

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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**No. ICC-01/14-01/18
Date: 12 December 2022**

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 for Reconsideration regarding
In-Court Protective Measures for Witness P-1858**

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’), and Rule 87 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Prosecution Request for Reconsideration regarding In-Court Protective Measures for Witness P-1858’.

I. Procedural history

1. On 9 March 2021, the Single Judge rejected the Office of the Prosecutor’s (the ‘Prosecution’) request for in-court protective measures for witness P-1858 (the ‘Initial Decision’).¹
2. On 2 November 2022, the Prosecution sought reconsideration of the Initial Decision, requesting the Chamber to grant in-court protective measures in the form of facial distortion and use of a pseudonym for P-1858 (the ‘Request’).²
3. On 14 November 2022, the Ngaïssona Defence opposed the Request, arguing that the Prosecution failed to demonstrate ‘exceptional, new, or additional circumstances’ warranting reconsideration of the Initial Decision or the existence of an objectively justifiable risk for the witness (the ‘Response’).³

¹ 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 41-42, p. 46.

² Request for Reconsideration regarding In-Court Protective Measures for Prosecution Witness P-1858, ICC-01/14-01/18-1651-Conf (public redacted version notified the same day, ICC-01/14-01/18-1651-Red), paras 1, 21.

³ Ngaïssona Defence Response to “Request for Reconsideration regarding In-Court Protective Measures for Prosecution Witness P-1858” (ICC-01/14-01/18-1651-Conf), ICC-01/14-01/18-1662-Conf, paras 1-2, 26.

4. On 9 December 2022,⁴ the Victims and Witnesses Unit (the ‘VWU’) provided its observations, in which it recommends to grant in-court protective measures consisting of use of a pseudonym and image distortion for P-1858 (the ‘Report’).⁵

II. Analysis

5. The Single Judge recalls the applicable law for protective measures, as set out in the Initial Decision.⁶
6. The Single Judge first takes note of the information provided by the VWU that the witness ‘resides [REDACTED]’ (specifically, ‘[REDACTED]’), [REDACTED], and would therefore ‘be easily recognised, potentially attracting unwanted attention from Anti-Balaka elements’.⁷ Second, the Single Judge notes the VWU’s submission that in carrying out his professional activities, the witness ‘passes through both legal and illegal checkpoints that are under the control of the Anti-Balaka movement’ and, given that ‘associates of the accused may occupy these checkpoints, there is a risk that the witness could be identified as an ICC witness, thereby placing him in potentially dangerous situations’.⁸
7. The Single Judge further takes note that, according to the VWU, the above risk is ‘further compounded’ by the fact that [REDACTED]. The Single Judges notes the VWU’s conclusions that, for this reason, ‘there is an objectively justifiable security risk to the witness’ and further that ‘the application of [in-court protective measures] may prevent a future escalation of risk’.⁹

⁴ In light of P-1858’s scheduled appearance from 14 to 16 December 2022, the Chamber initially directed the VWU to file its assessment on in-court protective measures latest by 5 December 2022 (email from the Chamber, 3 November 2022, at 16:21). Upon a request by the VWU, the Chamber granted an extension of this deadline to 12 December 2022 (email from the VWU, 30 November 2022, at 16:50; email from the Chamber, 1 December 2022, at 11:56). Thereafter, and in light of the potential appearance of P-1858 as of 12 December 2022 (email from the Prosecution, 5 December 2022, at 16:50; email from the Chamber, 5 December 2022, at 18:12), the Chamber amended the deadline to 9 December 2022 (email from the Chamber, 6 December 2022, at 17:47).

⁵ Victims and Witnesses Unit’s Observations on the “Request for Reconsideration regarding In-Court Protective Measures for Prosecution Witness p-1858” (ICC-01/14-01/18-1651-Conf), ICC-01/14-01/18-1691-Conf, para. 11.

⁶ Initial Decision, ICC-01/14-01/18-906-Red2, paras 14-21.

⁷ Report, ICC-01/14-01/18-1691-Conf, paras 3, 5, 7. *See also* Request, ICC-01/14-01/18-1651-Conf, para. 10.

⁸ Report, ICC-01/14-01/18-1691-Conf, para. 8. *See also* Request, ICC-01/14-01/18-1651-Red, paras 7-9.

⁹ Report, ICC-01/14-01/18-1691-Conf, paras 9, 11.

8. 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. While the Single Judge takes note of the Ngaïssona Defence's submissions,¹⁰ he finds that the new information provided, compounded by other circumstances, notably P-1858's prior involvement with the Anti-Balaka and the nature of his prospective testimony,¹¹ 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-1858, as recommended by the VWU.
9. Lastly, the Single Judge reminds the participants to organise their questioning in such a manner that use of private sessions be as limited as possible.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Request; and

ORDERS the Ngaïssona Defence and the VWU to file public redacted versions of the Response, ICC-01/14-01/18-1662-Conf, and the Report, ICC-01/14-01/18-1691-Conf, respectively, within one week of notification of this decision.

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



¹⁰ Response, ICC-01/14-01/18-1662-Conf, paras 11-25.

¹¹ Corrected version of 'Eighteenth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1858, P-1823, P-1819, P-1813, P-2476, P-1786, P-2587 and P-0487', 11 November 2022, ICC-01/14-01/18-1661-Conf-Corr (corrected version notified on 18 November 2022), paras 17-19. *See also* Report, ICC-01/14-01/18-1691-Conf, para. 5; Request, ICC-01/14-01/18-1651-Red, para. 11.

Judge Bertram Schmitt
Single Judge

Dated 12 December 2022

At The Hague, The Netherlands