

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No. **ICC-01/11-01/13**  
Date: **7 September 2022**

**PRE-TRIAL CHAMBER I**

**Before:**                    **Judge Péter Kovács, Presiding**  
                                  **Judge Reine Adélaïde Sophie Alapini-Gansou**  
                                  **Judge María del Socorro Flores Liera**

**SITUATION IN LIBYA**

**IN THE CASE OF**

***THE PROSECUTOR v. AL-TUHAMY MOHAMED KHALED***

**Public**

Decision terminating the proceedings against Mr Al-Tuhamy Mohamed Khaled

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

**The Office of the Prosecutor**  
Ms Nazhat Shameem Khan  
Ms Nicole Samson

**Counsel for the Defence**

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for Victims**

**The Office of Public Counsel for the Defence**

**States Representative**

**Amicus Curiae**

## **REGISTRY**

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**Registrar**  
Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

**PRE-TRIAL CHAMBER I** (the ‘Chamber’) of the International Criminal Court (the ‘Court’) issues this decision on the ‘Prosecution notification of the Death of Al-Tuhamy Mohamed Khaled and Request to Withdraw the Warrant of Arrest’ (the ‘Application’).<sup>1</sup>

1. On 26 February 2011, the United Nations Security Council referred the situation in the Libyan Arab Jamahiriya (‘Libya’) since 15 February 2011 to the Prosecutor of the Court.<sup>2</sup>

2. On 18 April 2013, the Chamber<sup>3</sup> issued the ‘Warrant of Arrest for Al-Tuhamy Mohamed Khaled’ (the ‘Warrant of Arrest’),<sup>4</sup> for his alleged criminal responsibility pursuant to article 25(3)(a) and (d) and article 28(b) of the Statute for several crimes against humanity and war crimes, allegedly committed in the territory of Libya from 15 February 2011 to 24 August 2011 and at least early March 2011 until 24 August 2011, respectively.<sup>5</sup>

3. On 2 August 2022, the Prosecution filed the Application requesting the Chamber to withdraw the Warrant of Arrest and to render it without effect due to Mr Al Tuhamy’s death,<sup>6</sup> and annexing a copy of a death certificate issued by the Libyan authorities (the ‘Certificate’) and an official translation.<sup>7</sup>

4. As the purpose of the Court’s criminal proceedings is to determine individual criminal responsibility, jurisdiction cannot be exercised over, and arrest warrants cannot be executed for, a deceased person. If a suspect has deceased, the arrest warrant and all other relevant documents are therefore rendered without effect.<sup>8</sup>

5. The Chamber notes that the Certificate provided by the Prosecution in support of the Application states that Mr Al-Tuhamy died of natural causes on 12 February 2021 in Cairo,

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<sup>1</sup> ICC-01/11-01/13-37-Conf-Exp (public redacted version filed on the same day), with 1 confidential *ex parte* annexe.

<sup>2</sup> See Resolution S/RES/1970 (2011).

<sup>3</sup> The Warrant of Arrest was issued by the Chamber in its previous composition. On 23 March 2021, the Presidency recomposed the chambers of this Court and assigned the situation in Libya to the Chamber in its present composition (*see* The Presidency, Decision assigning judges to divisions and recomposing Chambers, ICC-01/11-01/17-21, p. 9). On the same day, the Chamber elected Judge Péter Kovács as Presiding Judge of the Chamber (*see* Decision on the Election of the Presiding Judge, ICC-01/11-01/17-22, p. 4).

<sup>4</sup> ICC-01/11-01/13-1.

<sup>5</sup> Warrant of Arrest, pages 6-7.

<sup>6</sup> Application, para. 11.

<sup>7</sup> See ICC-01/11-01/13-37-Conf-Exp-Anx1.

<sup>8</sup> Article 58(4) of the Statute. Pre-Trial Chamber I (previous composition), *The Prosecutor v. Saif Al-Islam Gaddafi*, Decision to Terminate the Case Against Muammar Mohammed Abu Minyar Gaddafi, 22 November 2011, ICC-01/11-01/11-28, p. 4 and references cited therein. Trial Chamber IV, *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Public redacted Decision terminating the proceedings against Mr Jerbo, 4 October 2013 (public and confidential versions notified on the same day), ICC02/05-03/09-512-Red, para. 17 and references cited therein.

Egypt, as reported by someone who appears to be a family member of Mr Al-Tuhamy. Although the Certificate was issued by the *Libyan* authorities, on 21 June 2022, and without indication whether or how these authorities verified Mr Al-Tuhamy's passing, the Chamber notes the Prosecution's statement that '[t]here is no doubt that AL-TUHAMY, the person named in the Warrant of Arrest issued by this Court, is now dead'.<sup>9</sup> In light of the Prosecution's submissions, and mindful that the Prosecution is the entity that sought the warrant and which normally pursues an individual's arrest, the Chamber considers that the Certificate suffices to render the Warrant of Arrest without effect. Outstanding requests for arrest and surrender made to any States must accordingly be withdrawn.

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<sup>9</sup> Application, para. 12.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**TERMINATES** the proceedings against Mr Al-Tuhamy Mohamed Khaled; and

**INSTRUCTS** the Registrar to inform all States which were notified of the Warrant of Arrest that it is no longer in effect and to withdraw the requests for arrest and surrender.

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



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**Judge Péter Kovács,  
Presiding**



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**Judge Reine Adélaïde Sophie  
Alapini-Gansou**



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**Judge María del Socorro  
Flores Liera**

Dated this Wednesday, 7 September 2022

At The Hague, The Netherlands