (the ‘Report’).⁸

II. Analysis

A. Request for Variation of Time

7. The second sentence of Regulation 35(2) of the Regulations provides that when a request for variation of the time limit is filed after the original time limit has elapsed, ‘an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control’.
8. The Prosecution submits that the criterion is met, as the Requested Measures are predicated on a change in circumstances outside the Prosecution’s control, which

⁴ Noting that P-2353 was scheduled to testify as a contingency witness in the preceding block, the Single Judge instructed the participants to file responses, if any, by 19 July 2022 (email from the Chamber, 15 July 2022, at 09:45). P-2353 eventually did not testify in the preceding block, and his testimony is currently expected to commence on 9 September 2022.

⁵ Email from the Ngaïssona Defence, 15 July 2022, at 14:55; email from the Yekatom Defence, 18 July 2022, at 09:30.

⁶ Response by the Common Legal Representative of dual-status individual P-2353 to the “Prosecution’s submission pursuant to regulation 35 to vary the time limit and request for in-court protective measures for Prosecution Witness P-2353” (ICC-01/14-01/18-1512-Conf), ICC-01/14-01/18-1516-Conf (the ‘CLRV2 Response’), paras 1, 19.

⁷ The Single Judge initially instructed the Registry to submit its observations by 15 July 2022 (email from the Chamber, 15 July 2022, at 09:45). Subsequently, as the testimony of the witness was rescheduled, it was orally agreed between the Chamber and the Registry that its submissions would be provided by 6 September 2022.

⁸ Victims and Witnesses Unit’s Observations on the “Prosecution’s submission pursuant to regulation 35 to vary the time limit and request for in-court protective measures for Prosecution Witness P-2353” (ICC-01/14-01/18-1512-Conf), ICC-01/14-01/18-1567-Conf, para. 10.

arose after the 7 December 2020 time limit. In particular, it indicates that P-2353 earns his livelihood as a trader, and that it initially assessed that his activities would be limited to [REDACTED]. However, it reports that in July 2022, the witness indicated that his trading activities [REDACTED].⁹ The Single Judge further notes that this information is also reported by the CLRV2.¹⁰

9. In light of the above, and noting the lack of objections by the Defence, the Single Judge is satisfied that the change in the witness's activities amount to circumstances outside of the Prosecution's control. He therefore grants the Request for Variation of Time.

B. The Request for Protective Measures

10. The Single Judge recalls the applicable law for protective measures, as set out in the 'Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses'.¹¹
11. The Single Judge notes the information contained in the Report, in which the VWU indicates that the witness resides in [REDACTED]. The witness works as a trader, [REDACTED].¹² The Single Judge further notes the VWU's concern that 'his [REDACTED] trading activities [REDACTED] may make him susceptible to being identified as an ICC witness and therefore placed in potentially dangerous situations'.¹³
12. Moreover, the Single Judge observes that, according to the Report, [REDACTED].¹⁴

⁹ Request, ICC-01/14-01/18-1512-Conf, paras 7, 11.

¹⁰ See CLRV2 Response, ICC-01/14-01/18-1516-Conf, paras 9-10.

¹¹ 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 14-21.

¹² Report, ICC-01/14-01/18-1567-Conf, para. 4.

¹³ Report, ICC-01/14-01/18-1567-Conf, para. 7.

¹⁴ Report, ICC-01/14-01/18-1567-Conf, para. 8.

13. In light of the above, the VWU considers that ‘there is an objectively justifiable risk to the witness’, and that the application of in-court protective measures ‘may prevent a future escalation of risk’.¹⁵
14. In addition, the Single Judge takes note of the Prosecution’s submissions, according to which P-2353 ‘is known [REDACTED] to many individuals, including former Anti-Balaka members and their supporters’, and that testifying publicly ‘will expose P-2353 to a risk of reprisals by Anti-Balaka militia around [REDACTED] where the witness needs to conduct [sic.] his trading activities’.¹⁶ Similarly, the CLRV2 argues that the witness [REDACTED].¹⁷ The Prosecution and the CLRV further indicated that the witness is also [REDACTED].¹⁸
15. The Single Judge notes that the Defence does not oppose the Request, as well as the Prosecution’s submission that ‘most of [P-2353’s] testimony will be given in public session’.¹⁹
16. Considering all of the above, the Single Judge is of the view that there exists an objectively justifiable risk to the witness’s legitimate interests protected under Article 68 of the Statute. He also finds that, while the VWU recommends the use of voice distortion, the Requested Measures are sufficient to safeguard the witness’s interests. The Single Judge thus considers it appropriate to grant in-court protective measures in the form of use of a pseudonym and face distortion. The Request is therefore granted.
17. Lastly, the Single Judge reminds the participants to organise their questioning in such a manner that use of private sessions be as limited as possible.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Request for Variation of Time;

¹⁵ Report, ICC-01/14-01/18-1567-Conf, paras 9-10.

¹⁶ Request, ICC-01/14-01/18-1512-Conf, paras 11, 13. *See also* CLRV2 Response, ICC-01/14-01/18-1516-Conf, para. 13.

¹⁷ CLRV2 Response, ICC-01/14-01/18-1516-Conf, para. 12.

¹⁸ Request, ICC-01/14-01/18-1512-Conf, para. 11; CLRV2 Response, ICC-01/14-01/18-1516-Conf, para. 9.

¹⁹ Request, ICC-01/14-01/18-1512-Red, para. 18.

GRANTS the Request for Protective Measures, as set out in paragraph 16 above; and

ORDERS the CLRV2 and the VWU to file public redacted versions of filings ICC-01/14-01/18-1516-Conf and ICC-01/14-01/18-1567-Conf, respectively, within one week of notification of this decision.

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 7 September 2022

At The Hague, The Netherlands