

ANNEX 7

Public

From: Trial Chamber VI Communications

Sent: 29 January 2024 18:29

To: OTP CAR IIA Communications; D33 Said Defence Team; Said LRV Team OPCV

Cc: Chamber Decisions Communication; Associate Legal Officer-Court Officer; Trial Chamber VI Communications

Subject: Decision on Prosecution's request pursuant to rule 68(3) of the Rules of Procedure and Evidence (ICC-01/14-01/21-674)

Dear Parties and Participants,

The Chamber notes that in filing 674 the Prosecution has requested the introduction of the annex to P-1289's witness preparation log (ICC-01/14-01/21-674-AnxA) pursuant to Rule 68(3) of the Rules of Procedure and Evidence.

The Defence opposes the request in filing number 678. The Defence points out that P-1289 mentioned Mr Said for the first time during the recent preparation sessions, whereas he never mentioned Mr Said in his original statement of 2017. The Defence further point out that P-1289 confirmed during the witness preparation session that the information he provided in his application to participate as a witness in these proceedings is correct. This application form also contains new information which directly implicates Mr Said.

According to the Defence, this is a significant change in P-1289's testimony, which makes it inappropriate to introduce the annex to the preparation log pursuant to rule 68(3) of the Rules.

The Defence further requests to be provided with the video recordings of the witness preparation sessions. The Defence argues it needs to see the recordings because it is unclear from the preparation log what could have caused P-1289 to suddenly recognise Mr Said for the first time after many years.

The Prosecution responded to the Defence's request to be provided with the video recordings via email on Monday 29 January 2024 at 16:51 in accordance with the shortened deadline.

The Chamber has considered the parties' arguments and finds that the Defence's requests should be granted.

First, in relation to the Prosecution's request to introduce the annex to P-1289's witness preparation log, the Chamber agrees with the Defence that the nature and amount of new information provided by the witness during witness preparation is so significant that the Prosecution should examine the witness on these matters in court. Accordingly, the Prosecution's request to introduce the annex to P-1289's preparation log is rejected. As a result, the Chamber orders the Prosecution to conduct a supplementary examination of P-1289 and identify any corrections or clarifications which P-1289 may have to his original statement. Moreover, if the Prosecution wishes to elicit any testimony from P-1289 in respect of the additional information that was provided during witness preparation, it should question P-1289 on these matters under oath during the hearing. Following the completion of its supplementary examination, the Prosecution should proceed to the fulfilment of the rule 68(3) requirements as normal.

Second, in relation to the Defence's request to be provided with the video recordings of the witness preparation sessions of P-1289, the Chamber finds that, on this occasion, the Defence has demonstrated the necessity for reviewing the recordings. Specifically, the Chamber finds that, given the nature of the new information provided, in this specific instance, there is an interest in understanding how such information came about and thus access to the recording is warranted. Contrary to the Prosecution's submissions, disclosure of the video recording does not require there to be an indication of bad faith on the part of calling party and indeed, at this stage, the Chamber makes no such finding. Accordingly, the Chamber orders the Prosecution to make the recordings available to the Chamber, the Defence and the CLRV and upload them onto e-Court as soon as possible. There is no need to provide transcripts or translations of these recordings.

Kind regards,

Trial Chamber VI