

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/14-01/18-1423

Date: 27 May 2022

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

**Public Redacted Version of 'Urgent Application for Assurances under Rule 74
(3)(c) of the Rules', 23 May 2022, ICC-01/14-01/18-1423-Conf**

Source: Mr Sergei Golubok, Legal Adviser to Witness P-2475

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

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Witness P-2475

I. INTRODUCTION

1. In accordance with Rule 74 of the Rules of Procedure and Evidence ('Rules'), Witness P-2475 hereby respectfully requests the Trial Chamber V of the International Criminal Court ('Chamber') to ensure that the testimony, that is evidence provided by Witness P-2475 in response to the questions, will at all times be kept confidential, and will not be disclosed to the public or any State, and will not be used either directly or indirectly against Witness P-2475 in any subsequent prosecution by the International Criminal Court ('Court'), except under articles 70 and 71 of the Rome Statute of the Court ('Statute').

II. CLASSIFICATION

2. This application is filed confidentially pursuant to regulation 23*bis*(1) of the Regulations of the Court as it contains information which might lead to the identification of Witness P-2475. The public redacted version of this application will be filed in due course.

III. PROCEDURAL HISTORY

3. On 9 May 2022 the Prosecution advised the Chamber that the prospective testimony of Witness P-2475 "will raise issues of self-incrimination".¹ According to the Prosecution, prior statements of Witness P-2475 provided "several objective reasons for concern regarding possible self-incrimination", as Witness P-2475 was member of Anti-Balaka during the period covered by the charges against the Accused.² For the Prosecution, given the nature of the alleged crimes, "it is clear that rule 74 assurances are necessary".³
4. On 13 May 2022 Judge Bertram Schmitt, acting as Single Judge on behalf of the Chamber, directed the Registry to appoint duty counsel for Witness P-2475 to

¹ ICC-01/14-01/18-1398-Red, Public Redacted Version of 'Prosecution's Request for the Appointment of Duty Counsel pursuant to Rule 74', 9 May 2022, ICC-01/14-01/18-1398-Conf (public redacted version filed on 16 May 2022), para. 4.

² *Ibid.*, para. 5.

³ *Ibid.*, para. 6.

advise that witness pursuant to Rule 74 of the Rules regarding issues of self-incrimination that may arise during the testimony.⁴

5. On 18 May 2022 the Registrar of the Court appointed the Legal Adviser to Witness P-2475.⁵ The Legal Adviser had access to the relevant material in connection with the case and met confidentially with Witness P-2475, who was advised, *inter alia*, of article 70(1)(a) of the Statute.

IV. APPLICABLE LAW

6. Assurances under Rule 74 (3)(c) of the Rules shall be provided to the witness where the Court determines, pursuant to Rule 74 (2) of the Rules, that an assurance with respect to self-incrimination is required. The lawyer advising the witness who may be at risk of self-incrimination during testimony shall seize the Chamber of any application for assurances under Rule 74 (3)(c) of the Rules, if required.⁶
7. Granting assurances under Rule 74 (3)(c) of the Rules constitutes an exception to the default rule that witness may object to making any statement that might incriminate him or her; those assurances “are thus centred around the prospect of the Chamber compelling answers to questions”.⁷

V. SUBMISSIONS

8. The Prosecution expressed its view, which was not opposed by other participants, about “several objective reasons for concern regarding possible self-incrimination” of Witness P-2475, given that the witness was a [REDCATED] of Anti-Balaka Group. This view is confirmed by the Legal Adviser’s own independent assessment of disclosed material, and is shared by

⁴ ICC-01/04-01/18-1406, Decision on the Second Prosecution Request for Appointment of Duty Counsel for Purposes of Rule 74 of the Rules, 13 May 2022, para. 9.

⁵ ICC-01/04-01/18-1419, Notification of the Appointment of Mr Sergei Golubok as Legal Adviser to Witness P-2475, 20 May 2022.

⁶ ICC-01/04-01/18-631, Initial Directions on the Conduct of the Proceedings, 26 August 2020, para. 39.

⁷ ICC-02/04-01/15-1096, *Prosecutor v. Dominic Ongwen*, Single Judge on behalf of Trial Chamber IX, Decision on Request for Rule 74 Assurances for P-40, 6 December 2017, para. 6.

Witness P-2475. This concern is caused by the prospective testimony of Witness P-2475 about the [REDACTED] of Anti-Balaka, *modus operandi* [REDACTED] by Anti-Balaka, acts and conduct [REDACTED] of Anti-Balaka, acts and/or omissions of Witness P-2475 in connection with, directly and indirectly, [REDACTED], [REDACTED], and other relevant details ('Prospective Testimony').

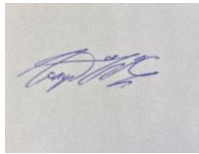
9. The concerns which flow from the nature of Prospective Testimony merit, in Legal Adviser's respectful submission, assurances to Witness P-2475 pursuant to Rule 74 (3)(c) of the Rules, which would enable Witness P-2475 to testify without fear of the consequences of possible self-incrimination, and thus contribute to the integrity of the present proceedings and ultimately to the cause of international criminal justice. Granting assurances will be in line with the powers of the Chamber, including with regard to the protection of witnesses, as they are defined in articles 64 (2) and 68 of the Statute.

VI. RELIEF REQUESTED

10. It is respectfully requested on behalf of Witness P-2475 that the Chamber provides assurances, with reference to both limbs of Rule 74 (3)(c) of the Rules, that Prospective Testimony will be kept confidential to the public or any State, and that it will not be used, directly or indirectly, against Witness P-2475, except in application of articles 70 and 71 of the Statute.
11. In order to give effect to the assurances under Rule 74 (3)(c) of the Rules, the Chamber may employ particular modalities listed in Rule 74 (7) of the Rules. Witness P-2475 relies on the wisdom of the Chamber in this respect, having in mind that particular measures employed by the Chamber while giving effect to Rule 74 (3)(c) assurances should be limited to what is strictly necessary to ensure an appropriate balance between protecting Witness P-2475 and the right of the accused to a public trial. It is submitted on behalf of Witness P-2475 that in any event the in-court witness protection measures already granted, such as non-

disclosure of the name and personal details, voice and face distortion, should continue.

12. Finally, given the nature of Rule 74 of the Rules, it is respectfully requested that the relevant assurances and directions based on those assurances be provided by the Chamber prior to the commencement of oral testimony of Witness P-2475 in court.



Sergei Golubok
Legal Adviser,
on behalf of Witness P-2475

Dated this 23rd day of May 2022

At The Hague, the Netherlands