

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/14-01/21

Date: 8 November 2022

TRIAL CHAMBER VI

Before: Judge Miatta Maria Samba, Presiding Judge
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godínez

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF

THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI

Public redacted version of

**Decision on the Prosecution's Request for reconsideration of the In-Court
Protective Measures for Witness P-0435**

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

The Office of the Prosecutor

Mr Karim A. A. Khan
Ms Holo Makwaia

Counsel for the Defence

Ms Jennifer Naouri
Mr Dov Jacobs

Legal Representatives of Victims

Ms Sarah Pellet

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
for Participation/Reparations**

**The Office of Public Counsel
for Victims**

**The Office of Public Counsel
for the Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Other

TRIAL CHAMBER VI of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, pursuant to article 64, 67(1), and 68 of the Rome Statute (the ‘Statute’) and rule 87 of the Rules of Procedure and Evidence, issues this ‘Decision on the Prosecution’s Request for reconsideration of the In-Court Protective Measures for Witness P-0435’.

I. PROCEDURAL HISTORY

1. On 21 September 2022, the Chamber issued its Decision on the Prosecution’s Request for In-Court Protective Measures (the ‘ICPM Decision’).¹ In the ICPM Decision, the Chamber provided advance rulings on protective measures requested by the Office of the Prosecutor (the ‘Prosecution’) for a number of witnesses, without prejudice to later reconsideration in light of additional information.² The Chamber rejected in-court protective measures for P-0435 on account of the fact that the witness indicated a willingness to testify publicly.³

2. On 4 November 2022, the Prosecution requested the Chamber to reconsider its decision in relation to P-0435.⁴ In essence, the Prosecution’s request is based on the fact that the witness is no longer willing to testify publicly.⁵

3. On 6 November 2022, the Defence responded via email.⁶ In the Response, the Defence asks the Chamber to reject the Request on the following grounds: (i) that no reasons were given for the witness’ change of heart; (ii) that there is no change in the circumstances in terms of the security situation and that [REDACTED]; (iii) that the witness’ employment with [REDACTED], which could be kept confidential, is not related to the proceedings before the Court and therefore cannot justify protective measures; (iv) that witnesses should not be allowed to make their testimony conditional

¹ ICC-01/14-01/21-481-Conf (a [public redacted version](#) was filed on 26 September 2022).

² ICPM Decision, para. 15.

³ ICPM Decision, para. 43.

⁴ Prosecution's request for reconsideration of the Decision on the Prosecution’s Request for In-Court Protective Measures (ICC-01/14-01/21-481-Conf) for Prosecution Witness P-0435, ICC-01/14-01/21-530-Conf (the ‘Request’).

⁵ Request, para. 6.

⁶ Email from Defence, 6 November 2022 at 19:57 (the ‘Response’).

upon certain protective measures being granted, as testifying is a solemn and courageous act that should, in principle, be done publicly.

II. APPLICABLE LAW

4. The Chamber refers to the applicable law set out in the ICPM Decision.⁷

III. ANALYSIS

5. As indicated in the ICPM Decision, the Chamber considers that the general security situation in the CAR may establish an objectively justifiable risk for individual witnesses.⁸ The Chamber also held that [REDACTED].⁹

6. In the ICPM Decision, the Chamber found that P-0435 is subject to the same general risk as other witnesses for whom in-court protective measures were approved.¹⁰ The Chamber would therefore have approved the requested in-court protective measures were it not for the witness' willingness to accept the risk.¹¹ The Chamber understands that the witness has now reconsidered this position and is no longer prepared to testify publicly. Although it is not privy to the reasons for this changed position, the Chamber considers it significant that the witness now appreciates the risk differently. As this was the main factor which led the Chamber to reject the requested in-court protective measures in the ICPM Decision, the Chamber has reassessed the situation and finds that there exists an objectively justified risk as observed above, and therefore grants the requested in-court protective measures.

7. The Chamber recalls, in this regard, that the Victims and Witnesses Unit agreed with the Prosecution's initial request for protective measures for P-0435.¹² The Chamber further reiterates that it is incumbent upon the VWU to inform the Chamber of any relevant changes in the situation of the witness and/or if the VWU would recommend variation of the measures ordered.¹³

⁷ ICPM Decision, paras 12-19.

⁸ ICPM Decision, paras 18-19.

⁹ ICPM Decision, para. 17.

¹⁰ ICPM Decision, para. 43.

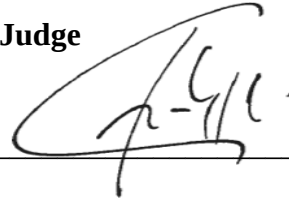
¹¹ ICPM Decision, para. 43.

¹² Email from VWU received on 9 September 2022 at 09:58.

¹³ ICPM Decision, paras 99-100.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS in-court protective measures in the form of the use of pseudonym, face and voice distortion, and use of private and closed sessions as and when necessary in respect of P-0435.

**Judge Miatta Maria Samba****Presiding Judge****Judge María del Socorro Flores Liera****Judge Sergio Gerardo Ugalde Godínez**

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

Dated 8 November 2022

At The Hague, The Netherlands