



Original: **French**

No.: **ICC-01/12-01/18**

Date: **13 May 2019**

PRE-TRIAL CHAMBER I

Before: Judge Péter Kovács, Single Judge

SITUATION IN THE REPUBLIC OF MALI

**IN THE CASE OF
*THE PROSECUTOR v. AL HASSAN AG ABDOUL AZIZ AG MOHAMED
AG MAHMOUD***

Public Document

Decision on the Prosecutor's Request for an Extension of Time

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

Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Counsel for the Defence

Ms Melinda Taylor

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

States' Representatives

**Office of Public Counsel for the
Defence**

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Péter Kovács, designated on 28 March 2018 by Pre-Trial Chamber I (“Chamber”) of the International Criminal Court (“Court”) as Single Judge responsible for carrying out the functions of the Chamber in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* (“Al-Hassan case”),¹ decides as follows:

I. Procedural history

1. On 27 March 2018, pursuant to article 58 of the Rome Statute (“Statute”), the Chamber issued a warrant of arrest for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (“Mr Al Hassan”).²
2. On 31 March 2018, Mr Al Hassan was surrendered to the Court, and he is currently being held at the Court’s detention centre in The Hague.³
3. On 4 April 2018, Mr Hassan’s first appearance hearing was held, during which the Single Judge scheduled the commencement of the confirmation hearing for Monday, 24 September 2018.⁴
4. On 16 May 2018, the Single Judge issued the “Decision on the Evidence Disclosure Protocol and Other Related Matters”,⁵ directing the Prosecutor to submit observations on a provisional schedule for the disclosure of evidence, taking into account any possible translation or witness protection requirements.
5. On 22 May 2018, the Chamber handed down its “Decision on the Prosecutor’s Application for the Issuance of a Warrant of Arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud”.⁶

¹ “Decision Designating a Single Judge”, dated 28 March 2018 and reclassified public on 31 March 2018, ICC-01-12-01/18-6-tENG.

² “Warrant of Arrest for Al Hassan Ag Abdoul Ag Aziz Ag Mohamed Ag Mahmoud”, dated 27 March 2018 and reclassified as public on 31 March 2018, ICC-01-12-01/18-2-tENG.

³ ICC-01-12-01/18-11-US-Exp.

⁴ Transcript of the first appearance hearing, 4 April 2018, ICC-01/12-01/18-T-1-Red-FRA.

⁵ ICC-01/12-01/18-31-tENG-Corr.

⁶ ICC-01/12-01/18-35-Red2-tENG.

6. On 20 July 2018, the Single Judge issued the “Decision Postponing the Date of the Confirmation Hearing”⁷ and scheduled the hearing for 6 May 2019. In the Decision, the Single Judge also instructed the Prosecutor to enter into the record, no later than 30 days before the date of the confirmation hearing (“Confirmation Hearing”), an Arabic translation of the Document Containing the Charges (“DCC”) and the list of the evidence which she intended to present at the Confirmation Hearing.⁸

7. On 5 October 2018, the Chamber issued its “Decision on the Defence Request concerning the Time Limit for the Prosecutor to File the Document Containing a Detailed Description of the Charges”.⁹ In that decision, the Chamber directed the Prosecutor to file the DCC and the list of evidence no later than 60 days before the date of the Confirmation Hearing,¹⁰ which had initially been scheduled for 6 May 2019.

8. On 9 November 2018, the Prosecutor filed information concerning the discharge of her disclosure and witness protection obligations.¹¹

9. On 7 February 2019, the Single Judge directed the Prosecutor to file precise submissions for requests concerning the proceedings which she intended to file before the start of the Confirmation Hearing.¹² The Prosecutor filed her submissions on 12 February 2019, and requested an extension of time for filing the DCC.¹³ The Defence

⁷ ICC-01/12-01/18-94-Red-tENG.

⁸ “Decision Postponing the Date of the Confirmation Hearing”, 20 July 2018, ICC-01/12-01/18-94-Red-tENG, p. 12.

⁹ ICC-01/12-01/18-143-tENG.

¹⁰ “Decision on the Defence Request concerning the Time Limit for the Prosecutor to File the Document Containing a Detailed Description of the Charges”, 5 October 2018, ICC-01/12-01/18-143-tENG, para. 27 and p. 13.

¹¹ ICC-01/12-01/18-180-Red2. On 16 November 2018 the confidential *ex parte* version was filed, see ICC-01/12-01/18-180-Conf-Exp. Subsequently, the Prosecutor filed a confidential redacted version, available to the Defence, on 13 November 2018 (ICC-01/12-01/18-180-Conf-Red) and a public redacted version on 16 November 2018 (ICC-01/12-01/18-180-Red2).

¹² “Order Directing the Prosecutor to File Precise Submissions for Requests concerning the Proceedings which She Intends to File before the Start of the Confirmation of Charges Hearing”, ICC-01/12-01/18-236-tENG.

¹³ “Éléments d’information concernant notamment la communication des éléments de preuve et les requêtes aux fins d’expurgation à venir et demande d’extension de délai pour déposer le Document contenant les charges ainsi que la Liste des témoins et des éléments de preuve”, ICC-01/12-01/18-243-Secret-Exp. The Prosecutor filed a secret redacted version of her request, *ex parte*, available to the Defence, on 14 February 2019 (ICC-

responded on 19 February 2019, objecting to the requested extension of time and to the postponement of the Confirmation Hearing.¹⁴

10. On 25 February 2019, the Single Judge issued the “*Ordonnance fixant une date butoir pour le dépôt des requêtes en vue du dépôt du document contenant les charges*”, instructing the Prosecutor to file all her applications relating to the filing of the DCC by 15 March 2019, postponing the date of the Confirmation Hearing, and advising that a new date would be set after 15 March 2019.¹⁵

11. On 18 April 2019, the Single Judge issued a decision instructing the Prosecutor to file the DCC by Wednesday, 8 May 2019 and rescheduling the Confirmation Hearing for Monday, 8 July 2019 (“Decision of 18 April 2019”).¹⁶

12. On 8 May 2019, the Prosecutor filed a request for an extension of the time limit of 8 May 2019, pursuant to regulation 35(2) of the Regulations of the Court (“Regulations”), to disclose an Arabic translation of the summary of the statements of Witness P-0582 (“Request”).¹⁷ The Prosecutor seeks an extension of time to 17 May 2019 but maintains that, should the document become available earlier, she will disclose it to the Defence and the Chamber as soon as practicable.¹⁸ Among other things, the Prosecutor makes mention of other associated tasks and of the document’s length, circumstances which have prevented her from finalizing the translation within the time limit set by the Single Judge.¹⁹ The Prosecutor also notes that the requested

01/12-01/18-243-Secret-Exp-Red), and a public redacted version on 15 February 2019 (ICC-01/12-01/18-243-Red2).

¹⁴ “Defence Response to the Prosecution’s ‘*Éléments d’information concernant notamment la communication des éléments de preuve et les requêtes aux fins d’expurgation à venir et demandes d’extension de délai pour déposer le Document contenant les charges ainsi que la Liste des témoins et des éléments de preuve*’”, 19 February 2019, ICC-01/12-01/18-250-Secret-Exp. The Defence filed a public redacted version on 21 February 2019, ICC-01/12-01/18-250-Red.

¹⁵ ICC-01/12-01/18-255, para. 15.

¹⁶ “Decision Rescheduling the Date of Filing of the Document Containing the Charges and the Commencement of the Confirmation Hearing”, 18 April 2019, ICC-01/12-01/18-313-tENG, paras. 18-20.

¹⁷ “Prosecution Request for Variation of Time Limit for Disclosure”, 8 May 2019, ICC-01/12-01/18-334.

¹⁸ Request, para. 4.

¹⁹ Request, paras. 1, 3-4.

extension does not prejudice the interests of the Defence, which has already been in possession of the original document since 30 April 2019.²⁰

13. On the same day, the Prosecutor filed the DCC against Mr Al Hassan.²¹

14. On 9 May 2019, the Defence informed the Chamber that it did not intend to respond to the Request.²²

15. On 11 May 2019, the Prosecutor filed an amended and corrected version of the DCC against Mr Al Hassan.²³

II. Analysis

16. The Single Judge makes reference to regulation 35(2) of the Regulations, which provides that:

2. The Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard. After the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control.

17. As a preliminary matter, the Single Judge notes that the Prosecutor filed the Request on 8 May 2019, the very day on which the time limit set by the Single Judge in his Decision of 18 April 2019 expired.²⁴ The Single Judge recalls that all parties must submit a request as soon as the reasons preventing them from meeting the deadline set by the Single Judge become known. In any event, all parties are required to submit such a request in such a way as to allow the Single Judge to take action within the time limit set.²⁵ In the case at hand, the Single Judge is of the view that the Prosecutor's filing of the Request on the very day the time limit expired makes it difficult for the

²⁰ Request, para. 5.

²¹ ICC-01/12-01/18-335-Conf.

²² Email from the Defence to the Chamber on 19 May 2019 at 12.17.

²³ ICC-01/12-01/18-335-Conf-Corr.

²⁴ Decision of 18 April 2019, para. 18.

²⁵ See, for example, Trial Chamber II, *The Prosecutor v. Germain Katanga*, "Decision granting a further extension of time to the Common Legal Representative of Victims for submitting applications for reparations", 8 December 2015, ICC-01/04-01/07-3628-tENG, para. 9.

Defence to file any response, and prevents the Single Judge from properly assessing the arguments made.

18. However, the Single Judge notes that the Defence does not object to the Request, and that it has been in possession of the original document since 30 April 2019. Consequently, in the light of these considerations, the Single Judge deems it appropriate to grant the extension of time sought by the Prosecutor to disclose the document to 17 May 2019.

19. Furthermore, the Single Judge notes that, if the document is available before 17 May 2019, the Prosecutor undertakes to disclose it to the Defence and to the Chamber as soon as practicable. Consequently, the Single Judge instructs the Prosecutor to make every effort to file the document as soon as possible.

FOR THESE REASONS, the Single Judge

GRANTS the Request;

EXTENDS the time limit for filing the document to 17 May 2019; and

INSTRUCTS the Prosecutor to make every effort to file the document as soon as possible.

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

[signed]

Judge Péter Kovács
Single Judge

Dated this 13 May 2019

At The Hague, Netherlands