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No. **ICC-01/22**
Date: **18 March 2025**

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 reconsideration

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

The Office of the Prosecutor

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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
Presidency
Assembly of States Parties

PRE-TRIAL CHAMBER II of the International Criminal Court issues this decision rejecting Mongolia’s request for reconsideration of the 29 November 2024 ‘Decision on Mongolia’s requests for leave to appeal, temporary stay of the proceedings and related matters’.¹

I. Procedural history and background

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

2. On 29 October 2024, the Registry transmitted to the Presidency a *note verbale* from Mongolia, enclosing 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 a *note verbale*, appending (i) a request for a temporary stay of the proceedings pending the resolution of the Application for 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 16 issues (the ‘Request for Leave to Appeal’).⁶

¹ ICC-01/22-111.

² ICC-01/22-90.

³ Article 87(7) Finding, p. 17.

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’).

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’).

3. On 4 November 2024, the Prosecution responded to the Request for Leave to Appeal, arguing that the Chamber should dismiss it because it fails to meet the requirements under article 82(1)(d) of the Statute (the ‘Prosecution’s Response’).⁷
4. On 13 November 2024, the Registry transmitted a *note verbale* from Mongolia, dated 12 November 2024, whereby it requested leave to reply to the Prosecution’s Response (the ‘Request for Leave to Reply’).⁸
5. On 14 November 2024, the Chamber granted the Request for Leave to Reply in relation to two discrete issues only and invited Mongolia to submit its reply by 20 November 2024.⁹
6. On 15 November 2024, the Plenary of Judges rejected the Application for Disqualification,¹⁰ and provided its reasons on 22 November 2024 (the ‘Decision on Disqualification of Judges’).¹¹
7. On 19 November 2024, the Registry transmitted a *note verbale* from Mongolia, dated 18 November 2024, whereby it requested an extension of the time and page limits to file a reply to the Prosecution’s Response (the ‘Request for Extension of Time and Page Limit’).¹²
8. On 20 November 2024, the Chamber partly granted the Request for Extension of Time and Page Limit, ordering *inter alia* that the reply be filed by 25 November 2024.¹³

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’).

⁹ Decision on Mongolia’s request for leave to reply, ICC-01/22-103.

¹⁰ Notification of a decision of the plenary on the ‘Application for the Disqualification of Judges’ filed on 31 October 2024 (ICC-01/22-92-Anx), ICC-01/22-104.

¹¹ Reasons for the Decision on the ‘Application for the Disqualification of Judges’ filed on 31 October 2024 (ICC-01/22-92-Anx), ICC-01/22-107.

¹² Request for extension of time and page limit to file a reply, ICC-01/22-106-Anx, annexed to Registry Transmission of a ‘Request for extension of time and page limit to file a reply’ received from Mongolia, ICC-01/22-106.

¹³ Email from the Chamber dated 20 November 2024 at 14:16.

9. On 25 November 2024, Mongolia did not file a reply to the Prosecution's Response. Instead, on 26 November 2024 the Registry transmitted to the Chamber a *note verbale* from Mongolia, dated 25 November 2024, enclosing a 'Request for oral hearing in lieu of written reply', whereby it requested the Chamber to (i) schedule an oral hearing to receive an oral reply in place of submitting a written reply to the Prosecution's Response; and (ii) allow and invite *amici curiae* submissions prior to the oral hearing pursuant to rule 103 of the Rules (the 'Request for Hearing and *Amici Curiae* Submissions').¹⁴

10. On 29 November 2024, the Chamber dismissed Mongolia's Request for Stay of the Proceedings, and rejected the Request for Leave to Appeal and the Request for Hearing and *Amici Curiae* Submissions (the 'Decision on Leave to Appeal').¹⁵

11. On 2 December 2024, the Registry transmitted to the Chamber a *note verbale* from Mongolia, enclosing a 'Request for Reconsideration of the "Decision on Mongolia's Requests for Leave to Appeal, Temporary Stay of the Proceedings, and Related Matters"' (the 'Request for Reconsideration of the Decision on Leave to Appeal').¹⁶

12. On the same date, the Registry transmitted to the Plenary of Judges a *note verbale* from Mongolia, enclosing a 'Request for Partial Reconsideration of the Decision on the "Application for the Disqualification of Judges"' (the 'Request for Reconsideration of the Decision on Disqualification of Judges').¹⁷

13. On 6 December 2024, the Prosecution responded to the Request for Reconsideration of the Decision on Leave to Appeal, requesting the Chamber its rejection.¹⁸

¹⁴ ICC-01/22-108-Anx, annexed to Registry Transmission of a 'Request for Oral Hearing in Lieu of Written Reply' received from Mongolia, ICC-01/22-108.

¹⁵ Decision on Mongolia's requests for leave to appeal, temporary stay of the proceedings and related matters, ICC-01/22-111.

¹⁶ 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.

¹⁷ ICC-01/22-113-Anx, annexed to Registry Transmission of a 'Request for Partial Reconsideration of the Decision on the "Application for the Disqualification of Judges"' received from Mongolia, ICC-01/22-113.

¹⁸ 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.

14. On 4 March 2025, the Plenary of Judges rejected the Request for Reconsideration of the Decision on Disqualification of Judges,¹⁹ and provided its reasons on 10 March 2025 (the ‘Decision on Reconsideration of Disqualification of Judges’).²⁰

II. Determination of the Chamber

15. At the outset, the Chamber notes that Mongolia requests to stay the consideration of the Request for Reconsideration of the Decision on Leave to Appeal until the Plenary of Judges decides on the Request for Reconsideration of the Decision on Disqualification of Judges.²¹ Considering that the Plenary has issued its decision rejecting the latter request, Mongolia’s request for a stay is moot.

16. Turning to the Request for Reconsideration of the Decision on Leave to Appeal, the Chamber recalls that the Court’s statutory framework does not provide for requests for reconsideration as a procedural remedy against decisions of a pre-trial chamber.²² Indeed, this is important in order to ensure the finality of judicial decisions. That notwithstanding, the Chamber notes that this exceptional measure could be adopted where, for instance, ‘a clear error of reasoning’ has been demonstrated, or if it ‘is necessary to prevent an injustice’ or if the decision rendered is ‘manifestly unsound’.²³

¹⁹ Notification of a decision of the plenary on the Request from Mongolia dated 2 December 2024 (ICC-01/22-113-Anx), ICC-01/22-121.

²⁰ Decision on the Request from Mongolia dated 2 December 2024 (ICC-01/22-113-Anx), ICC-01/22-122.

²¹ Request for Reconsideration of the Decision on Leave to Appeal, paras 78-86, 90(i).

²² See, for example, Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Édouard Ngaïssona*, Second Decision on Disclosure and Related Matters, 4 April 2019, ICC-01/14-01/18-163, paras 34, 36; Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Édouard Ngaïssona*, Decision on the Request for Reconsideration of the Order on Reclassification, 8 May 2019, ICC-01/14-01/18-190, para. 11, referring to Pre-Trial Chamber II, *The Prosecutor v. Joseph Kony, Vincent Otti and Okot Odhiambo*, Decision on the Prosecutor’s Position on the Decision of Pre-Trial Chamber II to Redact Factual Descriptions of Crimes from the Warrants of Arrest, Motion for Reconsideration, and Motion for Clarification”, 28 October 2005, ICC-02/04-01/05-60, para. 18; Pre-Trial Chamber II, *Regulation 46(3) of the Regulations of the Court*, Decision on a Request for Reconsideration or Leave to Appeal the ‘Decision on the “Request for review of the Prosecutor’s decision of 23 April 2014 not to open a Preliminary Examination concerning alleged crimes committed in the Arab Republic of Egypt, and the Registrar’s Decision of 25 April 2014”’, 22 September 2014, ICC-RoC46(3)-01/14-5, para. 5.

²³ Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”)*, Decision on the Request for Reconsideration of Decision ICC-02/05-01/20-110 Submitted by the Defence (ICC-02/05-01/20-113), 23 September 2020, ICC-02/05-01/20-163-tENG, para. 12, referring to Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, ‘Decision on Defence Request for Reconsideration of or Leave to Appeal the Directions on Closing Briefs and Closing Statements’, 11 May 2018, ICC-02/04-01/15-1259, para. 12; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, ‘Decision on the Prosecution’s request for reconsideration or, in the alternative, leave to appeal’, 18 March 2015, ICC-01/04-02/06-519, para. 12; Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on the defence request to reconsider the ‘Order on numbering of evidence’ of 12 May 2010, 30 March 2011, ICC-01/04-01/06-2705, para. 18.

The Chamber has further noted that reconsideration is an exceptional remedy which may be allowed only under strict and limited conditions and subject to the fulfilment of a twofold requirement: (i) ‘the conditions upon which the decision was grounded have changed’; and (ii) ‘it is necessary to prevent an injustice’.²⁴

17. The Chamber notes that Mongolia is alleging that the Decision on Leave to Appeal ‘contains a clear error of reasoning’,²⁵ and that reconsideration is necessary to prevent an injustice’.²⁶ The Chamber notes that none of the reasons put forward by Mongolia satisfies the high threshold for reconsideration. In particular, Mongolia’s mere disagreement with the Chamber’s interpretation of the law cannot amount to a change in the circumstances since the Decision on Leave to Appeal was issued.

18. Since the requirements to grant the exceptional remedy of reconsideration are cumulative and Mongolia has failed to satisfy the first one, it would be unnecessary for the Chamber to further engage with the pending request. However, the Chamber will address Mongolia’s submissions that reconsideration is necessary to prevent an injustice and allegations of ‘a denial of procedural justice and the right to be heard’.²⁷ Mongolia argues that it did not have enough time to substantiate its Request for Leave to Appeal, and that it is ‘perplexed by the Chamber’s reasoning that [Mongolia] failed to substantiate the issues’, and that the Chamber declined to grant the oral hearing requested by Mongolia in such request for leave to appeal.²⁸ The Chamber recalls that Mongolia submitted numerous written submissions that were duly considered by the Chamber:

- On 30 August 2024, the Registry transmitted to the Chamber a *note verbale* from Mongolia requesting ‘consultation with the Court according to the Article 97 of the Rome Statute’.²⁹ The Chamber issued its response on the same day.³⁰

²⁴ Pre-Trial Chamber II, *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, Decision on Mr Mokom’s requests for reconsideration and leave to appeal the ‘Order on appointment of Mr Kaufman as Counsel for Mr Mokom’, 14 April 2022, ICC-01/14-01/22-43, para. 19 and references cited therein.

²⁵ Request for Reconsideration of the Decision on Leave to Appeal, paras 16-33.

²⁶ Request for Reconsideration of the Decision on Leave to Appeal, paras 34-67.

²⁷ Request for Reconsideration of the Decision on Leave to Appeal, para. 58. See also paras 35-62.

²⁸ Request for Reconsideration of the Decision on Leave to Appeal, paras 35, 55.

²⁹ Annex I to Registry transmission of a communication received from Mongolia in relation to Pre-Trial Chamber II’s Order dated 24 April 2023 (ICC-01/22-23-Conf-Exp), ICC-01/22-83-Conf-Exp-AnxI.

³⁰ Email from Pre-Trial Chamber II to the Registry, 30 August 2024, at 16h10.

- On 2 September 2024, the Registry transmitted to the Chamber a *note verbale* from Mongolia seeking ‘consultation with the ICC to address the challenges related to the Court’s request for cooperation in the context of the Situation in Ukraine ICC-01/22 dated 26 April 2023’. Mongolia ‘recognize[d] that, under customary international law, President Putin, as a sitting head of state of a third country, is entitled and shall enjoy immunity *ratione personae* and *ratione materiae*’, and that it ‘ha[d] not identified any rule in customary international law that excludes or renders the immunity of heads of state inapplicable when their arrest is sought by an international criminal court’. Mongolia continued by asserting that ‘[t]he person specified in the request enjoys immunity and privileges according to the existing international customary norms and legal principles’ and that ‘proceeding with the request would result in breach of Mongolia’s pre-existing legal obligations’.³¹ The Chamber issued its response on the same date noting that, for consultations to be meaningful, they must be timely. The Chamber also recalled its classified response to the submissions of another State Party issued in the context of a prior consultation process under article 97 of the Statute and notified to all States Parties, including Mongolia,³² whereby it found that ‘personal immunity of officials, including Heads of third States, is not opposable in proceedings before the Court, nor a waiver of immunity is required under article 98 of the Statute’. The Chamber thus found that the submissions presented by Mongolia did not show any legitimate reason that would impede Mongolia from fulfilling its obligations under the Statute.³³

³¹ Annex I to Registry transmission of additional communication received from Mongolia in relation to Pre-Trial Chamber II’s Order dated 24 April 2023 (ICC-01/22-23-Conf-Exp), ICC-01/22-84-Conf-Exp-AnxI.

³² Response to submissions of a State Party under article 97 of the Rome Statute in relation to the Requests for provisional arrest of 26 April 2023 pursuant to the Order on the Requests for provisional arrest of 24 April 2023, 17 July 2023, ICC-01/22-42-Conf.

³³ Response to submissions of a State Party under article 97 of the Rome Statute in relation to the Requests for provisional arrest of 26 April 2023 pursuant to the Order on the Requests for provisional arrest of 24 April 2023, ICC-01/22-85-Conf, paras 9-10, 12.

- On 3 October 2024, upon being invited by the Chamber to do so,³⁴ Mongolia provided submissions concerning its failure to comply with the Request for Cooperation.³⁵
- As recalled above, in the context of the proceedings on leave to appeal, Mongolia filed several documents, all of which were thoroughly and expeditiously considered by the Chamber: (i) the Request for Stay of the Proceedings; (ii) the Request for Leave to Appeal; (iii) the Request for Leave to Reply; (iv) the Request for Extension of Time and Page Limit; and (v) the Request for Hearing and *Amici Curiae* Submissions.³⁶

19. Mongolia therefore has been afforded the widest opportunity to be heard and make submissions, which have been duly considered by the Chamber within the Court's legal framework in a timely manner. Mongolia's submissions on the alleged necessity to prevent an injustice are thus without merit.

20. In light of the above considerations, the Request for Reconsideration of the Decision on Leave to Appeal is rejected.

³⁴ Decision inviting Mongolia to provide any further submissions on its failure to arrest and surrender Vladimir Vladimirovich Putin, 10 September 2024, ICC-01/22-86-Conf, para. 9.

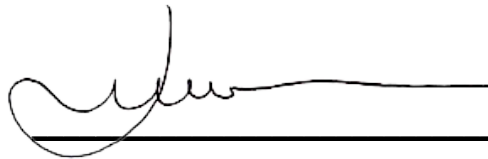
³⁵ Annex I (confidential *ex parte* Prosecution only) to Registry transmission of the submissions sent by Mongolia in relation to Pre-Trial Chamber II's Decision inviting Mongolia to provide any further submissions on its failure to arrest and surrender Vladimir Vladimirovich Putin dated 10 September 2024 (ICC-01/22-86-Conf), ICC-01/22-89-Conf-Exp-Anx (dated 4 October 2024 and notified on 7 October 2024).

³⁶ See above paras 2, 4, 7, 9.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS Mongolia's Request for Reconsideration of the Decision on Leave to Appeal.

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, 18th of March 2025

At The Hague, The Netherlands