



Original: English

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

Date: 30 October 2024

TRIAL CHAMBER VI

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

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public

Public Redacted Version of "Prosecution's request for partial reconsideration of the 'Decision on the Prosecution's Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of Two Witnesses', 02 October 2023, ICC-01/14-01/21-637-Conf", ICC-01/14-01/21-882-Conf, dated 22 October 2024

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests Trial Chamber VI (“Chamber”) to partially reconsider its “Decision on the Prosecution’s Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of Two Witnesses” (“Decision”),¹ and authorise the introduction into evidence of the witness statement of P-0975 taken on 11 and 12 August 2016 and two items of associated material pursuant to rule 68(2)(c) of the Rules of Procedure and Evidence (“Rules”).

2. Since the issuance of the Decision, a subsequent summons request² and directions by the Chamber for the transmission of the summons issued with respect to Witness P-0975,³ the Registry has been unsuccessful in contacting the witness or serving him with the summons.⁴ The outcome of these recent efforts by the Registry amount to new facts warranting the partial reconsideration of the Decision.

3. Witness P-0975’s statement and two items of associated material are therefore admissible under rule 68(2)(c) of the Rules because i) the witness is for over three years now unavailable to testify, given that the Registry has failed to serve the summons despite identifying where he is said to be located; and ii) as previously pleaded in the Prosecution’s request for the introduction of Witness P-0975’s witness statement⁵ and two items of associated material,⁶ pursuant to rule 68(2)(c) of the Rules (“Prosecution’s Initial Request”), P-0975’s evidence is relevant, probative and has sufficient indicia of reliability and the necessity of measures under article 56 of the Rome Statute (“Statute”) could not be anticipated.⁷

¹ ICC-01/14-01/21-637-Red.

² ICC-01/14-01/21-638-Red.

³ ICC-01/14-01/21-735-Conf.

⁴ ICC-01/14-01/21-878-Conf.

⁵ ICC-01/14-01/21-627-Red, paras 24, 26; Witness Statement CAR-OTP-2033-7885

⁶ ICC-01/14-01/21-627-Conf-AnxA.

⁷ ICC-01/14-01/21-627-Red, para 7.

II. CONFIDENTIALITY

4. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this request is filed confidential because it pertains to information, filings and a decision currently classified as confidential. A public redacted version of this request will be filed as soon as practicable.

III. PROCEDURAL HISTORY

5. On 2 October 2023, the Chamber denied the Prosecution's Initial Request and instructed the Prosecution to take further steps to ascertain the whereabouts of the witness by requesting a summons or state cooperation.⁸

6. On 20 November 2023, the Prosecution requested the Chamber to issue a summons for P-0975, stating it had exhausted all avenues to secure P-0975's voluntary attendance, [REDACTED].⁹ The Prosecution further informed the Chamber that despite various efforts [REDACTED], it was apparent that the witness will not testify in the this trial unless located by the CAR authorities and compelled to appear before the Court to testify.¹⁰

7. [REDACTED].¹¹

8. On 8 October 2024, the Chamber in its Third Directions on the Conduct of Proceedings, ordered the Prosecution to inform the Chamber as soon as possible and no later than 23 October 2024 if it intends to present the testimony of P-0975.¹²

⁸ ICC-01/14-01/21-637-Red, paras 14-17.

⁹ ICC-01/14-01/21-638-Red, para 11.

¹⁰ ICC-01/14-01/21-638-Red, paras 12-20.

¹¹ ICC-01/14-01/21-735-Conf.

¹² ICC-01/14-01/21-873.

9. On 17 October 2024, the Prosecution requested the disclosure of any report by the Registry confirming whether Witness P-0975's summons was successfully served in compliance with the Chamber's directions in the Decision of 2 April 2024.¹³

10. On the same day, the Chamber instructed the Registry to urgently file a report on the implementation of the Chamber's Decision of 2 April 2024.¹⁴

11. The Registry subsequently filed its Report on the Status of Execution of the Chamber's Decision ICC-01/14-01/735-Conf ("Registry Report"), [REDACTED].¹⁵ [REDACTED].¹⁶

12. On 7 October the Registry sent an additional note verbale to the CAR authorities requesting cooperation, with a deadline of 15 October 2024, to obtain the correct contact details of Witness P-0975 [REDACTED], to enable the Registry to obtain any indication from the witness of his willingness to testify. No response has yet been received by the Registry from the CAR authorities.¹⁷

IV. SUBMISSIONS

A. Partial reconsideration of the Decision is justified

13. It is settled law in the Court's jurisprudence, a reconsideration request may be granted when new or previously unavailable information requires the Chamber to reconsider its previous ruling.¹⁸

¹³ Prosecution's email on 17 October 2024, titled "Prosecution's request for disclosure of information in relation to Witness P-0975".

¹⁴ Trial Chamber VI's email on 17 October 2024, titled "Decision on Prosecution's request for disclosure of information in relation to Witness P-0975".

¹⁵ ICC-01/14-01/21-878-Conf, paras 4-9.

¹⁶ ICC-01/14-01/21-878-Conf, para 9.

¹⁷ ICC-01/14-01/21-878-Conf, para 10.

¹⁸ *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on Defence request for reconsideration of Decision on requests related to the submission into evidence of Mr Al Hassan's statements,

14. In the current case, this request is premised on the new information provided in the Registry Report which indicates that the Registry has been unsuccessful since April 2024 in contacting Witness P-0975 or serving him with the summons.

15. This new information affects the basis on which the Decision was rendered, and the reconsideration request is therefore justified.

B. P-0975's witness statement and two items of associated material can be introduced into evidence pursuant to rule 68(2)(c) of the Rules

16. Witness P-0975's prior recorded testimony comprises his statement,¹⁹ its annex and a declaration shown to the witness during his interview in 2016. The Prosecution relies on its previous submissions regarding the legal framework for the introduction into evidence of prior recorded testimony under rule 68(2)(c) of the Rules, as set out in paragraphs 19 to 22 of the Prosecution's Initial Request.²⁰

17. The Prosecution also relies on its previous submissions regarding the proof of P-0975's prolonged inaccessibility and that he can no longer with reasonable diligence be located,²¹ as well as the jurisprudence adopted by the Chamber regarding the interpretation of the term 'unavailable' envisaged in rule 68(2)(c) of the Rules.²²

ICC-01/12-01/18-2414, para. 7; *Prosecutor v. Ali Muhammad Ali Abd-al-Rahman ('Ali Kushayb')*, Decision on Defence request for reconsideration of "Decision on Defence submissions on cooperation with Sudan", ICC-02/05-01/20-650-Red, para. 10; *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on Defence request for reconsideration and, in the alternative, leave to appeal the 'Decision on witness preparation and familiarisation', ICC-01/12-01/18-734, para. 11; *Prosecutor v. Bosco Ntaganda*, Decision on Defence request seeking partial reconsideration of the 'Decision on Defence request for admission of evidence from the bar table', ICC-01/04-02/06-2241, para. 4; *Prosecutor v. Dominic Ongwen*, Decision on Request for Reconsideration of the Order to Disclose Requests for Assistance, ICC-02/04-01/15-468, para. 4; *Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on Defence Request for Reconsideration of or Leave to Appeal 'Decision on "Defence Request for Disclosure and Judicial Assistance"', ICC-01/05-01/13-1282, para. 8; *Prosecutor v. William Samoei Ruto & Joshua Arap Sang*, Decision on the Sang Defence's Request for Reconsideration of Page and Time Limits, ICC-01/09-01/11-1813, para. 19; *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the defence request to reconsider the "Order on numbering of evidence" of 12 May 2010, ICC-01/04-01/06-2705, para. 18.

¹⁹ CAR-OTP-2033-7885 and translation CAR-OTP-2107-1329.

²⁰ ICC-01/14-01/21-627-Red, paras 19-22.

²¹ ICC-01/14-01/21-627-Red, paras 8-18.

²² ICC-01/14-01/21-637-Red, paras 7-9.

18. The Registry's Report further indicates that while it took further steps between May and October 2024, including with the cooperation of the CAR authorities, to locate Witness P-0975 and serve him the summons, his whereabouts remain unascertained, and the situation further compounded by the fact that the witness is now in the territory of another State and [REDACTED].²³

(i) *P-0975's witness statement and two items of associated material are relevant, reliable and probative*

19. The Prosecution relies on its previous submissions in the Prosecution's Initial Request regarding the relevance, reliability and probative value of P-0975's statement and two items of associated material;²⁴ specifically that the witness' evidence is relevant to the chapeau elements of article 8 of the Statute, the statement was voluntarily provided by the witness in compliance with rule 111 of the Rules, providing a detailed account of what happened to P-0975 and what he witnessed and it is cumulative to and corroborates other evidence including that of witnesses whose evidence was granted under rule 68(2)(c) of the Rules.

(ii) *The introduction of P-0975's witness statement and two items of associated material is not prejudicial to or inconsistent with the rights of the Accused*

20. The Prosecution relies on its previous submissions that the introduction of the statement and two associated items is not prejudicial to or inconsistent with the rights of Mr SAID;²⁵ specifically that P-0975's evidence neither goes to the central events at the OCRB nor the acts and conduct of Mr SAID. Moreover, the Defence have had an opportunity to cross-examine various witnesses²⁶ that have testified to the same topics

²³ ICC-01/14-01/21-878-Conf, paras 9-10.

²⁴ ICC-01/14-01/21-627-Red, paras 26-29.

²⁵ ICC-01/14-01/21-627-Red, paras 30-

²⁶ P-0119, P-0291, P-0342, P-0358, P-0510, P-0787, P-0884, P-0975, P-1180, P-1429, P-1563, P-1762, P-2232, P-2251 and P-2573.

referred to in P-0975's evidence and will similarly have an opportunity to rebut the evidence by presenting their own evidence in 2025.

V. RELIEF REQUESTED

21. As the Prosecution draws nearer to the conclusion of the presentation of its case, it is pertinent that P-0975's statement and associated material are considered by the Chamber and introduced into evidence in this trial.

22. For the foregoing reasons, the Prosecution respectfully requests that the Chamber partially reconsiders its Decision and authorise the introduction of Witness P-0975's witness statement and two items of associated material into evidence pursuant to rule 68(2)(c) of the Rules.



Karim A. A. Khan KC, Prosecutor

Dated this 30th day of October 2024
At The Hague, The Netherlands