

Annex 24

Public

From: Trial Chamber X Communications
Sent: 29 January 2021 18:32
To: Al Hassan Prosecution Team; 'D28AlHassanDefenceTeam'; 'V43LRVTeam';
Cc: Trial Chamber X Communications; Chamber Decisions Communication; VWS Legal
Subject: RE: Prosecution Witness P-0603

Dear counsel,

The Chamber takes note of the emails below from the Prosecution and Defence on the scheduling of P-0603. As noted by the Defence, the Prosecution's request constitutes a request for reconsideration of the Chamber's Decision 948.

In light of the issues at stake, in particular the points made by the Defence and the reasoning in paragraphs 18 and 20 of the Chamber's Decision 948, the Chamber considers that litigation of this matter via formal filings is appropriate.

The Prosecution is directed to make its request by way of a formal filing, by no later than **next Friday 5 February**.

Any responses should be filed thereafter by **Friday 12 February**.

The Chamber notes that this timetable would not allow the witness to testify around 22 March as proposed by the Prosecution (assuming that the 45 day requirement in Decision 948 is maintained, even if amended to 45 days before the start of P-0603's testimony). However, the Chamber considers that the proposed timetable is appropriate in light of the issues at stake and taking into account the comments of the Defence.

Kind regards,

on behalf of Trial Chamber X

From: Taylor, Melinda

Sent: 29 January 2021 11:23

To: Dutertre, Gilles ; Trial Chamber X Communications ; Al Hassan Prosecution Team ;

'D28AlHassanDefenceTeam'; 'V43LRVTeam'; VWS Legal ; ;

Subject: Re: Prosecution Witness P-0603

Dear Trial Chamber X, Dear Colleagues,

The Defence respectfully copies below the response that was communicated yesterday to the Prosecution, when this issue was raised. The Defence further notes that in its email below, by asking to call P-603 at almost or close to 45 days at the present juncture, the Prosecution is seeking reconsideration of a decision that has already been reconsidered in its favour. The absence of any justification for such reconsideration warrants its dismissal *in limine*.

In the alternative, given the exceptional nature of non-disclosure, the Defence submits that this issue should be addressed by the Prosecution through a formal filing, to which the standard response time should apply. Indeed, in the event that the Chamber is minded to take into consideration the impact of current developments on the ability of the Prosecution to call witnesses, then the same developments must also be taken in account when considering the ability of the Defence to exercise its right to conduct effective investigations in relation to the witnesses called against Mr. Al Hassan. The Defence should therefore be afforded a fair opportunity to address matters, which have been raised by the Prosecution in multiple emails, rather than one consolidated filing.

Kind regards

Melinda Taylor, Counsel for Mr. Al Hassan

Dear Mr. Dutertre,

Thank you for your email.

The Defence does not object to P-114 and P-0081 being heard after P-0554 and P-0984. Can you confirm when the testimony of P-0554 will start?

The identity of P-0603 was initially ordered to be disclosed two weeks before the start of trial (end of June 2020). When the Prosecution sought and was granted reconsideration of this order, it was on the proviso

that P-0603 would be testifying in the third block of witnesses (see ICC-01/12-01/18-948-Conf-Red, paras. 9, 15, 17). The Trial Chamber further specified that her identity should be disclosed 45 days before the start of the 3rd block of witnesses, and not 45 days before the start of her testimony, in order to afford the Defence more time to investigate (para. 20). P-0603 was in fact scheduled as the fifth witness in block 3 - thus underscoring the intention of the Chamber to allow the Defence much more than 45 days lead time. Bearing in mind the current COVID restrictions and the impact that they have on defence investigations (particularly those that necessarily occur at short notice due to delayed disclosure), the Defence does not agree to the Prosecution proposal to amend the witness schedule by moving P-0603 from witness 61 (Block 3) to effectively Block 1/beginning of Block 2.

Kind regards

Melinda

From: Dutertre, Gilles <[REDACTED]>

Sent: 29 January 2021 11:08

To: Taylor, Melinda <mtaylor@icc-01/12-01/18-948-Conf-Red>; Trial Chamber X Communications <TrialChamberXCommunications@icc-01/12-01/18-948-Conf-Red>; Al Hassan Prosecution Team <AlHassanProsecutionTeam@icc-01/12-01/18-948-Conf-Red>; 'D28AlHassanDefenceTeam@icc-01/12-01/18-948-Conf-Red' <'D28AlHassanDefenceTeam@icc-01/12-01/18-948-Conf-Red'>; 'V43LRVTeam@icc-01/12-01/18-948-Conf-Red' <'V43LRVTeam@icc-01/12-01/18-948-Conf-Red'>; VWS Legal <VWS_Legal@icc-01/12-01/18-948-Conf-Red>; [REDACTED]

Subject: Prosecution Witness P-0603

Chère Chambre de Première Instance X,

Suivant la décision de la Chambre ICC-01/12-01/18-948-Conf-Red ‘‘the Prosecution request for delayed disclosure of the identity and identifying information of P-0603 until 45 days before the start of the third block of Prosecution witnesses’’ a été accordée.

P-0603 est un des témoins qui pourraient témoigner en mars prochain (même si elle est actuellement dans le troisième bloc).

L’Accusation s’est rapprochée de la Défense qui s’y oppose.

Cela étant, la Défense a déjà des informations substantielles qu’elle peut investiguer quant à la preuve potentielle de ce témoin.

Qui plus est, l’information incriminatoire provenant de ce témoin impliquant l’Accusé est circonscrite.

Vu les difficultés multiples pour constituer les calendriers de témoins (cf. mon courriel de ce jour à 10h30), sans compter l’indisponibilité probable de nombreux témoins pendant le Ramadan à venir en avril et mai 2021, l’Accusation souhaite donc l’autorisation de la Chambre d’appeler P-0603 en mars 2021. Un délai de disclosure de 45 jours est encore toujours possible à ce jour si P-0603 dépose avant P-0626 (soit juste avant le 22 mars).

Respectueusement,

Gilles Dutertre

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