



Original: English

No. **ICC-01/22**
Date: **17 December 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 the Prosecution's request to withdraw a filing from the record, or
alternatively file an amended record

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 issues this ‘Decision on the Prosecution’s request to withdraw a filing from the record, or alternatively file an amended record’.

I. Procedural history and background

1. On 17 March 2023, further to a request filed by the Prosecution dated 22 February 2023,¹ the Chamber issued a warrant of arrest for Mr Vladimir Vladimirovich Putin (the ‘Warrant of Arrest’).²

2. 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’), finding that Mongolia had failed to cooperate with the Court and thus referring it to the Assembly of State Parties.³

3. On 22 November 2024, the Chamber rejected *inter alia* Mongolia’s request under article 82(1)(d) of the Statute for leave to appeal the Article 87(7) Finding (the ‘Decision on Leave to Appeal’).⁴

4. On 2 December 2024, Mongolia requested the Chamber to reconsider *inter alia* the Decision on Leave to Appeal (the ‘Reconsideration Request’).⁵

5. On 6 December 2024, the Prosecution responded to Mongolia’s Reconsideration Request (the ‘Prosecution’s Response’).⁶ On the same day, the Court Management Section informed that access to this court record had been temporarily restricted and that the record should be considered as confidential.⁷

¹ ICC-01/22-14-SECRET-Exp.

² ICC-01/22-18-SECRET.

³ ICC-01/22-90.

⁴ Decision on Mongolia’s requests for leave to appeal, temporary stay of the proceedings and related matters, ICC-01/22-111.

⁵ Request for Reconsideration of the ‘Decision on Mongolia’s Requests for Leave to Appeal, Temporary Stay of the Proceedings, and Related Matters’, ICC-01/22-112-Anx, annexed to Registry Transmission of a ‘Request for Reconsideration of the “Decision on Mongolia’s Requests for Leave to Appeal, Temporary Stay of the Proceedings, and Related Matters”’ received from Mongolia, ICC-01/22-112.

⁶ Prosecution response to Mongolia’s “Request for reconsideration of the ‘Decision on Mongolia’s request for leave to appeal, temporary stay of the proceedings, and related matters’”, ICC-01/22-114, with public annexes A and B.

⁷ Email from Court Management-Court Records dated 6 December 2024, at 20h42.

6. On 11 December 2024, the Prosecution requested authorisation to (i) withdraw the Prosecution's Response; or, (ii) should the Chamber reject such withdrawal, file a corrected version of the Prosecution's Response (the 'Prosecution's Request').⁸ In support of its request, it submits that 'there are significant, substantive revisions to the [Prosecution's] Response which most accurately reflect the Prosecution's position on Mongolia's [Reconsideration] [R]equest'.⁹

II. Determination of the Chamber

7. The Chamber recalls that, for the sake of transparency of judicial proceedings, a filing cannot in principle be withdrawn and struck from the official record of a situation or case. The Prosecution's Response shall therefore remain and appear on the record of the present situation as originally submitted, including as regards to its level of classification, and shall be formally notified to the relevant recipients, including Mongolia. The Registry is hereby ordered to comply with these instructions.

8. The Chamber also recalls that 'registration of corrections' to documents filed in the record is governed by regulation 25 of the Regulations of the Registry, which provides specific requirements according to which a corrected version of a document may be filed in the record. Furthermore, as consistently held by the Appeals Chamber, 'the purpose of corrigenda is to correct typographical errors' and therefore 'a corrigendum may not be used to add to or alter the substance of the submissions made in a document'.¹⁰ The amendments that the Prosecution intends to apply to the Prosecution's Response do not appear limited to such purpose, but rather amount to the rephrasing, deletion and addition of submissions.¹¹

9. In the present case, the reasons advanced by the Prosecution in support of its request merely focus on questions of style as reflected in the Prosecution's proposed amendments.¹² The Chamber considers that these reasons are insufficient to authorise

⁸ Prosecution request to withdraw its "Prosecution response to Mongolia's 'Request for reconsideration of the "Decision on Mongolia's request for leave to appeal, temporary stay of the proceedings, and related matters'"", ICC-01/22-116.

⁹ Prosecution's Request, para. 3.

¹⁰ Decision on the admissibility of the appeal against the 'Decision on the application for the interim release of detained Witnesses DRC-D02-P0236, DRC-D02-P0228 and DRC-D02-P-0350', 20 January 2014, ICC-01/04-01/07-3424, para. 15.

¹¹ See Annex B to the Prosecution's Request, ICC-01/22-116-AnxB.

¹² See Annex B to the Prosecution's Request, ICC-01/22-116-AnxB.

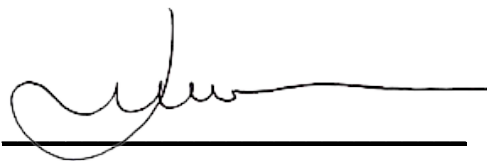
the Prosecution to withdraw the Prosecution's Response and file a revised or amended version.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Prosecution's Request; and

INSTRUCTS the Registry to re-instate access to court record ICC-01/22-114 and its annexes as originally submitted, and to formally notify it to the relevant recipients.

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 Tuesday, 17 December 2024

At The Hague, The Netherlands