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No. ICC-01/14-01/18

Date: 11 July 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 to Vary the Time Limit and Request for In-Court Protective Measures for Witness P-1576

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 Witness P-1576’.

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 witness P-1576.²
3. On 11 January 2021, the Prosecution requested the formal submission of the prior recorded testimony of five witnesses pursuant to Rule 68(2)(b) of the Rules, including P-1576.³
4. On 5 June 2023, the Chamber rejected the request to introduce the prior recorded testimony of P-1576 pursuant to Rule 68(2)(b) of the Rules, and instead

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 Seventh Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b), ICC-01/14-01/18-808-Conf (with confidential Annexes A and B) (public redacted version notified on 31 March 2021, ICC-01/14-01/18-808-Red), paras 1, 42.

introduced it *proprio motu* pursuant to Rule 68(3) of the Rules, *inter alia*, subject to the witness's appearance before the Chamber.⁴

5. On 26 June 2023, the Prosecution sought a variation of the time limit to submit a request for in-court protective measures for P-1576, in the form of voice and face distortion, and the use of a pseudonym (respectively, the 'Request for Variation of Time Limit' and the 'Request for Protective Measures'; collectively, the 'Request').⁵
6. On 30 June 2023, the Chamber ordered the Victims and Witnesses Unit (the 'VWU') to provide its assessment on in-court protective measures for P-1576 on the record latest by 10 July 2023.⁶
7. On 3 July 2023, the Ngaïssona Defence opposed the Request (the 'Ngaïssona Defence Response').⁷
8. On 6 July 2023,⁸ the Yekatom Defence opposed the Request (the 'Yekatom Defence Response').⁹
9. On 6 July 2023, the VWU provided its observations, in which it recommends to grant in-court protective measures consisting in the use of a pseudonym and face distortion for P-1576 (the 'Report').¹⁰ Furthermore, the VWU recommends the

⁴ Second Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b) of the Rules, ICC-01/14-01/18-1907-Conf (public redacted version notified on the same day, ICC-01/14-01/18-1907-Red), paras 81-82.

⁵ Prosecution's submission pursuant to regulation 35 to vary the time limit and request for in-court protective measures for Witness P-1576, ICC-01/14-01/18-1946-Conf.

⁶ Email from the Chamber, 30 June 2023, at 11:34.

⁷ Ngaïssona Defence response to the "Prosecution's submission pursuant to regulation 35 to vary the time limit and request for in-court protective measures for Witness P-1576" (ICC-01/14-01/18-1946-Conf), ICC-01/14-01/18-1955-Conf, para. 2.

⁸ On 3 July 2023, the Yekatom Defence informed the Chamber that it joins and supports the Ngaïssona Defence Response (email from the Yekatom Defence, 3 July 2023, at 15:36). On 6 July 2023, it informed the Chamber of its intention to file a response, [REDACTED] (email from the Yekatom Defence, 6 July 2023, at 10:32).

⁹ Yekatom Defence Response to the "Prosecution's submission pursuant to regulation 35 to vary the time limit and request for in-court protective measures for Witness P-1576", 26 June 2023, ICC-01/14-01/18-1946-Conf, ICC-01/14-01/18-1964-Conf, paras 5, 8.

¹⁰ 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 Witness P-1576" (ICC-01/14-01/18-1946-Conf), 6 July 2023, ICC-01/14-01/18-1966-Conf (notified on 7 July 2023).

‘use of closed and/or private session’ for P-1576’s identifying information, [REDACTED].¹¹

II. Analysis

A. The Request for Variation of Time Limit

10. 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’.
11. The Single Judge takes note of the Prosecution’s submission that ‘[a]s P-1576 was proposed to be called pursuant to Rule 68(2)(b), there was no necessity to apply for the Requested Measures within the time limit set’ and that ‘the disposition of the 5 June 2023 Second Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b) of the Rules’ and the ‘attendant logistics of planning his testimony comprise circumstances outside the Prosecution’s control’.¹² Indeed, the Request for Protective Measures could have only been filed after the Chamber’s decision of 5 June 2023, introducing, *proprio motu*, P-1576’s testimony under Rule 68(3) of the Rules. In light of this, the Single Judge finds that good cause exists pursuant to Regulation 35 of the Regulations to grant the Request for Variation of Time Limit.

B. The Request for Protective Measures

12. The Single Judge recalls the applicable law for protective measures, as set out in its previous decision.¹³

¹¹ Report, ICC-01/14-01/18-1966-Conf, para. 11.

¹² Request, ICC-01/14-01/18-1946-Conf, para. 2.

¹³ 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.

13. The Single Judge first takes note of the information provided by the VWU that the witness [REDACTED] and that the [REDACTED].¹⁴ Second, the Single Judge notes the VWU's assessment that 'the fact that the witness is [REDACTED] testifying before the Court [REDACTED], and that 'a public testimony identifying the witness [REDACTED].¹⁵
14. Considering all of the above, 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. While the Single Judge takes note of the Defence's submissions,¹⁶ he finds that the information provided by the VWU, and in particular, [REDACTED] and its assessment of the [REDACTED], makes it necessary to adopt protective measures. 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-1576, as recommended by the VWU.
15. 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.

¹⁴ Report, ICC-01/14-01/18-1966-Conf, para. 6.

¹⁵ Report, ICC-01/14-01/18-1966-Conf, para. 9.

¹⁶ Ngaïssona Defence Response, ICC-01/14-01/18-1955-Conf, paras 5-12; Yekatom Defence Response, ICC-01/14-01/18-1964-Conf, paras 3-6.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

PARTLY GRANTS the Request and grants the protective measures as set out in paragraph 14 of the present decision; and

ORDERS the Prosecution, the Ngaïssona Defence, the Yekatom Defence and the VWU to file public redacted versions of the Request, ICC-01/14-01/18-1946-Conf, the Ngaïssona Defence Response, ICC-01/14-01/18-1955-Conf, the Yekatom Defence Response, ICC-01/14-01/18-1964-Conf, and the Report, ICC-01/14-01/18-1966-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 11 July 2023

At The Hague, The Netherlands