

Annex 72

Public

From: Trial Chamber X Communications
Sent: 31 March 2021 11:48
To: [REDACTED] Dutertre, Gilles; [REDACTED]
Cc: Trial Chamber X Communications; Al Hassan Prosecution Team; V43 Victims Al Hassan Team; D28 Al Hassan Defence Team; Chamber Decisions Communication
Subject: TC X - Decision on Prosecution urgent email request concerning the disclosure of P-0570's identity

Dear Counsel,

The Single Judge notes that the Chamber recently decided, for another witness whose identity was withheld from the Defence, that disclosure of identity 'at a date which is earlier than what was authorised by the Chamber [...] need not be authorised as such' (ICC-01/12-01/18-1320-Conf, para. 17). In line with this, and consistent with the principles underlying the evidence disclosure protocol – including that redactions should be lifted by the disclosing party at the earliest opportunity, the Single Judge clarifies that no authorisation is warranted and that the Prosecution can disclose P-0570's identity and identifying information when filing its upcoming application pursuant to Rule 68 of the Rules.

Kind regards,

On behalf of the Single Judge of TC X

From: [REDACTED]
Sent: 31 March 2021 10:23
To: Trial Chamber X Communications <[TrialChamberXCommunications](#)> [REDACTED]
Cc: Dutertre, Gilles [REDACTED]
Subject: URGENT request to vary authorisation in ICC-01/12-01/18-794-Conf-Exp

Dear Trial Chamber X,

The Prosecution applies to vary the Chamber's original authorisation to delay disclosure of P-0570's identity and identifying information to the Defence until 45 days before her testimony. This is to enable disclosing her identity and identifying information when the Prosecution files its rule 68(2)(c) application, rather than 45 days before her testimony as originally ordered by the Chamber.

By decision of 8 May 2020, the Chamber at the Prosecution's request authorised it to delay disclosure of P-0570's identity and identifying information until 45 days before her testimony (ICC-01/12-01/18-794-Conf-Exp).

By decision of 14 December 2020, the Single Judge at the Prosecution's request granted an extension of time until 1 April 2021 for the Prosecution to file an application regarding P-0570 under either rule 68(2) or rule 68(3) (e-mail of 14 December 2020 at 08:52).

As the Prosecution will explain in its application to introduce her prior recorded testimony and associated material under rule 68(2)(c), P-0570 is unavailable to testify orally due to obstacles that cannot be overcome with reasonable diligence, namely, as a result of her state of health.

The Prosecution understands that P-0570's identity and identifying information should be communicated to the Defence when the Prosecution files its rule 68(2)(c) application so as to enable the Defence to meaningfully respond to it.

Given P-0570's unavailability to testify orally, the Prosecution requests that the Chamber vary its original authorisation to delay disclosing to the Defence her identity and identifying information until 45 days before her testimony, in order to enable disclosing her identity and identifying information when the Prosecution files its rule 68(2)(c) application, rather than 45 days before her testimony as originally ordered by the Chamber.

The Prosecution's rule 68(2)(c) application is due on 1 April 2021. Given the deadline for the Prosecution's rule 68(2)(c) application, the Prosecution respectfully requests that the Chamber vary its authorisation on an urgent basis. The Prosecution sends this e-mail message to the Chamber only pending it granting this request.

Best regards,

Elena Martin Salgado
Trial Lawyer, OTP