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No. ICC-01/14-01/18

Date: 17 April 2023

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Decision on the Fifth Prosecution Request for Authorisation to Disclose Certain
Transcripts, Filings and Materials in the case of *The Prosecutor v. Mahamat Said
Abdel Kani* concerning witness P-2625**

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

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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)(c), (e), 67 and 68(1) of the Rome Statute, and Regulation 42(2) of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision on the Fifth Prosecution Request for Authorisation to Disclose Certain Transcripts, Filings and Materials in the case of *The Prosecutor v. Mahamat Said Abdel Kani* concerning witness P-2625’.

I. Procedural history

1. On 28 March 2023, the Office of the Prosecutor (the ‘Prosecution’) requested the Chamber’s authorisation to disclose transcripts of and materials used during the testimony of witness P-2625 to the defence in the case of *The Prosecutor v. Mahamat Said Abdel Kani* (the ‘Said Defence’), namely: (i) four confidential transcripts; (ii) nine associated items referenced therein; and (iii) four confidential filings related to the procedural history leading up to P-2625’s appearance before the Chamber (the ‘Request’).¹
2. On the same day, the Yekatom Defence indicated that it does not intend to file a response and defers to the discretion of the Chamber.²
3. On 4 April 2023, the Ngaïssona Defence responded to the Request, asking the Chamber to partially reject it. In particular, it opposes the disclosure of document CAR-D30-0001-0036 (the ‘Item’), but defers to the discretion of the Chamber for the remainder of the Request.³

¹ Prosecution’s Request for Authorisation to Disclose Transcripts of and Materials used in the Testimony of Witness P-2625 to the Defence in the case of *Prosecutor v. Mahamat Said Abdel Kani*, ICC-01/14-01/18-1822 (with confidential Annex A) (the ‘Request’), paras 1-2.

² Email from the Yekatom Defence, 28 March 2023, at 16:53.

³ Defence response to the “Prosecution’s Request for Authorisation to Disclose Transcripts of and Materials used in the Testimony of Witness P-2625 to the Defence in the case of *Prosecutor v. Mahamat Said Abdel Kani*” (ICC-01/14-01/18-1822), ICC-01/14-01/18-1827-Conf (public redacted version notified on the same day) (the ‘Ngaïssona Defence Response’), paras 1-2.

II. Analysis

4. The Chamber observes that P-2625 was only granted protective measures for his solemn undertaking hearing,⁴ but subsequently testified without them. Nonetheless, some parts of his testimony were held in private session.
5. The Chamber further recalls that the disclosure of transcripts and items to participants in different proceedings before the Court would not vary the protective measures in this case, since they will remain in place towards the public. The Chamber therefore considers that Regulation 42(2) of the Regulations is applicable.⁵
6. At the outset, the Chamber observes that a number of associated items are public and/or publicly available.⁶ It recalls that in such instances, and where these items have been discussed with a witness in public session and are publicly displayed, the Chamber sees no need for authorisation under Regulation 42(2) of the Regulation. As previously instructed, the Prosecution may disclose such items to the *Said* Defence without submitting a request.⁷
7. The Chamber further notes the Ngaïssona Defence's objections to disclose the Item, arguing that Mr Ngaïssona has a reasonable expectation of privacy in relation to it and that it bears no relevance to the charges brought against Mr Said.⁸ The Chamber observes that the Item contains personal information regarding Mr Ngaïssona and sees no obvious link to the case against Mr Said. Moreover, it observes that the Item was ultimately not discussed with the P-2625 during his testimony and, consequently, does not form an integral part of the testimony itself.⁹

⁴ See ICC-01/14-01/18-T-165-CONF-ENG, p. 3, lines 15-24.

⁵ Decision on the Prosecution Request for Authorisation to Disclose Certain Transcripts in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, 5 October 2021, ICC-01/14-01/18-1129, para. 7, with further references to the jurisprudence of the Court.

⁶ See, for example, CAR-D30-0006-0084.

⁷ Decision on the Third Prosecution Request for Authorisation to Disclose Certain Materials in the Case of *The Prosecutor v. Mahamat Said Abdel Kani* concerning Witnesses P-0291, P-0884, P-0966, P-0975, P-1339, P-2232, P-2251, P-2269, and P-2328, 17 June 2022, ICC-01/14-01/18-1465 (the 'Third *Said*' Decision), para. 8.

⁸ Ngaïssona Defence Response, ICC-01/14-01/18-1827-Conf, paras 6-9.

⁹ See, similarly, Third *Said* Decision, ICC-01/14-01/18-1465, para. 11.

8. Accordingly, the Chamber considers that the disclosure of the Item to the *Said* Defence would infringe disproportionately on Mr Ngaïssona's right to privacy and thus rejects to authorise its disclosure.
9. Turning to the remainder of the Request, the Chamber observes that neither the Yekatom nor the Ngaïssona Defence raised any further objections,¹⁰ and that a large number of the items are public and/or publicly available. Furthermore, it notes that the disclosure to the *Said* Defence of the transcripts, filings and the remainder of the associated items would not negatively impact on the security and safety of P-2625, as the *Said* Defence is bound by confidentiality obligations pursuant to Article 8 of the Code of Professional Conduct for counsel and a protocol on the handling of confidential information.
10. Consequently, the Chamber authorises the Prosecution to disclose the transcripts, associated items and filings subject to the remainder of the Request.¹¹ The Prosecution is instructed to inform the *Said* Defence of the confidentiality of transcripts, filings and items, as necessary.

¹⁰ Email from the Yekatom Defence, 28 March 2023, at 16:53; Ngaïssona Defence Response, ICC-01/14-01/18-1827-Conf, paras 2, 10.

¹¹ See Annex A to the Request, ICC-01/14-01/18-1822-Conf-AnxA, pp. 2-3, with the exception of the Item.

FOR THESE REASONS, THE CHAMBER HEREBY

PARTLY GRANTS the Request, with the exception of item CAR-D30-0001-0036;
and

ORDERS the Prosecution to inform the *Said* Defence of the nature of the confidentiality of transcripts of hearings, filings and items, where applicable.

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



Judge Péter Kovács



Judge Bertram Schmitt

Presiding Judge



Judge Chang-ho Chung

Dated 17 April 2023

At The Hague, The Netherlands