

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14-01/21**
Date: **14 January 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

Decision on Defence request to suspend the trial preparations

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

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Other

TRIAL CHAMBER VI of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to Articles 61(11), 64(2) and (6)(f), 66, 67, and 82(3) of the Rome Statute (the ‘Statute’), Rules 130, 134, and 155 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on Defence request to suspend the trial preparations’.

I. PROCEDURAL HISTORY

1. On 26 October 2021, the Prosecution filed its Corrected Version of the Document Containing the Charges (the ‘DCC’).¹ In the DCC, the Prosecution levelled 14 counts against Mr Said Abdel Kani, involving alleged crimes committed in two different detention facilities in Bagui: the *Office Central de Répression du Banditisme* (‘OCRB’) and the *Comité Extraordinaire pour la Défense des Acquis Démocratiques* (‘CEDAD’).
2. On 9 December 2021, Pre-Trial Chamber II (the ‘Pre-Trial Chamber’) issued the decision on the confirmation of charges against Mahamat Said Abdel Kani (the ‘Confirmation Decision’),² in which it confirmed all charges related to crimes allegedly committed at the OCRB but declined to confirm any of the charges related to crimes allegedly committed at the CEDAD. The Pre-Trial Chamber also suspended the time limit for filing any application for leave to appeal until the translation of the Confirmation Decision into French has been submitted by the Registry in the record of the case.³ Furthermore, the Pre-Trial Chamber also ordered the Registry to transmit the Confirmation Decision and the record of the proceedings to the Presidency.
3. On 10 December 2021, the Registry transmitted the record of the confirmation proceedings to the Presidency.⁴
4. On 14 December 2021, the Presidency constituted Trial Chamber VI in its current composition and referred the case against Mr Said Abdel Kani to it.⁵

¹ [Public Redacted version of ‘Corrected Version of the Document Containing the Charges’](#), 1 December 2021, ICC-01/14-01/21-144-Corr-Red.

² [Decision on the confirmation of charges against Mahamat Said Abdel Kani](#), 9 December 2021, ICC-01/14-01/21-218-Red (‘Confirmation Decision’).

³ [Confirmation Decision](#), para. 154.

⁴ Transmission to the Presidency of the record of the proceedings, including the Decision on the confirmation of charges against Mahamat Said Abdel Kani, ICC-01/14-01/21-218-Conf, dated 9 December 2021, 10 December 2021, ICC-01/14-01/21-219-Conf.

⁵ [Decision constituting Trial Chamber VI and referring to it the case of The Prosecutor v. Mahamat Said Abdel Kani](#), 14 December 2021, ICC-01/14-01/21-220.

5. On 15 December 2021, the Defence filed a request to suspend the trial preparations until there is a final decision on the forthcoming appeal(s) against the Confirmation Decision (the ‘Request’).⁶

6. On 16 December 2021, the Single Judge set the deadline for any responses to the Request on 10 January 2022.⁷

7. On 10 January 2022, the Prosecution filed its response to the Request (the ‘Response’).⁸ Similarly, on 10 January 2022, the Legal Representative of Victims (the ‘LRV’) informed the Chamber that she did not intend to file a response to the Request.⁹

II. SUBMISSIONS

8. The Defence does not invoke any specific provision of the Court’s statutory framework in support of its request. Instead, it relies on what it terms ‘principles’ and ‘maxims’, such as the well-known maxim that justice must not only be done but must also be seen to be done and the presumption of innocence. According to the Defence, these principles and maxims would make it impossible for the Chamber to start preparing the trial of Mr Said Abdel Kani without creating the impression that the Chamber has already predetermined that a future request for leave to appeal by one of the Parties will be rejected or, if granted, that the Appeals Chamber will reject it on the merits.¹⁰ The Defence argues that even making decisions relating to the adoption of procedural protocols, disclosure, redactions, witness protection, etc. would be premature and claims that any such decisions made before there is a final decision on any future request for leave to appeal the Confirmation Decision would have to be revisited after the Pre-Trial Chamber and/or Appeals Chamber have ruled.¹¹

⁶ [Demande de la Défense visant à ce que soit garanti le respect de la théorie des apparences, le respect de la présomption d’innocence de Monsieur Said et l’équité de la procédure dans le cadre de la mise en œuvre du droit qu’ont les Parties d’épuiser les voies de recours à leur disposition pour contester la décision de confirmation des charges, condition pour que cette décision de confirmation des charges devienne définitive et que la procédure préliminaire soit close.](#), 15 December 2021, ICC-01/14-01/21-222 (‘Request’).

⁷ Email from the Single Judge to the Parties and Participants dated 16 December 2021 at 18:37.

⁸ [Prosecution’s Response to the Defence request to halt trial preparation pending the determination of any future interlocutory appeal requests or preliminary proceedings \(ICC-01/14-01/21-222\)](#), 10 January 2022, ICC-01/14-01/21-224 (‘Response’).

⁹ Email from the LRV to the Chamber, dated 10 January 2022 at 15:46.

¹⁰ [Request](#), para. 11.

¹¹ [Request](#), paras 14-16.

9. The Defence further argues that, if the Chamber were to proceed with trial preparations, this would have a dissuasive effect on Mr Said Abdel Kani's ability to exercise his right to appeal under the Statute.¹² It also claims that there would be no gain in terms of expediting the proceedings and that, in any event, the right to be tried without undue delay cannot be invoked against the accused.¹³ Instead, the Defence argues that the expeditiousness of the proceeding is best guaranteed by the Pre-Trial Chamber ruling swiftly on any future request for the leave to appeal.

10. The Prosecution in the Response submits that there is no legal requirement to delay trial preparations, noting that the Confirmation Decision is 'definitive – unless and until amended or set aside on appeal' and that '[h]alting trial preparations now would amount to a *de facto* suspension of the proceedings by the Trial Chamber, even though appellate proceedings have not even been initiated.'¹⁴ Further, in this regard, the Prosecution submits that to grant the Request would mean that 'a suspensive effect normally only granted upon request in appellate proceedings and in exceptional circumstances by the Appeals Chamber is introduced through the back door.'¹⁵

11. The Prosecution also avers that halting trial preparations would not benefit, but rather prejudice the accused, noting that 'conducting necessary procedural and logistical preparations does not harm, but benefits, the Accused'.¹⁶ In this vein, it submits that the Defence has 'failed to demonstrate that commencing trial preparations would create a suspicion of improper interference with the administration of justice if a future request to seek leave to appeal the Confirmation Decision has not yet been decided',¹⁷ noting that the fact that the Chamber has been constituted and the record of the case transmitted 'does not render the statutory powers of [...] Pre-Trial Chamber II obsolete and does not infringe the rights of the Accused.'¹⁸

12. Lastly, the Prosecution observes that it 'is in the interest of justice and the interests of all the Parties and participants that fair and expeditious proceedings are advanced through trial preparations, especially as [Mr Said Abdel Kani] is in

¹² [Request](#), para. 31.

¹³ [Request](#), paras 29-32.

¹⁴ [Response](#), para. 2.

¹⁵ [Response](#), para. 3.

¹⁶ [Response](#), para. 5 (emphasis removed).

¹⁷ [Response](#), para. 6.

¹⁸ [Response](#), para. 8.

detention.’¹⁹ The Prosecution highlights that taking preparatory measures will ensure that the trial ‘commences without undue delay’, and that taking such measures will not impede Mr Said Abdel Kani’s right to seek leave to appeal the Confirmation Decision, nor infringe any other procedural rights.²⁰

III. ANALYSIS

13. At the outset, the Chamber affirms that it attaches the greatest importance to the presumption of innocence and the requirements of independence and at all stages of the proceedings. The Chamber is mindful that the Rome Statute endows it with the authority to carry out the procedure in observance of both, all applicable legal principles, and the rights of the Parties.

14. The wording of Article 61(11) of the Statute is clear in that ‘[o]nce the charges have been confirmed [...] the Presidency shall constitute a Trial Chamber’. In this regard, the Chamber observes that this power is not dependent or made subject to whether there are any potential appeals to a decision confirming the charges. Rather, as soon as the charges have been confirmed, the Presidency *shall* constitute a Trial Chamber. Further, Article 61(11) of the Statute provides that the constituted Trial Chamber ‘shall be responsible for the conduct of subsequent proceedings and may exercise the function of the Pre-Trial Chamber’. Again the wording of the provision is clear in that the Chamber’s responsibility for the conduct of the proceedings, and thus the ability to take steps to prepare a trial, is not contingent or dependent on any potential appeals to a decision confirming the charges. The Chamber therefore rejects the Defence’s claim that any procedural steps towards the preparation of a possible trial would necessarily give rise to the impression of bias on the part of the Chamber.

15. In any event, the Chamber is of the view that there is no inherent contradiction between preparing a trial on the basis of the charges as they are currently confirmed and the fact that there is a possibility that the Confirmation Decision may be appealed. These are separate and distinct procedures. The Chamber points out that Article 82(3) of the Statute unambiguously states that an appeal does not of itself have any suspensive effect. It is open to the Defence to ask the Appeals Chamber to give suspensive effect to its appeal, should leave be granted.²¹ However, as long as the Appeals Chamber has

¹⁹ [Response](#), para. 10.

²⁰ [Response](#), para. 12.

²¹ Article 82(3) of the Statute and Rule 156(5) of the Rules.

not given such suspensive effect to the appeal, the Chamber must ensure that everything that must be done is done so that no time is lost, should the Confirmation Decision be upheld in whole or in part. This has no other purpose than to protect the rights of the accused to be tried without undue delay, according to Article 67(1)(c) of the Statute, and also in recognition of the rights of the victims to expeditious justice.

16. The Chamber also rejects the Defence's claim that taking steps to prepare a possible future trial would contravene the presumption of innocence. In commencing the standard trial preparations, the Chamber takes no view on the correctness of the Confirmation Decision or the merits of any possible grounds of appeal, much less on the guilt or innocence of the accused. The Chamber is simply faced with the fact that the Pre-Trial Chamber has confirmed certain charges against Mr Said Abdel Kani and that the Presidency has assigned the case to it. The Chamber therefore has the responsibility to take all steps that it reasonably can to prepare for the trial in full respect of the rights of all Parties. While the Parties may seek leave to appeal, the Chamber does not see how putting in place the conditions for the smooth conduct of proceedings in preparation for the trial would jeopardise Mr Said Abdel Kani's fair trial rights in any way. To suggest otherwise would not only cast doubt on the Chamber's ability to distinguish between the two parallel proceedings but also impugn the Pre-Trial and Appeals Chambers' independence.

17. If, in the event of an appeal, it is ordered by the Appeals Chamber to suspend or, indeed, terminate the proceedings, the Chamber will do so at that procedural stage. Until such time, the Chamber will continue to undertake all steps as necessary to guarantee a fair and expeditious trial.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request.

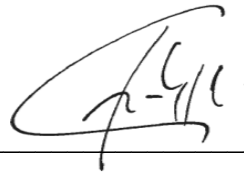
Done in both English and French, the English version being authoritative.



Judge María del Socorro Flores Liera



Judge Miatta Maria Samba
Presiding Judge



Judge Sergio Gerardo Ugalde Godínez

Dated 14 January 2022

At The Hague, The Netherlands