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**No. ICC-01/14-01/18
Date: 3 March 2023**

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-2082**

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-2082’.

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-2082 (the ‘Initial Decision’).¹
2. On 22 February 2023, the Prosecution sought reconsideration of the Initial Decision, requesting that the Chamber grant in-court protective measures in the form of face distortion and the use of a pseudonym for P-2082 (the ‘Request’).²
3. On 23 February 2023, the Common Legal Representatives of the Victims of Other Crimes informed the Chamber that it does not intend to respond to the Request.³
4. On 27 February 2023,⁴ the Victims and Witnesses Unit (the ‘VWU’) provided its observations, in which it recommends granting in-court protective measures consisting of the use of a pseudonym and face distortion for P-2082 (the ‘Report’).⁵

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).

² Request for Reconsideration regarding In-Court Protective Measures for Prosecution Witness P-2082, ICC-01/14-01/18-1768-Conf (public redacted version notified the same day, ICC-01/14-01/18-1768-Red), paras 1, 19.

³ Email from the Common Legal Representatives of the Victims of Other Crimes, 23 February 2023, at 17:04.

⁴ On 23 February 2023, the Chamber instructed the Victims and Witnesses Unit to provide its assessment on the Request by latest 27 February 2023, and directed the participants to file their potential responses by the same day (*see* Email from the Chamber, 23 February 2023, at 14:46).

⁵ Victims and Witnesses Unit’s Observations on the “Request for Reconsideration regarding In-Court Protective Measures for Prosecution Witness P-2082” (ICC-01/14-01/18-1768-Conf), ICC-01/14-01/18-1775-Conf, para. 12.

5. On 27 February 2023, the Yekatom Defence opposed the Request (the ‘Yekatom Defence Response’).⁶
6. On the same day, the Ngaïssona Defence informed the Chamber that it joins and agrees with the arguments raised in the Yekatom Defence Response.⁷

II. Analysis

7. The Single Judge recalls the applicable law for protective measures, as set out in the Initial Decision.⁸ 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’.⁹
8. The Single Judge first takes note of the VWU’s assessment that the witness’s current professional activities, which require P-2082 [REDACTED] ‘might make her susceptible to being identified as a Court’s witness and therefore place her in potentially dangerous situations.’¹⁰ Second, the Single Judge takes note of the information provided by the VWU that [REDACTED]. The Single Judge also notes the VWU’s conclusions that, for this reason, ‘there is an objectively justifiable risk to the witness’ and further that the application of in-court protective measures ‘may prevent a future escalation of risk’.¹¹
9. While the Single Judge takes note of the Yekatom Defence’s submissions, arguing that ‘(i) the Prosecution does not provide new elements justifying the request; (ii) the Prosecution fails to demonstrate an objective justifiable risk for P-2082 should she testify publicly, and; (iii) the measures sought are inconsistent with Mr Yekatom’s right to the publicity of the proceedings’,¹² he finds that the new information provided by the VWU makes it necessary to adopt protective

⁶ Yekatom Defence Response to the Prosecution’s “Request for Reconsideration regarding In-Court Protective Measures for Prosecution Witness P-2082”, ICC-01/14-01/18-1768-Conf, ICC-01/14-01/18-1776-Conf.

⁷ Email from the Ngaïssona Defence, 27 February 2023, at 16:13.

⁸ Initial Decision, ICC-01/14-01/18-906-Red2, paras 14-24.

⁹ Initial Decision, ICC-01/14-01/18-906-Red2, para. 21.

¹⁰ Report, ICC-01/14-01/18-1775-Conf, paras 7, 9.

¹¹ Report, ICC-01/14-01/18-1775-Conf, para. 11.

¹² Response, ICC-01/14-01/18-1776-Conf, paras 2, 7-21.

measures. The Single Judge is satisfied that there exists an objectively justifiable risk to the witness's legitimate interests protected under Article 68 of the Statute, which outweighs the accused's right to the publicity of the proceedings. Consequently, the Single Judge considers it appropriate to grant in-court protective measures in the form of use of a pseudonym and face distortion for P-2082, as recommended by the VWU.

10. Lastly, the Single Judge reminds the participants to organise their questioning in such a manner that the use of private sessions can be as limited as possible.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Request; and

ORDERS the VWU and the Yekatom Defence to file public redacted versions of the Report, ICC-01/14-01/18-1775-Conf, and the Response, ICC-01/14-01/18-1776-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

Single Judge

Dated 3 March 2023

At The Hague, The Netherlands