

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/11-01/11 OA 5

Date: 11 September 2014

THE APPEALS CHAMBER

Before: Judge Anita Ušacka, Presiding Judge
Judge Sang-Hyun Song
Judge Sanji Mmasenono Monageng
Judge Akua Kuenyehia
Judge Erkki Kourula

SITUATION IN LIBYA

**IN THE CASE OF THE PROSECUTOR v. SAIF AL-ISLAM GADDAFI and
ABDULLAH AL-SENUSSI**

Public document

**Decision on the appeal of Mr Al-Senussi against the Pre-Trial Chamber's
"Decision on Libya's postponement of the execution of the request for arrest and
surrender of Abdullah Al-Senussi pursuant to article 95 of the Rome Statute and
related Defence request to refer Libya to the UN Security Council"**



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

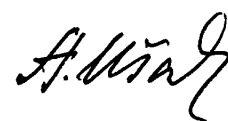
The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
Ms Helen Brady

Counsel for Saif Al-Islam Gaddafi
Mr John R. W. D. Jones
Ms Sarah Bafadhel

Counsel for Abdullah Al-Senussi
Mr Ben Emmerson
Mr Rodney Dixon

REGISTRY

Registrar
Mr Herman von Hebel

A handwritten signature in black ink, appearing to be 'A. M. Jones', located in the bottom right corner of the page.

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Abdullah Al-Senussi against the decision of Pre-Trial Chamber I entitled “Decision on Libya’s postponement of the execution of the request for arrest and surrender of Abdullah Al-Senussi pursuant to article 95 of the Rome Statute and related Defence request to refer Libya to the UN Security Council” of 14 June 2013 (ICC-01/11-01/11-354),

After deliberation,

Renders unanimously the following

DECISION

The appeal is dismissed as moot.

REASONS

I. PROCEDURAL HISTORY

A. Proceedings before the Pre-Trial Chamber

1. On 26 February 2011, the Security Council of the United Nations adopted *Resolution 1970*, referring the situation in Libya since 15 February 2011 to the Prosecutor of this Court.¹
2. On 27 June 2011, the Pre-Trial Chamber issued a warrant of arrest for Mr Al-Senussi,² in addition to a decision thereon.³ A request for Mr Al-Senussi’s arrest and surrender was issued on 4 July 2011.⁴
3. On 2 April 2013, Libya filed the “Application on behalf of the Government of Libya relating to Abdullah Al-Senussi pursuant to Article 19 of the ICC Statute”⁵

¹ S/RES/1970 (2011).

² “Warrant of Arrest for Abdullah Al-Senussi”, ICC-01/11-01/11-4.

³ “Decision on the ‘Prosecutor’s Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi’”, ICC-01/11-01/11-1.

⁴ “Request to the Libyan Arab Jamahiriya for the arrest and surrender of Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi”, ICC-01/11-01/11-5.

(hereinafter: “Libya’s Admissibility Challenge”). It concluded its filing by, *inter alia*, stating that it “exercises its right to postpone the order for surrender of Abdullah Al-Senussi, pursuant to article 95 of the Statute, pending a determination of the Government’s Article 19 admissibility challenge in relation to Abdullah Al-Senussi”.⁶

4. Counsel for Mr Al-Senussi (hereinafter: “Defence”), filed, on 24 April 2013, the “Response on behalf of Abdullah Al-Senussi to the Submission of the Government of Libya for Postponement of the Surrender Request for Mr. Al-Senussi”,⁷ arguing that the Pre-Trial Chamber should “reject Libya’s argument that it is entitled to postpone the surrender request pursuant to Article 95” and that it should “confirm its order for the immediate surrender of Mr. Al-Senussi to the ICC”.⁸

5. Libya filed the “Libyan Government’s reply to ‘Response on behalf of Abdullah Al-Senussi to the Submission of the Government of Libya for Postponement of the Surrender Request for Mr. Al-Senussi’” on 20 May 2013,⁹ having been granted leave by the Pre-Trial Chamber to do so.¹⁰ In this filing, Libya requested the Pre-Trial Chamber to reject the Defence’s submissions “and interpret article 95 to allow Libya to postpone execution of the surrender request pending determination of the admissibility challenge”.¹¹

6. On 14 June 2013, in the “Decision on Libya’s postponement of the execution of the request for arrest and surrender of Abdullah Al-Senussi pursuant to article 95 of the Rome Statute and related Defence request to refer Libya to the UN Security Council”¹² (hereinafter: “Impugned Decision”), the Pre-Trial Chamber decided, *inter alia*, “that Libya, pursuant to article 95 of the Statute, may postpone the execution of the Surrender Request pending determination of the Admissibility Challenge”.¹³

⁵ ICC-01/11-01/11-307-Conf-Exp. A confidential redacted version was registered on the same day (ICC-01/11-01/11-307-Conf-Red) and a public redacted version was registered on 3 April 2013 (ICC-01/11-01/11-307-Red2).

⁶ Libya’s Admissibility Challenge, para. 206. *See also* para. 5.

⁷ ICC-01/11-01/11-319 (hereinafter: “Defence Filing regarding Article 95”).

⁸ Defence Filing regarding Article 95, para. 63.

⁹ ICC-01/11-01/11-339 (hereinafter: “Libya’s Response to Defence Filing regarding Article 95”).

¹⁰ “Decision on Libya’s application for leave to reply to the Defence of Abdullah Al-Senussi”, 10 May 2013, ICC-01/11-01/11-335.

¹¹ Libya’s Response to Defence Filing regarding Article 95, para. 44.

¹² ICC-01/11-01/11-354.

¹³ Impugned Decision, p. 20.

7. Following an application by the Defence for leave to appeal the Impugned Decision,¹⁴ the Pre-Trial Chamber rendered the “Decision on an application for leave to appeal submitted by the Defence of Abdullah Al-Senussi” dated 28 August 2013,¹⁵ granting the Defence leave to appeal in relation to the following issue:

[T]he postponement of the surrender order on the narrow basis that all the Chamber needed to consider was whether an admissibility challenge had been properly filed before the ICC.¹⁶

8. On 11 October 2013, the Pre-Trial Chamber rendered the “Decision on the admissibility of the case against Abdullah Al-Senussi”¹⁷ (hereinafter: “Pre-Trial Chamber’s Decision on Admissibility”), finding the case against Mr Al-Senussi to be inadmissible.

B. Proceedings before the Appeals Chamber

9. On 9 September 2013, the Defence filed the “Appeal on behalf of Mr. Abdullah Al-Senussi against the ‘Decision on Libya’s postponement of the execution of the request for arrest and surrender of Abdullah Al-Senussi pursuant to article 95 of the Rome Statute and related Defence request to refer Libya to the UN Security Council’”¹⁸ (hereinafter: “Appeal OA 5”). The Defence argues “that the Pre-Trial Chamber committed discernable errors of law and fact in postponing the surrender order for Mr. Al-Senussi to the ICC pursuant to Article 95 while the admissibility application is being determined by the Pre-Trial Chamber”, and requests that the Appeals Chamber “reverse the [Impugned Decision] and [] order Libya to surrender Mr. Al-Senussi to the ICC immediately”.¹⁹

¹⁴ “Defence Application on behalf of Mr. Abdullah Al-Senussi for Leave to Appeal against ‘Decision on Libya’s postponement of the execution of the request for arrest and surrender of Abdullah Al-Senussi pursuant to article 95 of the Rome Statute and related Defence request to refer Libya to the UN Security Council’”, 20 June 2013, ICC-01/11-01/11-365. The Prosecutor filed a response to this application on 24 June 2013. See “Prosecution Response to the Defence Application on behalf of Mr. Abdullah Al-Senussi for Leave to Appeal against the ‘Decision on Libya’s postponement of the execution of the request for arrest and surrender of Abdullah Al-Senussi pursuant to article 95 of the Rome Statute and related Defence request to refer Libya to the Security Council’”, ICC-01/11-01/11-369.

¹⁵ The decision was registered on 29 August 2013; ICC-01/11-01/11-419 (hereinafter: “Decision Granting Leave to Appeal”).

¹⁶ Decision Granting Leave to Appeal, p. 25.

¹⁷ ICC-01/11-01/11-466-Conf. A public redacted version was registered on the same date (ICC-01/11-01/11-466-Red).

¹⁸ ICC-01/11-01/11-439 (OA 5).

¹⁹ Appeal OA 5, para. 3.

10. Responses to this appeal were filed by the defence for Mr Saif Al-Islam Gaddafi (hereinafter: "Gaddafi Defence"),²⁰ the Prosecutor²¹ and Libya²² (hereinafter: "Libya's Response to the Appeal"). The Gaddafi Defence puts forward submissions as to its standing in the appeal²³ which are contested by Libya.²⁴ Libya also includes within its filing an application to extend the time limit for its filing pursuant to regulation 35 (2) of the Regulations of the Court.²⁵ The Defence responded to this application on 7 October 2013 arguing that it should be rejected.²⁶

11. The Pre-Trial Chamber's Decision on Admissibility having been rendered on 11 October 2013, the Defence filed, on 17 October 2013, its appeal against that decision²⁷ (hereinafter: "Appeal OA 6"). The Appeals Chamber delivered its judgment on that appeal on 24 July 2014,²⁸ confirming the Pre-Trial Chamber's Decision on Admissibility and dismissing the appeal.

II. MERITS

12. The issue being raised in the Appeal OA 5 concerns the interpretation of article 95 of the Statute, which provides as follows:

²⁰ "Defence Response to 'Appeal on behalf of Mr. Abdullah Al-Senussi against the "Decision on Libya's postponement of the execution of the request for arrest and surrender of Abdullah Al-Senussi pursuant to article 95 of the Rome Statute and related Defence request to refer Libya to the UN Security Council"', 20 September 2013, ICC-01/11-01/11-448 (OA 5). A corrigendum was registered on 23 September 2013 (ICC-01/11-01/11-448-Corr (OA 5)) (hereinafter: "Gaddafi Defence Response to the Appeal").

²¹ "Prosecution's Response to the 'Appeal on behalf of Mr. Abdullah Al-Senussi against the "Decision on Libya's postponement of the execution of the request for arrest and surrender of Abdullah Al-Senussi pursuant to article 95 of the Rome Statute and related Defence request to refer Libya to the UN Security Council"', 20 September 2013, ICC-01/11-01/11-449 (OA 5).

²² "Libyan Government Response to 'Appeal on behalf of Mr. Abdullah Al-Senussi against the "Decision on Libya's postponement of the execution of the request for arrest and surrender of Abdullah Al-Senussi pursuant to article 95 of the Rome Statute and related Defence request to refer Libya to the UN Security Council"', ICC-01/11-01/11-451 (OA 5).

²³ Gaddafi Defence Response to the Appeal, paras 7-14.

²⁴ Libya's Response to the Appeal, para. 5.

²⁵ Libya's Response to the Appeal, para. 2.

²⁶ "Response on behalf of Mr. Abdullah Al-Senussi to the Libyan Government's Regulation 35(2) Request within the 'Libyan Government Response to "Appeal on behalf of Mr Abdullah Al-Senussi against the 'Decision on Libya's postponement of the execution of the request for arrest and surrender of Abdullah Al-Senussi pursuant to article 95 of the Rome Statute and related Defence request to refer Libya to the UN Security Council"', ICC-01/11-01/11-463 (OA 5).

²⁷ "Appeal on behalf of Abdullah Al-Senussi against Pre-Trial Chamber I's 'Decision on the admissibility of the case against Abdullah Al-Senussi', and Request for Suspensive Effect", ICC-01/11-01/11-468-Conf (OA 6). A public redacted version was registered on the same date (ICC-01/11-01/11-468-Red (OA 6)).

²⁸ "Judgment on the appeal of Mr Abdullah Al-Senussi against the decision of Pre-Trial Chamber I of 11 October 2013 entitled 'Decision on the admissibility of the case against Abdullah Al-Senussi'", ICC-01/11-01/11-565 (OA 6).

Where there is an admissibility challenge under consideration by the Court pursuant to article 18 or 19, the requested State may postpone the execution of a request under this Part pending a determination of the Court, unless the Court has specifically ordered that the Prosecutor may pursue the collection of such evidence pursuant to article 18 or 19.

13. As noted above, shortly after receipt of the last Defence filing in the instant appeal, the Pre-Trial Chamber rendered a decision finding the case against Mr Al-Senussi to be inadmissible in relation to which the Defence subsequently filed an appeal (Appeal OA 6). The Appeals Chamber considered it appropriate to first decide on that appeal before addressing the instant appeal because it considered that the outcome of the former would determine whether or not the latter needed to be resolved. Subsequently, the Appeals Chamber dismissed the Appeal OA 6 and confirmed the Pre-Trial Chamber's Decision on Admissibility. In such circumstances, the Appeals Chamber considers the Appeal OA 5 to be moot, and dismisses it as such. As a result of this decision, there is no need for the Appeals Chamber to decide on the procedural issues that arise in this appeal, including Libya's request to extend time, as contained within Libya's Response to the Appeal, the standing of Mr Saif Al-Islam Gaddafi in this appeal, and compliance by the parties with the page and word limits stipulated in the Regulations of the Court.

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



Judge Anita Ušacka
Presiding Judge

Dated this 11th day of September 2014

At The Hague, The Netherlands