



Original: English

No. **ICC-01/22**
Date: **14 November 2024**

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Presiding Judge
Judge Sergio Gerardo Ugalde Godínez
Judge Haykel Ben Mahfoudh

SITUATION IN UKRAINE

Public

Decision on Mongolia's request for leave to reply

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

The Office of the Prosecutor

Mr Karim A. A. Khan KC
Ms Brenda J. Hollis

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

**The Office of Public Counsel
for Victims**

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

States Representatives

Competent authorities of Mongolia

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Other

PRE-TRIAL CHAMBER II of the International Criminal Court, having regard to regulation 24(5) of the Regulations of the Court (the ‘Regulations’), issues this decision on the request of Mongolia for leave to reply.

I. Procedural history and background

1. Following Vladimir Vladimirovich Putin’s (‘Mr Putin’) travel to Mongolia and its failure to arrest and surrender him to the Court, on 10 September 2024 the Chamber invited Mongolia to provide submissions concerning its failure to comply with the request to cooperate with the Court in the arrest and surrender of Mr Putin pursuant to regulation 109(3) of the Regulations.¹

2. On 3 October 2024, Mongolia provided submissions concerning its failure to comply with the Court’s request for cooperation.²

3. On 24 October 2024, the Chamber, pursuant to article 87(7) of the Rome Statute (the ‘Statute’), rendered the ‘Finding under article 87(7) of the Rome Statute on the non-compliance by Mongolia with the request by the Court to cooperate in the arrest and surrender of Vladimir Vladimirovich Putin and referral to the Assembly of States Parties’ (the ‘Article 87(7) Finding’).³

4. On 29 October 2024, the Registry transmitted to the Presidency a *note verbale* from Mongolia containing an application for the disqualification of two judges from the Chamber and the disqualification of two judges from the Presidency (the ‘Application for Disqualification’).⁴ On the same date, the Registry transmitted to the Chamber the same *note verbale*, appending (i) a request for temporary stay of the proceedings pending the resolution of the aforementioned Application for

¹ Decision inviting Mongolia to provide any further submissions on its failure to arrest and surrender Vladimir Vladimirovich Putin, ICC-01/22-86-Conf, para. 9.

² Annex I (confidential *ex parte* Prosecution only) to Registry transmission of the submissions sent by Mongolia in relation to Pre-Trial Chamber II’s Decision inviting Mongolia to provide any further submissions on its failure to arrest and surrender Vladimir Vladimirovich Putin dated 10 September 2024 (ICC-01/22-86-Conf), ICC-01/22-89-Conf-Exp-Anx (dated 4 October 2024 and notified on 7 October 2024).

³ ICC-01/22-90.

⁴ Registry transmission of communication received from Mongolia in relation to Pre-Trial Chamber II’s ‘Finding under article 87(7) of the Rome Statute on the non-compliance by Mongolia with the request by the Court to cooperate in the arrest and surrender of Vladimir Vladimirovich Putin and referral to the Assembly of States Parties’ of 24 October 2024, with Public Annex, ICC-01/22-92 (the ‘Registry Transmission to the Presidency’). See also Annex to Registry Transmission to the Presidency, ICC-01/22-92-Anx, pp. 4-8 (under the title ‘APPLICATION FOR THE DISQUALIFICATION OF JUDGES’).

Disqualification (the ‘Request for Stay of the Proceedings’);⁵ and (ii) a request for leave to appeal the Article 87(7) Finding in relation to sixteen issues (the ‘Request for Leave to Appeal’), also containing requests to convene a hearing and to invite expressions of interest to participate as *amici curiae* pursuant to rule 103 of the Rules of Procedure and Evidence (the ‘Rules’) in relation to the Request for Leave to Appeal (the ‘Other Related Requests’).⁶

5. On 4 November 2024, the Prosecution responded to the Request for Leave to Appeal, arguing that the Chamber should dismiss it as failing to meet the requirements under article 82(1)(d) of the Statute (the ‘Prosecution’s Response’).⁷

6. On 13 November 2024, the Registry transmitted a *note verbale* from Mongolia, dated 12 November 2024, whereby Mongolia requests leave to reply to the Prosecution’s Response (the ‘Request for Leave to Reply’).⁸

II. Determination of the Chamber

7. Regulation 24(5) of the Regulations provides that a participant ‘may only reply to a response with the leave of the Chamber’ and that ‘a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated’.

⁵ Registry transmission of communication received from Mongolia in relation to Pre-Trial Chamber II’s ‘Finding under article 87(7) of the Rome Statute on the non-compliance by Mongolia with the request by the Court to cooperate in the arrest and surrender of Vladimir Vladimirovich Putin and referral to the Assembly of States Parties’ of 24 October 2024, with Public Annex, ICC-01/22-91 (the ‘Registry Transmission to Pre-Trial Chamber II’). See also Annex to Registry Transmission to Pre-Trial Chamber II, ICC-01/22-91-Anx, pp. 9-10 (under the title ‘REQUEST FOR A TEMPORARY STAY OF PROCEEDINGS’).

⁶ Registry Transmission to Pre-Trial Chamber II. See also Annex to Registry Transmission to Pre-Trial Chamber II, ICC-01/22-91-Anx, pp. 4-8 (under the title ‘REQUEST TO LEAVE TO APPEAL’).

⁷ Prosecution response to Mongolia’s request for leave to appeal the Pre-Trial Chamber II’s ‘Finding under article 87(7) of the Rome Statute on the non-compliance by Mongolia with the request by the Court to cooperate in the arrest and surrender of Vladimir Vladimirovich Putin and referral to the Assembly of States Parties’, ICC-01/22-93, para. 1.

⁸ Registry Transmission of a ‘Request for Leave to Reply’ received from Mongolia in relation to the ‘Prosecution’s response to Mongolia’s request for leave to appeal Pre-Trial Chamber’s II’s ‘Finding under article 87(7) of the Rome Statute on the non-compliance by Mongolia with the request by the Court to cooperate in the arrest and surrender of Vladimir Vladimirovich Putin and referral to the Assembly of States Parties’ ICC-01/22-93, ICC-01/22-100 (the ‘Registry Transmission of 13 November 2024’); Annex to Registry Transmission of 13 November 2024, ICC-01/22-100-Anx, pp. 4-9 (under the title ‘REQUEST LEAVE TO REPLY’).

8. Mongolia submits that the Prosecution's Response introduces 'several new issues', arguing in this regard that: (i) it 'did not foresee that the Prosecution would challenge the sufficiency of its procedural presentation' of the issues for which leave to appeal is sought in the Request for Leave to Appeal;⁹ (ii) the Prosecution's contention that Mongolia's arguments stem from misunderstandings of the Article 87(7) Finding 'represent new characterizations that it could not have anticipated';¹⁰ (iii) a reply would allow Mongolia to address the Prosecution's arguments that the issues raised by Mongolia in its Request for Leave to Appeal are settled by prior jurisprudence by 'demonstrating the unique and specific nature of the issues arising from the' Article 87(7) Finding;¹¹ and (iv) the Prosecution's assertion that its 'request for measures such as *amici curiae* and oral hearings are "unjustified" is a new procedural argument that requires a reply, as these requests are grounded in procedural fairness and merit substantive consideration'.¹²

9. Mongolia further contends that the Prosecution's Response contains 'substantial misinterpretations and mischaracterizations of Mongolia's arguments, warranting clarification to ensure a fair and accurate record', referring, among others, to the need to clarify that its arguments raised in the Request for Leave to Reply 'raise distinct legal questions that have not been directly addressed by prior Appeals Chamber rulings'.¹³

10. The Chamber considers that the arguments to which Mongolia intends to reply in relation to issues (i) and (iv) could have been reasonably foreseen as they are direct responses to those arguments developed by Mongolia in its Request for Leave to Appeal, and do not appear to raise any novel issue. Accordingly, leave to reply to these issues is rejected. However, considering that it could have been difficult for Mongolia to anticipate the overall scope and the level of detail of the arguments provided in the Prosecution's Response in relation to issues (ii) and (iii), the Chamber exceptionally grants leave to reply limited to such issues. Considering its limited scope, the Chamber invites Mongolia to file a reply, not exceeding 5 pages, by Wednesday, 20 November 2024. This is without prejudice to the adjudication of pending related requests.

⁹ Request for Leave to Reply, para. 12. See also paras 11, 13-15.

¹⁰ Request for Leave to Reply, paras 16-17.

¹¹ Request for Leave to Reply, paras 18-19.

¹² Request for Leave to Reply, para. 20. See also para. 21.

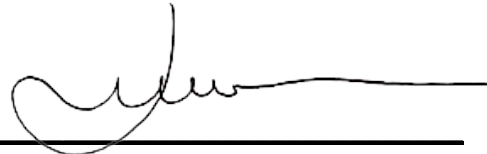
¹³ Request for Leave to Reply, paras 28-29. See also paras 22-32.

FOR THESE REASONS, THE CHAMBER HEREBY

PARTLY GRANTS Mongolia's Request for Leave to Reply; and

INSTRUCTS Mongolia to file a reply, not exceeding 5 pages, in accordance with paragraph 10 above, by Wednesday, 20 November 2024.

Done in English. A French translation will follow. The English version remains authoritative.



**Judge Rosario Salvatore Aitala,
Presiding Judge**



**Judge Sergio Gerardo Ugalde
Godínez**



Judge Haykel Ben Mahfoudh

Dated this Thursday, 14 November 2024

At The Hague, The Netherlands